Fem Leg Stud (2012) 20:121–134
DOI 10.1007/s10691-012-9201-1

Battered Women's Experiences of the Criminal Justice System: Decentring the Law

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Published online: 22 July 2012

Abstract This article takes up Smart's suggestion to examine the way the law works in practice. It explores the context of current criminal prosecutions of domestic violence offences in Queensland, Australia. This article argues that legal method is applied outside the higher courts or "judge-oriented" practice and that the obstacles inherent to legal method can be identified in the practices of police, lower court staff, magistrates and lawyers. This article suggests that it may be difficult to deconstruct legal method, even by focussing on law in practice, and as a result it may be difficult to successfully challenge law's truth claims in this way. The analysis of criminal prosecutions of domestic violence offences reported here supports Smart's earlier findings that women and children who seek redress through the criminal justice process find the process at best ambivalent and at worst, destructive. However, the article also shows how, in the Queensland context, women sometimes find their way to feminism and personal empowerment by going to law.

Keywords Domestic violence · Criminal law · Legal method

Introduction

In this article I propose to re-examine some of the ideas that Carol Smart presented in *Feminism and The Power of Law* (1989) in the context of current criminal prosecutions of domestic violence offences in Queensland, Australia. Smart demonstrated, in the context of rape and child sex abuse prosecutions, that women and children who seek redress through the criminal justice process find the process at best ambivalent and at worst, destructive (Smart 1989, 12). Smart substantially

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agreed with Mossman's argument that legal method, encapsulated as boundary definition, relevance and case analysis, "disqualifies other knowledge's which may be rooted in feminism" (Smart 1989, 21; Mossman 1987, 163–164). While Smart accepted that legal method, as described by Mossman, supported law's truth claims, such as neutrality (1989, 22), she also qualified Mossman's claims. Smart suggested that, in practice, most law is not subjected to legal method, in the sense that most cases do not go before a judge and many lawyers do not necessarily operate within this framework, therefore legal method can be "deconstructed" (1989, 23; 25). Smart suggested that in order to decentre the law and avoid "colluding with law's overinflated view of itself" feminists should focus on law in practice (1989, 25).

It is over 20 years since Smart presented these ideas, and since then Kaganas and others have shown how feminist activism has led to significant changes in relation to the community perception of, and legal approach to, domestic violence (Kaganas 2006, 141; Schneider 2002). Many have continued to accept that women are likely to experience distress and disadvantage when they become involved in criminal prosecutions of domestic violence (Lewis 2004; Coker 2001; Dobash et al. 2001). However others, like Dempsey, argue that "effective" prosecution of domestic violence offences is, at least potentially, a sound feminist strategy (2007, 909). Dempsey suggests that if prosecutors exercise their discretion and prosecute cases of "strong" domestic violence (that is violence perpetrated in a domestic context that tends to sustain or perpetuate patriarchy) "vigorously", patriarchy can be "habitually" denounced (2007, 917; 927). Essentially Dempsey's "strong" domestic violence reflects American domestic violence researcher Stark's understanding of domestic violence as a pattern of coercive control (2009).

This article takes up Smart's suggestion to examine the way the law works "in practice" (Smart 1989, 66). It attempts to show how legal method is applied outside the higher courts or 'judge-oriented' practice and that the obstacles inherent to legal method can be identified in the practices of police, lower court staff, magistrates and lawyers. It attempts to demonstrate how it may be difficult to deconstruct legal method, even by focussing on law in practice, and thus that it is difficult to successfully challenge law's truth claims in this way. Despite this, the article shows how, in the Queensland context, women sometimes find their way to feminism and personal empowerment by going to law. It concludes that, in this context, criminal prosecution of domestic violence offences can sometimes, indirectly, be a feminist strategy towards eliminating violence against women.

