

Secondary Victimization: Domestic Violence Survivors Navigating the Family Law System

Violence Against Women
1–22

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Abstract

This qualitative study explored the experiences of 22 domestic violence survivors attempting to negotiate safe post-separation parenting arrangements through the Australian family law system. Their allegations of violence put them at odds with a system that values mediated settlements and shared parenting. Skeptical responses, accusations of parental alienation, and pressure to agree to unsafe arrangements exacerbated the effects of post-separation violence. Core themes in the women's narratives of engagement with the family law system—silencing, control, and undermining the mother–child relationship—mirrored domestic violence dynamics, suggesting the concept of secondary victimization as a useful lens for understanding their experiences.

Keywords

domestic violence, secondary victimization, family law, shared parenting, child custody

Introduction

Domestic violence is often a key factor in women's decisions to end an intimate relationship, particularly when they become concerned about the impact of the violence on their children (Fanslow & Robinson, 2010; Hardesty & Chung, 2006; Meyer, 2010). For many women, however, separation from an abusive partner does not end domestic violence (Fleury, Sullivan, & Bybee, 2000; Humphreys & Thiara, 2003). In some

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cases, physical violence may escalate in severity, including to lethal violence (J. C. Campbell, Glass, Sharps, Laughon, & Bloom, 2007). In others, separation may be associated with a change in the tactics of abuse. For example, there may be an intensification of non-physical coercive tactics, such as financial abuse (Branigan, 2007) or litigation or “paper abuse” (Miller & Smolter, 2011, p. 637). A common form of litigation abuse is engaging the woman in protracted family law proceedings (Coy, Perks, Scott, & Tweedale, 2012; Prezkop, 2011).

Abusers commonly use children as a means of indirect control of women after separation (Hayes, 2012) as parenting and contact arrangements provide a context in which they have ongoing access to ex-partners (Hardesty & Ganong, 2006; Jaffe, Crooks, & Poisson, 2003). In this context of post-separation violence and multifaceted efforts by the abuser to continue to exercise coercive control, survivors who are mothers are required to negotiate post-separation parenting arrangements. This is occurring in the context of a family law system that, in Australia as in many similar nations, is underpinned by a philosophy that has been characterized as “the indissolubility of parenthood” (Parkinson, 2013, p. 8). This policy direction over the past 30 years is typically expressed in legislation that emphasizes children’s rights to an ongoing relationship with both parents, shared parental responsibility and shared post-separation parenting arrangements, ideally established via mediation rather than litigation (Elizabeth, Gavey, & Tolmie, 2012). In some jurisdictions, legislation contains what is colloquially termed a “friendly parent provision,” that is, decision makers being required to take into account the extent to which a parent has facilitated the child’s relationship with the other parent, in determining parenting arrangements. This provision can inhibit women’s ability to seek to limit contact with fathers when child abuse and/or domestic violence are at issue (de Simone, 2008; Rathus, 2007). Despite claims to gender neutrality in family law (Elizabeth et al., 2012), Hardesty and Chung (2006) argue that this provision primarily targets women as mother residence continues to be the primary post-separation arrangement.

The family law system has been increasingly challenged to respond to the growing recognition of domestic violence as a serious social issue (Johnston & Ver Steegh, 2013), and of the deleterious effects on children of exposure to domestic violence (Febres et al., 2014; Holt, Buckley, & Whelan, 2008). Johnston and Ver Steegh (2013) argue that critiques of the family law system by domestic violence advocates center on several issues: the identification of domestic violence, the adequacy of protection and support afforded to survivors and the extent to which perpetrators are held accountable, the impact on survivors of participating in dispute resolution procedures given the power imbalance inherent in domestic violence, and the extent to which contact and parenting arrangements address safety.

This article reports the findings of a qualitative study of women’s experiences in attempting to establish safe parenting arrangements for themselves and their children through the family law system after separating from an abusive partner. The study was conducted in the period following the introduction of far-reaching legislative changes to Australian family law that reflected the expression of the notion of the “indissolubility of parenthood” (Parkinson, 2013, p. 8). It is argued that the concept of secondary

victimization provides a useful lens for understanding the distressing encounters that the women reported with a range of professionals in the family law system—lawyers, judges, family report writers, mediators, and contact services staff.

Secondary Victimization

Secondary victimization is the term used to describe the additional harm and sense of betrayal experienced by victims of traumatic events when the responses they receive from formal or informal supports are inappropriate (S. L. Brown, 2013). It is a concept that has most commonly been applied to understanding the experiences of rape survivors (R. Campbell, 2008; R. Campbell, Wasco, Ahrens, Seftl, & Barnes, 2001). Applying the concept to domestic violence survivors, Hattendorf and Tollerud (1997) summarize succinctly, “Secondary victimizations are injustices that occur to victims after a trauma” (p. 17). The sense of betrayal comes from the survivor’s expectation that she will be provided with belief, validation, and protection when she instead encounters victim-blaming attitudes, or her victimization is ignored or minimized. Much of the study of secondary victimization has focused on survivors’ encounters with the criminal justice system (e.g., Patterson, 2011; Rich & Seffrin, 2013) and with the mental health system (S. L. Brown, 2013). Rivera, Sullivan, and Zeoli (2012) moved beyond these contexts to study secondary victimization of women during family court mediation. Whereas a minority of the women reported positive experiences during mediation, which involved “feeling heard, respected, listened to, and safe” (p. 244), 63% experienced secondary victimization. They found it difficult to be heard about the abuse they had experienced, particularly controlling behaviors, and reported feeling blamed, disbelieved, or dismissed.

