



A feminist reconceptualisation of intimate partner violence against women: A crime against humanity and a state crime



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SYNOPSIS

Intimate partner violence is, internationally, the most prevalent and serious harm perpetrated against women. Yet despite its mass scale, cross-cultural nature, and identifiable structural and institutional elements, it continues to be treated as a problem of violent individuals. In this article, I challenge existing conceptual frameworks by proposing that intimate partner violence (IPV) against women by men be conceptualised within international law as a crime against humanity and a state crime. I explain the suitability of this framework by showing that IPV can be understood as the systematic perpetration of grave harms against a particular social group, within the context of state and institutional policy, practice and ideology that institutes, authorises, endorses, and is therefore complicit, in the harm. I also suggest that IPV can be understood as a state crime because the state perpetrates the structural violence which directly underpins IPV, and because male perpetrators can be understood as proxy agents of the patriarchal state. I suggest that this original way of understanding IPV could enhance its international recognition, illuminate multiple layers of liability for the harm, and prompt more holistic responses to the problem, some of which are outlined in the final section of this article.

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Introduction and overview

Intimate partner violence (IPV)¹ remains the most pervasive and harmful form of violence against women internationally. It has been identified by various national and global authorities as a form of sexual discrimination, as it relates closely to the ongoing sexual inequality and oppression of women in all aspects of life (e.g. [National Council to Reduce Violence Against Women and their Children, 2009](#); [United Nations, 1979, 1991, 1993](#)). But despite the recognition of IPV's structural and systemic origins, it continues to be treated primarily within nation-bound jurisdictions as an interpersonal crime for which only individual perpetrators are liable. Even where international law has been invoked in this area, the notion of broader liability has only considered states' obligation to protect citizens from other individuals, not as implicated in the harm itself. This article outlines my proposal that intimate partner

violence (IPV) against women by men be conceptualised as a crime against humanity and as a state crime. I argue that this conceptual innovation challenges the limiting boundaries within which the harm has thus far been understood, offering the most holistic framework for conceiving of IPV in a way that, for the first time, recognises the role of state and institutional policy, practice and ideology in its perpetration and perpetuation. Whilst this piece obviously draws upon international legal concepts, it is not a law article and I do not claim to present irrefutable technical arguments. Rather, it is a feminist criminological proposal which is intended to 1. show that IPV can be understood as a mass harm against women that derives from the state, state-sanctified institutions, policy, practice and ideology, 2. indicate multiple layers of liability for the perpetration and perpetuation of this harm, and 3. promote innovation in understanding and responding to this widespread problem.

In the following discussion, I begin by locating my proposal within international developments in conceptualising IPV,

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before outlining the crimes against humanity and state crime frameworks and explaining their value. In the central section of the article, I demonstrate how the systematic domestic abuse of women can, and should, be understood as a crime against humanity and a state crime. Finally, because regarding this crime as a mass harm with state, structural and institutional elements indicates a fundamentally new and different approach, I consider implications for response, redress and prevention. By incorporating notions of individual, collective, institutional and state-level liability for harm, I nominate several ways that IPV might be addressed in a more innovative and comprehensive way.

Part I

IPV as an international harm: developing concepts

My proposal to reconceptualise IPV is situated within a growing body of scholarship that nominates international law for understanding and addressing this widespread problem. These approaches, in part, respond to the conceptual limitations of conventional legal understandings of violence, which are based on a male, single incident-based model of victimisation (Australian Institute of Criminology, 2009; Chan & Payne, 2013; Hester, 2012; Johnson, 2008; Stark, 2007, 2010). One notable way that international law has been used to broaden understandings of IPV has been through its identification as a human rights violation. In Barry's (1979) analysis, for example, systematic domestic abuse of women is described as a form of slavery. Similarly, Russell's (1982) study of marital rape identifies how domestic abuse is comparable to the political torture condemned by human rights organisations. Copelon (1994) is well-known for demonstrating that certain IPV actually constitutes torture, according to definitions in the Universal Declaration of Human Rights (United Nations, 1948) and the Convention Against Torture (United Nations, 1984). Identifying IPV as a form of terrorism is also increasingly common. Over two decades ago, Kelly (1988) noted the incongruity of attention to international political terrorism when the domestic terrorism of IPV directly threatened far greater numbers of people (also Finn, 1989). More recently, Pain (2012: 8) discusses domestic abuse as everyday terrorism because of how "fear, terror and control" operate similarly to that in national or global terrorism. Johnson's renowned typology of domestic violence (Johnson, 2008; also Johnson, 1995, 2005, 2010, 2011) also labels certain IPV intimate terrorism, highlighting how patterns of abuse involve multiple oppressive tactics which create an overall dynamic of intimidation, isolation and control. These various descriptors have successfully challenged and expanded previous understandings of IPV.