The Study

In 2009–2010, semi-structured interviews were conducted with twenty women who have engaged with the criminal justice system to assist in the prosecution of domestic violence offences. This research sought to investigate women's experience of criminal prosecution of the violence perpetrated against them by their intimates. In Queensland many women who attend court in relation to domestic violence protection orders or related prosecutions will be assisted by members of the Domestic Violence Court Assistance Network (DVCAN). This is a state-wide

network of court assistance workers or advocates[1] who provide assistance and support to women during the court process in relation to domestic violence (DVCAN 2010). Most of these workers are attached to organisations that identify as feminist organisations. Court workers, police and others frequently refer women to DVCAN workers when they seek advice or support in relation to domestic violence. Some DVCAN workers are employed by non-government organisations that are located within courthouses or very close to courts. Women interviewed for this study were contacted through DVCAN workers throughout Queensland, Australia. The women in this study were interviewed for between 90 min and 2 h and their interviews were transcribed. Interviewees were asked about their experience of engaging police, attending court and their views of the results of prosecution including sentence where relevant.[2] This article begins with a consideration of the continuing power of law and the obstacles inherent to legal method in the context of prosecuting domestic violence offences.

The Power of Law

Smart has observed that law sets itself above other knowledge's (1989, 8–9; 1990, 73–74); she claims that the idea that the law has the power to right wrongs is pervasive (1989, 12). Women in this study generally viewed law as powerful conceptually, but in general they did not find law useful and sometimes they believed going to law increased their danger. One interviewee explained what she thought the law would deliver: "I thought I'd tell my story [in the court] and I'd be believed and he'd get the punishment he deserved and me and the kids would be safe". Many believed that their negative experiences of law were related to the limitations imposed on the legal system. In effect this view might underline the power that interviewees associated with law. For example, one interviewee claimed: "there has to be a merger between the legal system and the people with the expertise from the social side". Another interviewee explained: "the legislation must work as a whole … not separate departments for the legal side, for throwing money into [social] programs". These comments suggest a perception that if law could somehow engulf other systems, those other systems may have more authority. Like Smart, many women recognised a disconnect between law as a system of knowledge and other areas of knowledge (Smart 1989, 10–11, 162) but wanted law to be able to do more. These interviewees strongly imply that law should expand its reach. Such views suggest confidence in the law's potential to right wrongs. However Smart has observed that these distinctions, for example between law and social work, actually enhance the power of law (1989, 10, 162; Howe 1990, 166).

While interviewees regarded the law as powerful they also saw it as biased towards male perpetrators of violence. Many commented on the ability of their violent partners to manipulate the legal process. Women described their intimates as "sneaky", as a "silver tongue". Others commented that: "he is strategic" and "he

[1] In England and Wales these advocates are known as Independent Domestic Violence Advisors.

[2] For the full report see Douglas and Stark 2010.

exploits every grey area". Some interviewees observed police officers had great empathy towards perpetrators. For example: "there's a copper at the door. [He says] we've charged him. We're just dropping him off at a mate's place for the night. We're wondering if you could go get him a beer for the trip?" Similarly, some interviewees were frustrated with the perpetrator's ability to "charm" representatives of the justice system. Some interviewees were discouraged by the fact that the perpetrator was well connected with representatives of the legal system. For example, an interviewee observed: "I mean because his brother was a copper, he had it in his mind that he could do whatever he liked". In some cases perpetrators arranged for character references from police officers. Not surprisingly, men seem better able to engage with what Smart has described as the "masculine requirements of law" and legal processes (1989, 160; 2). Research suggests that men are more likely to understand the language of law. For example, Field and Crowe observe that men may be better able to navigate family law mediations because they are more familiar with recognised norms of rationality (2007). Men may also have better community networks to draw on, including networks of male friends who support their behaviour, to help them to manage legal processes (de Keseredy and Schwartz 2009, 107).

Many interviewees believed that engaging with legal processes might invoke a different aspect of law's power; it risked inciting further violence from their intimates. One interviewee observed: "I am way more at risk". Another commented: "I had to beg them to withdraw the charges and withdraw the application….It was making it riskier for me." It has been argued elsewhere that involving the criminal justice system in domestic violence matters may create distress, disadvantages and disillusionment for women that overrides hope or safety that might be gained (Mills 1998, 310; Coker 2001; Smart 1989, 161). Interviewees also identified circumstances where legal method is applied outside the higher courts or 'judge-oriented' practice and that the obstacles inherent to legal method can be identified in the practices of police, lower court staff, magistrates and lawyers.