This article extends the application of the concept of secondary victimization to understand women’s experiences of negotiating the broader family law system. Parallels are drawn between themes in the women’s experiences of the family law system and the dynamics of domestic violence to highlight the ways in which their encounters across the system can be experienced by women as re-victimization.

The Policy Context

This study was undertaken following major changes to Australian Family Law. Among the changes introduced with the *Family Law Amendment (Shared Parental Responsibility) Act 2006* were compulsory mediation (termed *family dispute resolution*) prior to litigation, with an exception for cases of child abuse or family violence, through newly established community based Family Relationship Services; the presumption of equal shared parental responsibility; and greater emphasis on the need to protect children from exposure to family violence and child abuse (Kaspiew et al., 2009). Although the legislation did not introduce a rebuttable presumption that children should spend equal time with each parent after separation, as advocated strongly by father’s rights groups (Flood, 2009), the legislation nevertheless did require all mediators and judicial decision makers to consider “equal time” or “substantial and

significant time” with each parent if shared parent responsibility was deemed appropriate.

The 2006 legislation followed legislative change a decade earlier that, among other changes, introduced an objects clause that included a list of children’s rights, including the child’s “right to know and be cared for by both their parents” and the “right to contact on a regular basis with both their parents and other [significant] people” (Kaspiew et al., 2009, p. 9), colloquially referred to as the “right to contact” principle. A raft of studies following this legislation identified a trend to privileging the “right to contact” principle over protection from family violence in Family Court decisions (e.g., Dewar & Parker, 1999; Kaspiew, 2005; Rhoades, Graycar, & Harrison, 2000; Shea Hart, 2004), a trend that was characterized as the development of a “pro contact culture” (Fehlberg, Behrens, & Kaspiew, 2008, p. 235) in Australian family law. Contact negotiations and changeovers have been identified as a major site for exposure of women and children to post-separation domestic violence in both Australian (Kaye, Stubbs, & Tolmie, 2003; Laing, 2008; Rendell, Rathus, & Lynch, 2000) and international research (Barnett, 2015; Bruno, 2015; Coy et al., 2012; Harne, 2002; Harrison, 2008; Hayes, 2012; Holt, 2013). This speaks to the importance of the family law system as a part of the broader child protection system (T. Brown & Alexander, 2007), although at the time of its establishment in the heady days of “no fault” divorce in 1975 (Fehlberg, Kaspiew, Millbank, Kelly, & Behrens, 2015, p. 154), this role was not envisaged.

The 2006 legislation appeared to hold the possibility of addressing domestic violence more effectively, as rights of the child to be protected from exposure to abuse, violence, and neglect were elevated to one of two primary considerations for decisions about post-separation parenting arrangements. The other primary consideration was the “meaningful involvement” of both parents in children’s lives (Kaspiew et al., 2009, p. 9). The challenge of addressing the tension between these core principles where violence was an issue, however, was not addressed in the legislation (Rathus, 2007).

Despite acknowledgment of the need to protect children from exposure to violence and abuse, other aspects of the legislation were problematic for women escaping domestic violence. The legislation included a “friendly parent provision” as one of the second tier considerations in decision making (de Simone, 2008), a provision for costs to be awarded against a party where “false allegations or statements are knowingly made” was included (Alexander, 2010, p. 913), and the definition of family violence (the term used rather than domestic violence) in the *Family Law Act* was narrowed to a much more restricted one than the definitions of domestic/family violence in the state and territory legislation concerning applications for protection orders.

The exclusion of cases involving domestic violence and child abuse from compulsory family law mediation indicated recognition that mediation can result in contact and parenting arrangements that do not sufficiently attend to women and children’s safety when power differences between the participants are not recognized and when violence is ignored or minimized (Field, 2006; Johnson, Saccuzzo, & Koen, 2005; Rivera, Zeoli, & Sullivan, 2012). However, coercive but non-physical tactics of abuse

are not readily identified in efforts to screen cases involving domestic violence out of mediation (Frederick, 2008; Johnston & Ver Steegh, 2013) and integrating risk assessment into mediation processes has proved difficult. In the United Kingdom, for example, Trinder, Firth, and Jenks (2010) found that mediators marginalized allegations of violence and responded punitively when women were persistent in raising issues that affected children's safety. The introduction of mediation as a core element of the new policy lacked an evidence base about the impact of mandating mediation to a client group in which high rates of domestic violence could be anticipated but may not be readily identified (Cleak, Schofield, & Bickerdike, 2014).