Building upon the idea that IPV can represent a violation of women's fundamental rights, feminist advocates have invoked international human rights law to conceptualise and enforce state responsibility in this area. This is because, broadly speaking, international law requires states to protect citizens from violations of their fundamental rights by third parties, including from individuals who perpetrate domestic abuse (Andrews & Khavinson, 2013; Charlesworth, 1995; Duramy 2013; Libal & Parekh, 2009; Meyersfeld, 2003, 2010; Sullivan, 1995). When they do not take this responsibility seriously,

states are considered to 'acquiesce' to the violation (Hakimi, 2010).ⁱⁱ Additionally, the Declaration on the Elimination of Violence Against Women (United Nations, 1993) obligates states to prevent, criminalise and penalise such violence. Therefore, as MacKinnon (1993) explains, when states demonstrably fail to fulfil these obligations, and instead, show "official impunity and legalised disregard" (29) for IPV, they can be seen as complicit in the harm. These conceptual shifts have been significant in introducing the notion of state responsibility for safeguarding IPV victims' basic rights, although they continue to conceptualise the harm as individual interpersonal violence.

The crimes against humanity framework

The framework that I propose goes beyond considering the state's role as merely protector of IPV victim's rights. I argue that, at a more fundamental level, state and institutional policy, practice and ideology can be seen to actually initiate, authorise, tolerate and perpetuate the harm of IPV itself. Although "crimes are committed by individuals and not by abstract entities" (Schabas, 2008: 982), domestic violence against women is clearly not just a problem of a few errant men. Its epidemic prevalence (see Garcia-Moreno, Jansen, Ellsberg, Heise, & Watts, 2006; Reed, Raj, Miller, & Silverman, 2010) reveals that it is a central aspect of women's lives, and that is connected to normalised structures, institutions, policies, practices and ideologies.ⁱⁱⁱ Indeed, in accordance with a structural feminist perspective, domestic violence can only be adequately understood as part of the system-wide subordination of women (Barry, 1979; Burris, 1973; Charlesworth, 1995; Graham, 1994). It is therefore essential to develop new frameworks that recognise it as more than just an individual, interpersonal crime. The crimes against humanity framework is useful because it can account for multiple dimensions of liability for harm, as it retains a traditional focus on individual perpetrators whilst simultaneously acknowledging a state, institutional or organisational element in its perpetration and perpetuation. In relation to IPV, I argue that by "mediat(ing) individual and collective responsibility" (Teitel 1997: 2047), the framework has the capacity to more appropriately situate individual perpetration within a broader, multi-level framework of liability.

Crimes against humanity are a particular category of crime within international statutory criminal law, outlined within the International Criminal Court's (1998) Rome Statute and elaborated in the accompanying Elements of Crimes (International Criminal Court, 2011). A number of acts can constitute crimes against humanity, including torture, enslavement, rape and persecution, however these must also satisfy certain contextual elements. Firstly, the crimes must be "committed as part of a widespread or systematic attack directed against any civilian population" (ICC 1998 Art 7.1). This means that the perpetration of grave, repeated violations against individuals must occur within the context of other violations directed against a specific civilian group. The crimes must also be "pursuant to or in furtherance of a State or organisational policy" (ICC 1998 Art 7.1–3), which is understood to require an identifiable state or organisational element in promoting, encouraging, or being complicit in the harm (Bassiouni, 2011; International Criminal Court, 2011; Robertson, 2002; Schabas, 2007; Vernon, 2002).^{iv} Considering this state or state-like involvement in the perpetration or perpetuation of harm, like Balint (2012), I argue that

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