Boundary Control

Smart, like Mossman, has observed that legal method defines its own boundaries (Smart 1989, 21; 1987, 157, 163) and that one of the purposes of boundary definition is to confer the claim of 'neutrality' on the law (Smart 1989, 11; 1986, 163). Legal boundaries are constructed in a variety of ways including linguistically and culturally and these constructions are contingent (Scales 2006, 145). Thus law's boundaries are, of course, not neutrally constructed; rather, law "sits in a framework that …is sustained by webs of practices and beliefs that perpetuate micro cultures" (Wells 2004, 508). Smart has observed that lawyers maintain there is a distinction between legal issues and other issues such as those concerning morality (1989, 22). She argues that the maintenance of such separation helps lawyers (and law) to gain credibility. One of the interviewees in this study commented that: "[n]o matter what I thought or what happened morally, the legal side is a whole different story. If you can work the legal system it doesn't matter whether you're right or wrong, you

win". Boundary definition may explain to some degree why women are often disillusioned when they look to law to address wrongs.

Largely as a result of feminist activism, domestic violence has been defined in legislation to extend to non-physical abuse such as threats and stalking (Kaganas 2006, 140). Despite this, both battered women and justice professionals often continue to define and understand domestic violence in the legal context narrowly as physical assault. The result is that domestic violence often falls outside law's boundaries. Thus, even though the definition of domestic violence has been expanded in statutes to include threats and stalking, in many cases the women interviewed for this study did not identify non-physical domestic violence as a matter for law. Other studies have come to similar conclusions (e.g. McFarlane et al. 2000, 398). Smart has claimed that women's constructions of themselves and their lives may be able to "displace [law's] dominant constructions with women's more positive constructions" (1989, 9). In contrast Fegan suggests that perhaps the 'law' is so pervasive that many women have come to share the constructions law has created (1999, 246). Reflecting Fegan's position, many women in this study assumed that unlawful domestic violence was limited to physical abuse. Despite the fact that many interviewees described circumstances of domestic violence reflecting coercive control (Stark 2009), at the same time they saw it as outside the legal definitions of domestic violence. Interviewees commented: "domestic violence to me was just physical. If I had of known there's a lot more to it I would have probably done something a fair way back". Other interviewees suggested that domestic violence was not only physical violence; it also needed to leave visible injuries to be 'true' domestic violence: "I've seen my mother beaten up for years, so I defined it as physical violence. I didn't get any bruises so therefore it's not".

On those occasions when interviewees identified their experience as domestic violence, they often assumed that unless the abuse entailed physical violence, it would not be recognised by law: "But I think what [the police] don't see and they don't understand is that it's the psychological part. Like they don't see … that he text messages me all the time saying 'why are you doing this to me?'"

In some cases women identified their abuse as domestic violence and as a contravention of the law from the outset. In such cases they often found that police acted as gatekeepers obstructing their access to legal redress. For example, women reported that some police officers discounted domestic violence as irrelevant to law unless it involved physical assault: "[the police officer] also said to me he hasn't actually sort of done anything, has he? It's all just threats" and another interviewee observed: "[he] made the reference to four pages of notes with no violence, no cuts, no bruises, no bashing- no domestic violence".

As Howe found in her recent research (2008, 201), many of the interviewees in this study claimed that they were keen to assist in a prosecution; however, their engagements with police officers suggest their experiences were often minimised and silenced. Such minimisation helps to shift domestic violence out of the field of law. For example, one woman commented: "I knew that, even if they came, they wouldn't do anything. Because they never do…they get there and they go oh, so, what is annoying you?" and another mentioned "having to justify myself constantly, being told oh in the scheme of things your situation's not that serious".

The descriptions of violence as "not that serious" or as "annoying" trivialise the experience of women and push it outside of the law. Interviewees reported that magistrates sometimes made comments which had a similar effect. An interviewee explained:

> I don't think [the magistrate had] a very good understanding and he made comments that I thought were completely inappropriate…he said things like … well they've been together for a long time. He might still love her.