The many questions about the ways in which this complex legislative environment might affect women's efforts to establish safe parenting arrangements after separating from a violent partner provided the context for the study.

Research Design

The study was conducted in collaboration with five specialist domestic violence services that provided advice on issues of safety throughout the project. The research question was broad and exploratory:

Research Question 1: How are current family law policies and practices experienced by women who have been subjected to domestic violence as they negotiate parenting arrangements?

Consistent with this broad question, qualitative methods were employed to elicit rich data about the women's experiences. The study was conducted with ethical approval from the University of Sydney Human Ethics Research Committee.

Participants

A purposive sample of 22 women aged between 24 and 54 years was recruited through flyers distributed by the five domestic violence services, which were located in very diverse socio-economic suburban and outer areas of Sydney, New South Wales. The 22 women were mothers to 51 children aged from 1 year through to young adults. The women had been separated for periods ranging from 6 months to 8 years, with an average of 2¾ years. Five of the women came from culturally and linguistically diverse backgrounds as did seven of their ex-partners. None of these women were recent immigrants or refugees and all were fluent in English.

This was a sample in which there had been a high rate of civil and criminal legal intervention. Eighteen of the women had taken out civil protection orders against their ex-partners. Eight of the women's ex-partners had been charged with criminal offenses: Three had been charged and convicted of assault against their partners, one had been convicted of stalking, three had been charged with breaching protection orders and two convicted of this, and one had been charged with child sexual assault although the case did not proceed to final adjudication in the criminal court.

Procedure

Semi-structured interviews were conducted at a safe and private location of the women's choice. The women were invited to talk on their own terms about their experiences of seeking to make post-separation parenting arrangements through the family law system. The average length of interviews was 90 min, as the women recounted complex encounters with many professionals and organizations over considerable periods of time.

Participating in research can present risks to survivors' physical and emotional safety (J. C. Campbell & Dienemann, 2001) and can pose risks of punitive and unjust institutional responses. The partnership with domestic violence services was vital in anticipating and planning to address the ethical issues for this vulnerable population. The study adhered to the ethical requirements regarding informed consent, voluntary participation, and participants' right to withdraw at any time. In addition, in consultation with the partner domestic violence services, the approach to data collection was planned to address the important ethical issue of avoiding the interview process re-traumatizing the women. It was explained to participants that the focus of the interview was on their experiences of negotiating the service system rather than on the violence itself, to give the women control over the extent to which they discussed the violence. They were advised that they could stop the interview altogether or take a break at any time and their consent and comfort to continue were raised by the researcher at regular intervals throughout the interview (Fontes, 2004). In addition, the women were positioned as experts on the system because of their intimate experiences of it. At the end of the interview, they were asked about their ideas for improving the system for women dealing with domestic violence and a short series of debriefing questions was asked about the women's experiences of the research process itself (Gondolf, 2000), including asking about suggestions for making the interview experience safe and comfortable for other women. Information on counseling and support services was provided to all participants. In reporting the findings of the research, participants' anonymity was protected by the use of a research number and all quotations were scrutinized to ensure that potential identifying information was not revealed.

Data Analysis

Thematic analysis was used to analyze the interview data. This inductive approach is a method for "identifying, analyzing and reporting patterns (themes) within data" (Braun & Clarke, 2006, p. 79). Although they acknowledge that analysis is a recursive rather than a linear process, Braun and Clarke (2006) identify six phases of analysis that were followed in this analysis. The interviews were transcribed in full and immersion in the data involved reading all the interview transcripts several times, noting initial ideas and questions about the data and recording these in memos. Initial codes were generated through line-by-line coding of each interview transcript to identify both meaning and content (Thomas & Harden, 2008). The software program NVivo 10 was used to assist in the process of systematic coding and organizing the initial codes

into categories. A continuing process of asking questions of the data assisted in looking for connections across categories to identify broader patterns or themes. Reviewing the themes involved moving between the themes and the data, checking that the themes were grounded in the data, and making links with the literature.

The challenge in thematic analysis is to move beyond the development of descriptive themes to generating analytic themes (Bazeley, 2013; Braun & Clarke, 2006). In interpreting the data in relation to the research question, the overarching theme that emerged was that the women experienced participating in the family law system as a process of re-victimization that exacerbated their traumatic responses, described in detail below.

Findings

Stage in the Family Law Process

The women were at various stages of the family law process. Nine had interim court orders and were awaiting final court hearings; seven had final court adjudicated orders of which three were being appealed by the men; four of the women were returning to the family law process to attempt to renegotiate older consent orders that were no longer working for them and their children and were involved in mediation. One woman was waiting on a court hearing date, while another had initiated mediation which her ex-partner had not attended, and was struggling with the decision about whether or not initiating further formal action would precipitate her ex-partner acting on his threats to abduct the children.

