

Portuguese Women's Responses to Domestic Violence in England: A Socio-Legal Analysis

Ana Sofia Grilo Carapeto Graça

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Abstract

This dissertation explores Portuguese women's invocation of law in situations of domestic violence in England. Despite the existence of studies on minority ethnic women's invocation of law and on the Portuguese population in England, there is no published research on Portuguese women's invocation of law in situations of domestic violence. The dissertation seeks to address this gap in knowledge, using socio-legal theories of the invocation of law, theories of legal consciousness and interviews with Portuguese women living in England.

Although theories of legal consciousness are not unproblematic, they permit the development of a framework of analysis that puts culture at the centre of women's subjective understanding of the law. They do so by analysing legality as the result of a combination of schemas and resources. The central schema for this dissertation is Portuguese culture, which results from a number of historical and political circumstances, such as the sustained promotion of women's domesticity and the lack of a strong feminist movement. The influence of culture on Portuguese women's invocation of law becomes clearer when articulated with an analysis of the resources available to them, such as language proficiency, levels of education and economic independence. The dissertation also includes an analysis of women's experiences and expectations of service providers, as the distinction between the perceived usefulness of some services in comparison to others, such as between the police and victim support services, also impacts on women's invocation of law.

The dissertation concludes that Portuguese women's invocation of law is complex, but with a clear preference for using informal mechanisms to address domestic violence. This has consequences for the development of practical ways of helping Portuguese women living in England deal with domestic violence, and informs the recommendation made in the final chapter of the dissertation.

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List of Abbreviations

ACPO	Association of Chief Police Officers
APAV	Associação Portuguesa de Apoio à Vítima
APF	Associação de Propaganda Feminista
BME	Black and Minority Ethnic
CAADA	Co-ordinated Action Against Domestic Abuse
CNMP	Conselho Nacional das Mulheres Portuguesas
CPS	Crown Prosecution Service
DASH	Domestic Abuse, Stalking and Honour Based Violence
DVPN	Domestic Violence Protection Notice
DVPO	Domestic Violence Protection Order
IDVA	Independent Domestic Violence Advisor
LRM	Liga Republicana das Mulheres
MPF	Mocidade Portuguesa Feminina
MARAC	Multi-Agency Risk Assessment Conference
OMEN	Obra das Mães pela Educação Nacional
PARSUK	Portuguese Association of Researchers and Students in the United Kingdom
SDVC	Specialist Domestic Violence Court
UMAR	União de Mulheres Alternativa e Resposta
UK	United Kingdom
USA	United States of America

Table of Legislation

English Law

Crime and Disorder Act 1998

Crime and Security Act 2010

Domestic Proceedings and Magistrates' Courts Act 1978

Domestic Violence and Matrimonial Proceedings Act 1976

Domestic Violence, Crime and Victims Act 2004

Family Law Act 1996

Housing Act 1996

Protection from Harassment Act 1997

Portuguese Law

Código de Processo Civil 1876

Constituição Portuguesa de 1933

Decreto-Lei nº 17636 de 1929, Diário da República I Série nº 268

Decreto-Lei nº 32171 de 1942, Diário da República I Série nº 175

Decreto-Lei nº 187/75 de 4 de Abril, Diário da República I Série nº 79

Decreto-Lei nº 308-A/75 de 24 de Junho, Diário da República I Série nº 143 4º Suplemento

Decreto-Lei nº 400/82 de 23 Setembro, Diário da República I Série 1º Suplemento nº 221/82

Decreto-Lei nº 78/87 de 17 de Fevereiro, Diário da República I Série nº 40/87

Decreto-Lei nº 237-A/2006 de 14 de Dezembro, Diário da República I Série, nº 239

Lei Eleitoral de 14 de Março de 1911

Lei nº 3 de Julho 1913, Diário da República I Série nº 153

Lei nº 6/84 de 11 de Maio, Diário da República I Série nº 109

Lei nº 59/2007 de 4 de Setembro, Diário da República I Série nº 170

Lei nº 16/2007 de 17 de Abril, Diário da República I Série nº 75

Lei nº 112/2009 de 16 de Setembro, Diário da República I Série nº 180

Resolução da Assembleia da República nº 74/2004, Diário da República Série I-A nº 269

Resolução do Conselho de Ministros 100/2010, Diário da República I Série nº 243

European Union Law

Treaty establishing the European Economic Community (Treaty of Rome) art 3c and arts 48 to 58 Act of Accession 1985 (Spain and Portugal) Protocol 34

Table of Case Law

B v B (Occupation Order) [1999] 31 HLR 1059

C v C (Non-Molestation Order: Jurisdiction) [1998] 1 FLR 554

Chalmers v Johns [1999] 1 FLR 392

Danesh v Kensington and Chelsea RLBC [2007] H.L.R. 17

G v G [2000] 2 FLR 36

Nwogbe v Nwogbe [2000] 2 FLR 744

Re Y (Children) (Occupation Order) [2000] 2 FCR 470

Yemshaw v London Borough of Hounslow [2009] EWCA Civ 1543

Yemshaw v Hounslow LBC [2011] UKSC

List of Interviewees

Alexandra – May 2012 (London)