Another claimed that domestic violence was perceived by the magistrate as an inability to communicate: "[b]ecause I don't have any pictures [the magistrate] feels it is just two people who can't communicate". The suggestion implicit in these comments is that some types of domestic violence fall outside the public sphere of law and within the private sphere of 'love' and communication (Thornton 1995, 9).

This private/public distinction was also implicit in a number of comments interviewees made about their perceptions of the kind of crimes that were considered to be within the boundary of law. Many women commented that if similar crimes to those perpetrated by their intimates were committed by a stranger, the matter would clearly be recognised as a problem for law. For example: "it is clearly wrong. If that was a stranger who had done that they would be in jail. Because it's a family member should have no bearing on a different type of treatment". On several occasions interviewees had been unable to identify the perpetrator with certainty to police because they had not actually seen the perpetrator or because an incident was reported to them by a third party. They claimed that in such situations police were more likely to respond and to respond more rapidly than would have been the case if it had been a domestic violence call. For example: "the police were called and basically the [school] principal had said somebody was trying to abduct a child, so the police were there within minutes". Similarly another woman, who had seen the shadow of 'someone' outside her house and assumed it was the perpetrator commented: "I always keep my mobile by my bed so I ducked under my covers and called the police and they said they were sending someone straight away because I said there's someone there, I don't know who it is and they sent someone straight away".

The private/public distinction was also illustrated in matters where third parties were present at the scene of domestic violence. For example, in circumstances where violence was perpetrated against both the woman and a third party, interviewees observed that injuries to a third party were much more likely to be prosecuted. An interviewee explained that the police attended a domestic violence incident and a neighbour was present. The perpetrator assaulted the neighbour. Another woman was assaulted by her partner at a nightclub. A security officer assisted her to leave the nightclub in a taxi and the perpetrator ripped the security officer's shirt. In both cases the perpetrators were only charged with assault on the third parties.

While Dempsey argues that habitual prosecution of domestic violence cases can send a symbolic message (2007, 914–915), the foregoing discussion suggests that police and prosecuting authorities regularly fail to prosecute domestic violence cases. In some cases women contribute to this because they do not name their

injuries as a matter for law. While they may call for police attendance, they may not choose to pursue further legal action. More frequently, it is police and prosecutors who determine that many domestic violence cases fall outside of the boundaries of the criminal law.

Relevance

In her analysis of rape trials, Smart showed how women and their experiences were often disregarded in the rape trial: the victim is often treated as a bystander in the events (1989, 34). Similarly, in many prosecutions of domestic violence cases discussed by the interviewees, the woman's experience of events is considered irrelevant and constituting insufficient evidence. Mossman, too, argues that the realities of women's experience are often considered irrelevant to law (1987, 160–161; 164; Smart 1989, 22). A common concern of interviewees in this study was that their history of abuse by the perpetrator was not relevant in proving a particular offence such as a breach of a protection order or stalking. This results, in part, from the fact that criminal law treats domestic violence offences like other crimes (Ashworth 2002, 580); that is, as 'one off' incidents abstracted from their context (Hunter and Mack 1997, 176; Dobash and Dobash 2005, 191). The consequence is that the context of abuse is deemed irrelevant to many prosecutions. One interviewee suggested that "the legal system needs to talk to the women on the coalface" and another commented:

> The magistrate's just letting these people just go …I don't know, I suppose they're not out in the halls to see the women crying, they're not out in the halls to see the filthy dirty looks on the men's faces, staring their women down. They're not out there. They walk in, they sit there, the guy looks glowing, he's all dressed up… the women probably have set them up.

The fact that so much of women's experience is irrelevant to law often leads to claims that there is no evidence (Stubbs 2002, 52). One interviewee explained that she had called the police on numerous occasions in relation to breaches of her protection order. Eventually the police were willing to charge the perpetrator, but not for matters related to domestic abuse: "they charged him with drink driving, unlicensed driving, speeding and all of that, nothing to do with me or domestic violence at all. And I said, Why can't you do anything more than that? And he said, because basically there's no evidence."