Parenting Arrangements

There were a range of parenting arrangements from 50:50 shared time (five cases) to contact with fathers only at a supervised contact service (three cases with final orders and two with interim orders). Only in one case of final orders involving supervised contact was this type of arrangement permanent; in the other cases, it was expected that contact would progressively move to being unsupervised but with no requirement that the men demonstrate any change in the violent or abusive behaviors that had resulted in supervised contact being ordered. The other parenting arrangements were primarily mother residence, with the children spending time with fathers, typically including weekends and part of the school holidays, some with mid-week contact as well and all including some overnight component.

The sole parent without any time with her child was a woman who had consented to orders giving child residence to her ex-partner and who did not seek any contact following several years of being subjected to contravention litigation as her ex-partner made good his threats:

He said to me when I left that he will have [child] and he will put my life through hell if I left him. And he'll have me in and out court until he got [child]. And I know he would because he did that with the partner before me. (Woman 14)

Violence Against the Women and Their Children

Given that the sample was recruited primarily from specialist domestic violence services, it is not surprising that the violence that the women reported experiencing both within their relationship and since separation was severe and multifaceted. The most frequently reported forms of abuse were, respectively, emotional/psychological, financial, controlling behaviors, using children, using the system to abuse, and physical violence. Some examples are provided to set the context in which the women were attempting to negotiate safe parenting arrangements. Control was the theme throughout the various forms of abuse: “There were things like he wouldn’t let me sleep for three nights in a row, I’d go to sleep for 20 min and he’d wake me up.” (Woman 01); “Because our life was like living in a concentration camp, that’s how I described it once.” (Woman 15)

Children were exposed to domestic violence with contact changeovers a common site for post-separation violence:

I was severely assaulted, I was beaten unconscious. Part of it happened in the flat while I was picking up the kids and then it sort of moved outside. . . . So my younger child [aged 3] saw him beating me and he was in the stairwell and he kept hiding his head . . . and he has told his counselor that I wouldn’t wake up—that he kept telling me “mummy wake up.” (Woman 05)

In common with the large body of existing research, the women reported that domestic violence and direct abuse of children frequently co-occurred. Twenty-one of the women reported that their ex-partners had directly abused their children and the children were frequently subjected to multiple, overlapping forms of abuse: 12 women described emotional abuse of children, eight described physical abuse, six described sexual abuse or inappropriate sexual behaviors, three described incidents of neglect, and nine reported children being exposed to dangerous situations, such as drug use.

The Re-Victimizing Effects of Interacting With the Family Law System

The core theme that emerged from the analysis of the women’s accounts was that of re-victimization: The women experienced the process of engagement with the family law system as exacerbating and compounding the traumatic impacts of having lived with domestic violence and the ongoing effects of post-separation violence. Some drew explicit parallels between their experiences of domestic violence and of participating in the family law system:

I’ve been traumatized by him and even violence, and now I’m traumatized by dealing with people who just can’t, that cannot acknowledge the fact that we have been abused and have no education as to how this has affected us. (Woman 19)

Sources of distress included the apparent ignorance of various professionals about the dynamics and effects of domestic violence and the requirement to participate in processes that did not reflect such understandings:

We had to go through three bouts of mediation which was very, very hard to be in the same room, directly opposite the table with someone who, for the last 15 years has pushed me in a corner—and I've got to try and voice what I want in that scenario where there is someone sitting directly—glaring at you . . . (Woman 08)

The following section presents the analysis of sub-themes of re-victimization in which parallels are drawn between key themes in the women's experiences of navigating the family law system and the dynamics of domestic violence.

Secrecy/silencing. Secrecy is intrinsic to domestic violence. It enables the perpetrator to isolate his victim and to avoid accountability for his abuse (Herman, 1992). It is common for the perpetrator to try to ensure his victim's silence through threats and fear—for example, threats to harm the woman and her children or to harm others she cares about, threats that she will be disbelieved and diagnosed as mentally ill, and threats to make sure that she loses her children to him (Bancroft, Silverman, & Ritchie, 2012; Jaffe, Lemon, & Poisson, 2003).

As noted above, in this sample, domestic violence was known to many agencies including the civil and criminal legal systems prior to the women entering the family law system. Notwithstanding this evidence and the provisions in the legislation for taking into account domestic violence and child abuse, the women reported that they received the strong message from many sources, including for six women their own lawyer, not to raise allegations of violence.

The Judge actually threatened to take [child] off me and that I would have supervised care if he saw me in court again with such rubbish [allegations of domestic violence]. The Judge did not want to know. (Woman 10)

As a consequence of such warnings to keep silent, the women reported managing a very delicate balancing act as they made choices about whether, and how much, to raise issues of violence and abuse. They struggled with the fear that they could be punished by losing the residence of their children if they were seen to be challenging the inevitability of an ongoing relationship between ex-partners and children.

[I]t's very hard with it because you get to disclose some things but you've got to be guarded and protected in what you disclose. . . . But then there's mothers that stand up to the "nth degree" and they've ended up going to jail. You hear stories. Or they ended up being fined or whatever the case may be. All they're doing is trying to protect their children. So even if I was willing to go those lengths, I can't go to those lengths because I won't be around to protect my children then. (Woman 20)

The women's fear of consequences for raising issues of violence extended beyond the Family Court to contact services. Women with interim orders reported feeling constrained in raising concerns about unsafe practices by contact services because they feared their efforts being judged as "alienating" and hence jeopardizing their court outcomes. One woman described the warning she received from her solicitor

when she complained that her ex-partner, with a history of stalking, was being permitted to chase and play hide- and- seek games with the children at the contact center:

My solicitor said, “The court’s given you supervised access. Just be grateful you’ve got it. Back off from the Center staff because if you push this, they’re going to write things about you in the report that you don’t want.” (Woman 17)

Given the prevailing advice about not raising the issues of violence, the women were acutely aware that they had to temper their efforts to negotiate safe parenting arrangements with considerations that they may be perceived as motivated by the desire to undermine the father–child relationship by appearing as an “unfriendly” or “alienating” parent. As a consequence, they reported that they were pressured to agree to arrangements that they did not think safe, for fear of worse outcomes:

I had already made up my mind that I didn’t want the sleepovers [at the father’s house] because I really didn’t think it was safe for the children but my lawyer convinced me that if I wouldn’t do it, the Judge would probably even now give me a slap on the wrist and give [ex] more than I would be willing to give, so he really strongly recommended me to do this otherwise it would all blow up in my face. So I did agree. I didn’t feel like I had a choice. (Woman 12)

When women resist the pressure to remain silent about abuse, the response that they receive to their disclosure is vital to their recovery and to their future help seeking; belief, validation, and support are crucial (Herman, 1992). However, when women in this study challenged the imperative to remain silent and tried to raise concerns about the risks to their children of exposure to domestic violence, they encountered a climate of disbelief. The women found that their motives in raising violence became the center of focus, rather than the allegations and the potential risks to children. Vindictive and fallacious rather than protective motives were attributed to their efforts to raise issues affecting the safety of their children:

They don’t try and listen to what you’re saying or the fears involved or the serious issues. And they just kind of think you’re the bitter wife or whatever and trying to get maintenance money out of the husband and all that. (Woman 02)

The women encountered the assumption that their motives in speaking of domestic violence were to undermine the relationship between fathers and children, with many women being accused of “alienating” children, despite the discrediting of the concept of parental alienation in the scientific literature (Meier, 2009). Accusations of “alienation” served to re-silence the women:

Everything is twisted and misconstrued as, “You are being combative. You are being a high conflict parent. You are alienating the children from the father.” And anything that you do to try and advocate for your children is somehow twisted into being high conflict and parental alienation. So you are basically silenced. And the children are silenced. (Woman 19)

Many times, when women sought to make safe parenting and contact arrangements, they reported that they were told that fathers were essential to children, apparently regardless of the men's abusive behavior, which was minimized or ignored:

And they're saying to me but he has to have time with the children. And I'm saying "but he's knocked me to the ground with a baby in my arms—and he's been charged, he's been found guilty of assault—he's had breaches of AVOs [protection orders]." (Woman 8)

When violence was addressed, understandings were narrow, with limited understanding of forms of abuse other than physical violence:

[I] remember the magistrate saying, in the evidence that she had, that she didn't really see anything there that looked like violence. And I thought "oh, because what she is looking for is bruises" . . . and his main form of violence really was the psychological and emotional. And that wasn't really recognized as violence. (Woman 15)

The balancing act required to try to achieve safe parenting arrangements without being seen as "unfriendly" parents or undermining the father-child relationship resulted in women feeling that they were not able to put the full story of violence and abuse before the court, a situation that has implications for the quality of the decision making of the courts:

Probably half or even the majority of things that have happened with us won't get written down on paper. I mean, this court won't know about the ongoing abuse and harassment or things like that—they won't have a clue about those. (Woman 20)

Coercive control. The core dynamic of domestic violence is the imposition by the perpetrator of a regime of coercive control (Stark, 2007) through a complex, shifting, and targeted pattern of tactics including psychological, verbal, and financial abuse, physical and sexual violence, social isolation, threats, and use of children (Almeida & Durkin, 1999). All of the women reported that their ex-partners used the family law system to continue to try to exercise control over them:

[I]t's the only way he still has contact with me. The only way he still pulls the strings with me. The only time [ex-partner] ever sees me, is in Court. The only time [ex-partner] ever has contact with me is when he has to ring to speak to the kids. (Woman 08)

What's hard for my life now is that I got myself away from him but I haven't. He's always there and he's got a say in my life for the next 18 years. Like if I want to move for work—like he doesn't work, I do work. If I want to move for work, I pretty much have to ask him for permission. I can't take the children with me. (Woman 07)

While shared parental responsibility aims to involve both parents in key decisions about their children, regardless of the child's residence, the women found that this provided an excellent avenue of continuing control for abusive ex-partners:

[T]he only way that he can have any control over my decisions is basically obliterating my advice as a mother to make any decision because that's what's happened. I physically don't have the right to make any decisions about my son whatsoever as his mother. None. Without his father's consent, that is, his permission. And that's basically what it boils down to. I have to go and beg and see him "can I do this, can I do that?" And that is the reality of shared care with a domestic violence partner. (Woman 10)