The need to show visible physical injury in order to bring harms within the boundary of law was also significant to the concept of relevance. Clearly the focus on visible injuries results in many domestic violence cases being missed, ignored or denied by those empowered to investigate and prosecute domestic violence cases. Women in this study often recognised the need for evidence to be tangible and visible in order to be relevant. An interviewee commented that "it helped that I had a black eye…and strangulation marks and everything", while another said the police had told her that "unless they catch him in the act or you are actually hurt, we

can't prove it". Yet another interviewee observed: "in some ways it's almost easier because you can show a bruise, you can prove it".

Interviewees claimed that some police assumed at the outset that a criminal offence would be impossible to prove and as a result police did not gather evidence in the way they might for a burglary or other type of crime. Some interviewees assumed that when their matter related to domestic violence, but did not involve visible injuries, they would have to work hard to ensure that the state was 'interested' in their harms (Howe 1990, 161; MacKinnon 1985, 61). Many interviewees acted as investigators, locating and collating tangible and visible evidence and presenting it to police, demanding action. Many women collected and compiled emails to demonstrate stalking, kept detailed diaries, photographed their injuries and audio-recorded perpetrators. An interviewee explained her strategy: "we did not want to show our hand to [the perpetrator] at that stage about this recording device…the only way that I could get the evidence… was to actually record him". Another interviewee explained: "within hours of court the text messages started. At that time I contacted [the women's service] and they told me straight up, 'Look, you need to record it when he comes home'…I did have my phone and that had a voice recorder". The remarks of many of the women suggest that they have learned the rules about what counts as relevant evidence and many have taken action to ensure that the required forms of evidence are available when they go to law. While this might be determined to be a demonstration of women's agency (Gavey 2005, 91–94), it also suggests that one reason that women must do the extra work is that investigating domestic violence is marginalised by those who are employed by the state to undertake this task.

Smart shows how legal method "combines" with binary thought to present an obstacle to a more complex understanding of rape. (1989, 32–33; 103; 113) Using the example of rape, Smart shows how binary thought is linked to law's claim to truth (1989, Chap. 2). For example, in the legal context, rationality is associated with men while emotionality or irrationality is associated with women (Smart 1989, 33; Naffine 1995, 23–25; Young 1996, 1, 33). Smart observes, "[w]here chaotic female bodies enter it is presumed that meaningful rational behaviour exits" (1989, 103). In circumstances where incidents occur in private, for example both rape and domestic violence, the adversarial legal system pits one story against another. One story must be disqualified and women in this study claimed it was usually their story that was disqualified. For example, in the committal of her ex-partner for rape, the interviewee claimed that lawyers who cross-examined her at the committal: "were just going over it again and again. They were like yelling at me and telling me I was lying. They were saying that I was crazy and that I had made him do it and he was the victim." A number of interviewees believed police viewed them as crazy and irrational: "[Police] just look at us like we're … cuckoo ladies …they look at you like you're some sort of blubbering idiot". While domestic violence often impacts on mental health (Mechanic et al. 2008), the portrayal of women as crazy, liars and irrational is common in law and one that has been researched elsewhere (Smart 1989, Chap. 2; Young 1996, 28). According to many of the interviewees, the portrayal of women as irrational can be directly juxtaposed against the way men are perceived. For example one interviewee explained: "he has assistance [a lawyer] to do this and this makes his world real and credible and you're mental."

Other women suggested that the legal system constructed 'real' victims of domestic violence in a particular way and that these archetypal cultural categories (Hunter and Mack 1997, 173) were relied upon when police decided who to 'help':

> I said, you know, what's the matter, am I not talking in a way you want me to talk to you, or something? Because I'm not distressed and crying, I'm angry…the police like to see you with tears and black eyes. It suits their purpose much better if you are weak and pathetic. Because then they can see that you need help.

Dempsey observes that prosecutors make decisions about how to frame issues; women may be framed as sick or irrational or behaving as a reasonable battered woman. Evidence can be called which can assist the prosecution (2007, 928). The women's stories re-told here suggest that police and prosecutors sometimes construct women in a way that makes their experiences irrelevant to law by reading victims' stories as irrational or untrue. Often the women themselves have little or no role in the construction of the 'real' domestic violence victim. Sometimes, paradoxically, in circumstances where women are perceived as rational truth tellers they are sometimes seen as not 'real' victims and thus not in need of law's intervention.