When the professionals in the family law system did not demonstrate an understanding of the dynamics of domestic violence, particularly the centrality of coercive control, the women reported that they were unable to stop the men from manipulating the system in ways that enabled them to continue to exercise control over the women and their children. Contact service staff seemed to be particularly susceptible to the men's ability to be charming in interactions with them, despite interactions such as these being a poor basis on which to assess the risks posed to children (Bancroft et al., 2012). The women were shocked that there appeared to be little understanding of the complexity of assessing whether and to what extent an abusive father had made the changes necessary for him to provide safe parenting, beyond the mere passage of time:

My lawyer said because he's behaving himself most of the time at the Access Centre or appears to be behaving himself, the court is satisfied that he's not really violent. . . . But I said to the solicitor that he's not usually violent when there's other people around because it is domestic violence and they're not going to be violent when there's witnesses. (Woman 19)

Undermining the mother–child relationship. The mother–child relationship is adversely affected by the ways in which violent men parent and by their use of children as a tactic of abuse (Bancroft et al., 2012; Radford & Hester, 2006). Tactics can include denigrating the woman as a mother, undermining her authority by contradicting her rules, rewarding children's disrespectful behavior toward her, and financial abuse that makes it difficult for her to buy food and other essentials for the care of children. Tactics such as these have been conceptualized as comprising an attack on the mother–child relationship (Humphreys, Thiara, & Skamballis, 2011). For example, in this study, one of the women described the way in which her partner, through extreme physical violence to both mother and daughter, had undermined her relationship with her daughter by disabling the woman's ability to protect her daughter:

He's picked her up by the arm, hit her with a belt, took her breath away one day. [She's] screaming out to me: "help me, help me." I couldn't do anything [crying], because she had a lock on her door too, I couldn't get in. She's in there calling out for me and that's the worst, worst thing you can hear. (Woman 22)

Family law decisions on post-separation parenting arrangements did not provide the women and children in this study with a context that was supportive of rebuilding their relationships. For example, many of the women were required by the court to send children to contact visits or to spend time in the care of fathers against their

children's will, at times necessitating the women physically forcing young children to spend time with their fathers or risk being called before court for contravening orders:

[M]y youngest, doesn't want to go to him and so she cries, she screams, "no, no, no," she's grabbing onto my neck as he's grabbing and she's kicking him. . . . And so I worry about the impact that that's having on them. And I find it's very distressing some of the things they come home and say. "My daddy said he's going to run over you" or "My daddy wants me to go to karate so I can bash you." (Woman 07)

In addition to the requirement to force reluctant children to have contact, the woman's statement above provides an example of the ways in which contact arrangements enabled her ex-partner to continue to use the children as a weapon of abuse, providing opportunities for stalking, sending threats and sowing further division. Another woman described the barriers created to her comforting an injured child by her ex-partner's rigid carving out the territory of shared time:

And my son had a major accident while he was at his father's and he had to go straight to the hospital. Now, my ex didn't call me, my other child called me and said he'd been taken to the hospital bleeding and she was hysterical! I walked in and in front of my child he said "go home I've got custody." My child was covered in blood, so I said no, I sat by his bed and did not look at his father . . . several times [ex] said "go away we don't need you" in front of the child and that was really sad because [child] was holding my hand even tighter when that was said. (Woman 01)

Another dimension to the women's post-separation parenting was that they often had to deal with the children's distressed and difficult behaviors on return home from spending time with their fathers. This demanded extreme patience and understanding on the part of the women. For example, where regular contact had been ordered by the court despite the mother's raising the child's exposure to physical assault of herself and physical abuse of her son, one woman described their life after contact: "[T]he first comment to me after [contact visits]: 'I hate you because you forced me to go' . . . I get the anger. I get the frustration . . . and it's all directed back at me." (Woman 8)

Another woman, who was traveling several hours on public transport to a contact center with two pre-school-age children, tried to minimize the aftermath of contact:

In summer they go to a pool, and in winter they go to a park. I let them run wild, you know, like within reason. We always go somewhere and let them get it out of their system because I see the eldest one—she gets really upset and it takes her sometimes a day or two to settle down. Sometimes even when they go home, they're still unsettled and I've got to deal with all that. (Woman 21)

The women reported that managing unsatisfactory post-separation parenting arrangements took a great emotional toll on them. All lived with fear for their children's safety and well-being when the children were in the care of their fathers. Some lived with a sense of guilt that they had escaped the abuse and violence to which their children continued to be subjected:

And now I'm away I'm free and I'm so scared for my children because I don't want them being hurt the way I was you know. I'm strong and I got through it but I just hope my kids will get strong as well because they will never get away from it. (Woman 02)

Resistance. A large body of research attests that women are not passive in the face of the efforts of the perpetrator to control and demean them, but that they exercise agency in employing a wide range of protective strategies to deal with their partner's behavior (Dutton, 1996; Hamby, 2009; Lempert, 1996; Stark, 2007). In this study, despite the obstacles they encountered and the distress engendered as they journeyed through the family law system, the women provided examples of the strategies that they employed to continue to strive to protect themselves and their children from post-separation abuse. For example, in response to unhelpful and invalidating encounters with many professionals in the family law system, the women sought support from specialist domestic violence services. This helped them to keep going, often for many years, because they were provided with validation, practical support, and information, including referrals to lawyers who were prepared to listen to their concerns about safety and to advocate for safer parenting arrangements.

In light of the prevailing court culture of shared parenting, the women carefully weighed whether or not to make some strategic concessions about contact to avoid longer term dangers to their children. For example, one of the women drew on her own experience of surviving emotional abuse to shape arrangements that she hoped would minimize the impact of their father's erratic contact and emotional and verbal abuse on the children:

So, what I'm proposing with him having the children on school holidays is that at least I can take care of their education, their stability; I can find good role models in their lives. . . . As long as I can control their schooling and make sure they're doing well at school and that sort of thing it's a greater, more important part of their life . . . (Woman 03)

In the face of the failure of the system to protect her children from a situation in which they were exposed to inappropriate sexual films and intrusive behaviors, another woman instigated a form of protective behaviors to try to make her children safer when in the care of their father:

I'm trying to teach the children that when mum's not around, always go into the bathroom, always have your underwear, singlet, and pajamas ready, your towel—never, ever let anybody come into the bathroom when you're in the shower because I know my ex hangs out with people that are pretty similar to him. (Woman 16)

Discussion

In this study, the women approached the family law system seeking to make safe post-separation parenting arrangements for themselves and their children but were discouraged from raising the issue of domestic violence. When they did so, with the aim of protecting their children, they encountered a climate of disbelief and found that their

motives were scrutinized and questioned. They experienced disbelief and minimization of their victimization, which engendered a powerful sense of injustice, suggesting that the family law system is a site of secondary victimization.

The women's struggles to achieve lives free of violence for themselves and their children can be understood in part through an examination of the family law policy context that, over recent decades, has emphasized children's ongoing relationship with both parents after parental separation, and increasingly, shared parenting arrangements. Fehlberg et al. (2015) argue that the current policy emphasis on shared parenting is at odds with parenting arrangements made without recourse to the law by the majority of separating parents, and that the families using the legal system bring complex issues such as domestic violence and child abuse, for which shared parenting arrangements are contraindicated. Effectively, they argue, it is these families—the "exceptions to [the law's] principles regarding shared parental responsibility and time" (Fehlberg et al., 2015, p. 650)—to whom these principles are most likely to be applied.

This lack of fit between the types of cases proceeding through the formal process of family law and the policy emphasis on shared parenting is reflected in decisions that appear not to reflect the system's overarching principle of the "best interests" of children and may also pay insufficient attention to the safety of women and children. For example, the small minority of cases that proceed to a court decision are invariably complex, and likely to involve allegations of domestic violence and/or child abuse, mental health concerns, high conflict, and substance misuse (Kaspiew et al., 2009). Despite lacking the features associated with successful shared time arrangements—such as child-focused, flexible, and cooperative parenting—judicially ordered shared time parenting arrangements were found to have increased substantially in Australia following the legislative changes in 2006 (Fehlberg, Smyth, Maclean, & Roberts, 2011). This is against a wider social context in which shared parenting is very uncommon, and shared time arrangements even less so, estimated at about 4% of families (Cashmore et al., 2010).

Legislative changes in 2012 repealed some of the most problematic aspects of the 2006 legislation such as the "friendly parent" element, introduced a broader definition of family violence, and placed protection of children from exposure to abuse and family violence as the primary consideration in decision making (Moloney, Weston, & Hayes, 2013). A recent, comprehensive evaluation of the effects of these legislative changes (Kaspiew et al., 2015) found that the impacts were, to date, "modest, mixed or limited" (p. xii) in terms of achieving the intentions of the legislation, that is, to deal more effectively with issues of domestic violence and child safety. While an increased emphasis on identifying domestic violence and child abuse was identified, this was not associated with changes in decisions about patterns of parenting arrangements or with parents' satisfaction with responses to their concerns about safety. Pertinent to the findings of this study, the evaluation found that, despite the repeal of the "friendly parent" provisions, the issue of the extent to which a parent supported the other parent's relationship with the child was increasingly raised in cases proceeding to a judicial outcome (Kaspiew et al., 2015).

The Family Court continues to introduce important initiatives to better address violence, including the development of comprehensive training resources and the

development of *Family Violence Best Practice Principles* (Family Court of Australia, 2015). Nevertheless, the problem identified by Fehlberg et al. (2015) remains: Women bringing allegations of domestic violence are “out of synch” with the core philosophy underpinning the law. Responses by judicial and other decision makers in this context of “legislative incoherence” (Fehlberg et al., 2015, p. 651) can include minimizing violence and its effects and pathologizing women who make such allegations (McInnes, 2014; Naughton, O’Donnell, Greenwood, & Muldoon, 2015), seen in the present study, by the focus on the women’s motives for making allegations, as much as on the allegations themselves.