Case Analysis

The third limb of Mossman's articulation of legal method is case analysis (1987, 164; Smart 1989, 21). This aspect of legal method requires prosecutors in common law systems to search out case precedents to justify prosecution. Lawyers use precedents to advise a client and judges and magistrates use them to support their decisions. Case precedents will often influence the circumstances in which a matter is seen to be within law's boundaries or where evidence is deemed relevant, thus these three elements of legal method intersect. Case precedents have also been particularly important in justifying the low level penalties that are generally applied in domestic violence cases. Fines are the precedent for domestic violence matters that come before the magistrates courts partly because, even where the circumstances of the offence reflect higher level charges such as stalking or threats, domestic violence cases are often charged as summary breach of order offences (Douglas 2008, 447). Such charging decisions often relate back to the way 'relevance' is determined. Interviewees believed that such a precedent serves to entrench the minimisation of harms in the context of domestic violence.

Regardless of the context of the breach, in this study, as in others (Douglas 2008; SAC 2008, 15), it was clear that where breaches of domestic violence charges result in a conviction, fines were usually ordered. Many interviewees believed that fines were insufficient and did not recognize the particular harm and context of domestic violence. One interviewee claimed that "$700 or $800; it was nothing to him", while another interviewee observed: "these orders are … not given out willy nilly like lollies. There has to be serious consequences to the person who breaches an order… A fine is nothing". As other researchers have found (ALRC 2010, 229),

although women generally did not argue that sentencing should be more punitive, many women wanted perpetrators to be held accountable for the injuries they had caused. For example, an interviewee observed: "I just think a community service type environment which allows [the perpetrator] to see the victims of those types of crimes without those women feeling uncomfortable would be a better way to go…" When domestic violence offences, including prosecutions of breach of a protection order, come before the higher courts on appeal, the judiciary have generally made clear statements about the seriousness of domestic violence. For example in recent cases judges have commented that "unless breaches of such orders are, and are well known to be, visited with appropriate severity, they will quickly lose their value in the minds of both of those who obtain them and of those who are subject to them".[3] Judges have accepted that a breach of a protection order reflects contempt for law and that neither the intimate, nor the emotional, nature of the relationship should reduce the penalty (Douglas 2008, 460). However such comments have not necessarily resulted in higher or more appropriate penalties.

The development of domestic violence protection orders and the fact that the legislative definition of domestic violence extends beyond physical violence to include stalking can be attributed to feminist activism. Similarly Government campaigns and law Reform Commission reports consider domestic violence a gendered issue grounded in power and control (e.g. ALRC 2010, para [1.8]). The language used by judges in the higher courts also seems to be more likely to reflect back feminist principles. The more formal environment where proceedings are recorded and lawyers are often present may make them more accountable to developments in policy. However, the vast majority of domestic violence criminal cases are heard in the lower courts, usually as breach of protection order cases. These courts are notoriously over-worked and under-resourced, proceedings are not generally recorded, and the rules of evidence are not strongly enforced (Willis 2001). It is not surprising that some interviewees were concerned about the lack of uniformity of approach to the law. For example, one interviewee stated, "I don't trust the magistrate's decision. I don't believe they read the background before they come in… …because there's no consistency". Another explained that the magistrate was "dismissive" towards her.

The Emancipatory Effects of Going to Criminal Law

This study has shown that women generally viewed law as powerful conceptually but in general did not find law useful. As the women's comments suggest, legal method continues to make criminal law in practice largely impervious to feminist challenges. However, one of the paradoxical effects of feminist activism has been the development of women's services that are structured around providing support, advice and advocacy to women attending court in relation to protection orders and criminal justice issues related to domestic violence. As a result, for many women 'going to law' may also mean 'going to feminism'. In this study, women referred to

[3] *JRB v Bird* (2009) QDC 277.

their experiences with women's services as "non-judgemental" and "helpful" and the inference from some of the interviewees' comments was that this part of the overall experience of going to law was an empowering one. For example:

> [Women's support service staff] give you everything. They don't tell you what you have to do. … They give you lots of information…They don't judge you, which is really nice, because you always feel judged when you're a domestic violence person, I think.