This legislative framework is embedded in a dominant social discourse that is highly skeptical of women’s allegations of violence in post-separation contexts. National community surveys of attitudes to violence against women in 2009 and 2013 have found that more than half of the Australians surveyed view women’s allegations of child abuse and domestic violence in the context of divorce and separation as tactics by women to gain advantage in family law decisions (Victorian Health Promotion Foundation, 2014). Given this broader context and the legislative emphasis on shared, cooperative parenting, it is understandable that the women in this study encountered a climate of disbelief, which they experienced as contributing to their experiencing their encounters with family law as re-victimizing.

Another core element in contemporary family law is the encouragement of mediated settlements rather than litigation. This reflects an assumption that problems in reaching agreements on post-separation parenting arrangements are grounded in parental conflict rather than violence (Laing, 2008). The government press release introducing the 2006 legislation placed the assumptions underpinning the legislation firmly within a framework of conflict:

The Government wants to bring about a cultural change in the way family breakdowns are handled. This . . . package will give separating parents the support they need to sit down across the table and agree what is best for their children, rather than fighting in the courtroom. (Attorney-General & Minister for Family and Community Services, 2005)

Hence parents are urged to place children’s interests at the center of negotiations, put the past behind them, and work toward what has been termed the “idealized post-separation family” (Shea Hart & Bagshaw, 2008, p. 291). However, it is recognition of this—the past and continuing coercive, controlling violence—as injustice, that is required if women are to begin to recover from the effects of living with domestic violence. In addition, when the professionals whom the women saw as well educated and as having the authority to act for children’s safety failed to recognize the men’s use of the family law system to continue to harm and control them, their sense of injustice was exacerbated.

Through a lens that focuses on resolving conflict to facilitate cooperative parenting (an important goal where violence and abuse are not at issue), a woman seeking to prevent or to limit contact with an ex-partner is immediately positioned as obstructive, rather than as seeking to ensure a child’s safety. Framing the woman as a problematic

and obstructive participant will increase the likelihood that the responses she receives to her allegations of domestic violence will be experienced as unhelpful and disbelieving.

In a major review of international family law developments and domestic violence, Johnston and Ver Steegh (2013) make a similar observation to Fehlberg et al. (2015), arguing that family law reforms aimed at the general divorcing population have resulted in unintended negative consequences for victims of domestic violence such that some cases of domestic violence cannot be dealt with appropriately in the current family law context and require a separate stream in which the priority is “safety, fact finding and the enforcement of orders” (Johnston & Ver Steegh, 2013, p. 71). This echoes an earlier call by Sudermann and Jaffe (1999) for an approach that distinguishes the unique requirements of cases involving domestic violence from other parenting decisions where violence and abuse are not at issue: They called for the centrality of a focus on safety, as opposed to a focus on promoting the child’s relationship with both parents; a focus on risk assessment rather than mediating differences about the past; and for assessments that attend to the nature and effects of violence.

A strength of the qualitative methodology employed in this study lies in the generation of rich data about the experiences of women who had suffered severe, controlling domestic violence attempting to negotiate safe parenting arrangements in a family law system that reflects the principle of the “indissolubility” of parenting (Parkinson, 2013, p. 8) and is struggling to integrate understandings of domestic violence within this underpinning framework. Consistent with good practice in violence against women research, the study was grounded in collaboration with women’s specialist domestic violence services (Edleson & Bible, 2001) at all stages: planning, recruitment, analysis of findings, and policy advocacy based on the findings. An important limitation of the methodology is that the findings of a non-representative sample such as this cannot be generalized. However, participants were recruited from the group of women and children who are the focus of the legislation’s provisions regarding exposure to violence and abuse and whose experiences can inform efforts to increase the family law system’s responsiveness to domestic violence. The findings are consistent with those of a large, multimethod evaluation of the 2006 legislative changes, which found that the system still had a considerable way to go in effectively addressing domestic violence (Kaspiew et al., 2010), and with the recent findings (Kaspiew et al., 2015) about the limited impact of recent legislative amendments in shifting systemic responses to domestic violence.

Conclusion

Judith Herman (2005) has eloquently described the mismatch between victim/survivors’ needs for social acknowledgment, support, and regaining a sense of control, and the processes of the criminal justice system. A similar mismatch can be seen between domestic violence survivors’ efforts to protect themselves and their children from post-separation domestic violence and the culture of the family law system with its emphasis on shared parenting and mediated agreements, framed in a paradigm of

conflict between equals. Rather than validation of the harm experienced by themselves and their children, the women experienced re-victimizing dynamics in the family law system that echoed those that they had experienced from the abuser: silencing, coercive control, and undermining of the mother–child relationship. At the same time, they developed new strategies of resistance and protection in the face of shifting tactics of perpetrators in the post-separation context. Their narratives provide compelling evidence of the need to further improve the systemic response of the family law system to women seeking safe post-separation parenting arrangements through the development of a specialist pathway that prioritizes the safety of women and children.

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