This woman's comment underlines the fact that while the women's service provided her with non-judgemental information, material support and advice, they did not direct or pressure her. She was able to make informed and supported choices about how to proceed. This approach is recommended by others (Stubbs 2007, 180). For many women the experience with domestic violence women's service workers was completely new. For the first time in many years they felt safe and secure. For example, one woman explained: "they are really good, really supportive. They are beyond question". Another commented:

> When you are frazzled and can't think and don't even know what to do, they just walk you through it, a very slow psychological pace … they make you feel safe…and they make you feel like somebody's there looking after you.

While many interviewees believed that legal outcomes often failed to recognise their harms and rendered their experience irrelevant, they emphasised that they felt that workers at women's services believed them and treated them with dignity. For example, interviewees said: "the funny thing was I was quite inconsolable only because when they said they believe me. It's really weird".

Being 'believed' by some representatives of the justice process, including police, prosecutors and justices, was similarly important for some of the women in this study. When asked if anything positive had come out of their involvement with the justice process, women commented that some of their interactions with police were positive because they felt they were believed: "I think I felt believed; especially it was a female officer who had been through this process a number of times so she did believe". In some cases women could point to magistrates who believed them. For example: "[the magistrate was] wonderful. He believed me. I wasn't lying but I was expecting—[the perpetrator] told me that no one would believe me …" Another interviewee explained how a magistrate's careful approach helped her to regain her sense of dignity despite the outcome: "there was a particular woman [Magistrate] who was absolutely fantastic, she read everything….She took the time".

Conclusion

As Smart has observed, law's truth is often in conflict with women's experience (1990, 1), and the engagement with criminal law remains a 'compromising and tricky business' (Howe 2008, 181). The interviewees' experiences of engaging in the prosecution process demonstrate how the features of legal method are reflected in policing practices and by lawyers, staff and magistrates operating in the lower

courts. The experience of many of the women in this study was that the outcomes delivered through criminal prosecution often served to support and affirm violent men and indirectly men's violence and to ignore women's stories and minimise their injuries. Generally, interviewees' experiences of prosecution were harrowing and unsatisfying: violent men often walk away from court acquitted or when violent men are convicted it is often for minor crimes and sentences seem inconsequential. A 'successful prosecution,' in the sense of conviction and sentence is often perceived to be a "phyrric" victory, when it sometimes occurs (Smart 1989, 49).

However, despite the traumas associated with criminal prosecution, sometimes it can have life-changing and positive effects for women, and usually this has little to do with the 'result' of a criminal prosecution. For many women in this study, their engagement with the legal system has, paradoxically, been the catalyst for their connection with feminist organisations which has helped them to decentre the law and construct an alternative reality to the one presented by law (Smart 1989, 25, 160) and assisted them to leave violent men. Despite the fact that the overall experience of prosecuting a domestic violence offence has been generally hostile and delivered a negative outcome, sometimes women consider that their stories are heard and that they are perceived as central and visible truth tellers by a justice professional; perhaps a police officer, a prosecutor, a lawyer or a member of the judiciary, and their experience of 'going to law' (Smart 1990, 2) might be, as a result, an emancipatory experience.

The women's narratives reported here suggest that the power of feminism has not changed 'law's truth' but that it has helped some women to de-centre the law. Sometimes feminism has, in effect, crept into the cracks on the borders of law. In Queensland, domestic violence services are often placed literally at the edge of the justice process, for example next to the courthouse or the police station, and many women are connected with these services when they come to law. It is often the experience of engaging with women's support services that helps women to decentre the law. Smart observes that going to law is problematic and risky but she also accepts that sometimes it is a risk worth taking as long as the risks are "acknowledged and weighed in the balance" (Smart 1989, 161); such caution is reflected in this final comment from an interviewee:

> I just thought, no, what he's done is wrong and I want to report it to the police. I thought I know that there's a low chance that I'd be successful … but I thought at least then I know that I've done everything I can and if I'm not successful, even if I went to court and I lost in court, it doesn't mean that people haven't believed you; it's just because you need such a high level of evidence to get a prosecution.

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