Alice – June 2012 (London)

Amélia – October 2011 (London)

Barbara – December 2011 (London)

Beatriz – November 2011 (London)

Carla – December 2011 (Reading)

Carolina – September 2012 (Norfolk)

Catarina – January 2012 (London)

Daniela – June 2012 (London)

Diana – November 2011 (London)

Elsa – November 2011 (London)

Fátima – November 2011 (London)

Fernanda – November 2011 (London)

Francisca – November 2011 (London)

Guida – September 2012 (Norfolk)

Helena – September 2012 (Norfolk)

Isabel – March 2012 (London)

Ivone – September 2012 (Norfolk)

Joana – September 2011 (London)

Laura – March 2012 (London)

Jacinta – September 2012 (Norfolk)

Julia – September 2012 (Norfolk)

Mariana – January 2012 (Reading)

Sara – September 2012 (Norfolk)

Chapter 1: Introduction

This dissertation explores Portuguese women's invocation of law in situations of domestic violence in England. To do so, it uses socio-legal theories of the invocation of law, literature on immigrant women and domestic violence, and interviews with Portuguese women living in England.

The fact that ethnic minority women face specific challenges when accessing help in situations of domestic violence is recognised both in governmental policy and academic literature. In terms of policy, the Home Office's most recent publication on violence against women and girls mentions the need to address specific challenges amongst Black and Minority Ethnic (BME) communities, echoing its earlier policies.¹ As for academic literature, although the focus on immigration and domestic violence is a fairly recent and underexplored area,² the difficulties immigrant women face when engaging with English and North American justice systems to address domestic violence have been well documented. Burman et al., for example, draw attention to the structural disadvantages that women from minority communities suffer when trying to access domestic violence and related

¹ Home Office, *Call to End Violence Against Women and Girls, Taking Action, The Next Chapter* (Home Office 2012)

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97901/action-plan-new-chapter.pdf> accessed 19 July 2012, 12; Home Office, *A Call to End Violence Against Women and Girls: Action Plan 2013* (Home Office 2013)

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181088/vawg-action-plan-2013.pdf> accessed 24 June 2013.

² Cecilia Menjivar and Olivia Salcido, 'Immigrant Women and Domestic Violence: Common Experiences in Different Countries' (2002) 16 6 *Gender and Society* 898.

services in the United Kingdom (UK), with particular emphasis on racism;³ Gill and Sharma and Anitha use the difficulties experienced by South Asian women as case studies for the analysis of challenges faced by recently immigrated women who experience domestic violence in the UK;⁴ in the United States of America (USA), Menjívar and Salcido draw attention to the specific difficulties that Latinas and South Asian women, amongst other immigrants, face when experiencing domestic violence, and Vidales addresses the same problem by focusing her analysis specifically on Mexican women in Southern California.⁵

Despite political and academic recognition of immigrant women's specific circumstances when reacting to domestic violence in the country of destination, research in this area only started to gain traction at the end of the 1990s, and represents a small proportion of the studies conducted on domestic violence in general.⁶ Research specifically on Portuguese immigrants and domestic violence is no exception to this. One of the few examples of such research is a large-scale study conducted by Barata et al. on Portuguese-speaking women's responses to domestic violence in Canada. Barata et al. reveal that Portuguese culture has an overwhelming impact on Portuguese-speaking women's perceptions of and

³ Erica Burman et al., 'Culture' as a Barrier to Service Provision and Delivery: Domestic Violence Services for Minoritized Women' (2004) 24 *Critical Social Policy* 332.

⁴ Aisha Gill and Kaveri Sharma, 'Response and Responsibility' in Sarah Walsum and Thomas Spijkerboer (eds), *Women and Immigration Law: New Variations on Classical Feminist Themes* (Routledge-Cavendish 2007) 190; Sundari Anitha, 'No Recourse, No Support: State Policy and Practice towards South Asian Women Facing Domestic Violence in the UK' (2010) 40 *British Journal of Social Work* 462.

⁵ Menjívar and Salcido (n 2); Guadalupe Vidales, 'Arrested Justice: The Multifaceted Plight of Immigrant Latinas who Faced Domestic Violence' (2010) 25 *Journal of Family Violence* 536; Catherine Fuchsel, Sharon Murphy and Rebecca Dufresne, 'Domestic Violence, Culture, and Relationship Dynamics Among Immigrant Mexican Women' (2012) 27 *Affilia* 269.

⁶ Menjívar and Salcido (n 2) 898.

reactions to domestic violence. In their study, most Portuguese-speaking women say that, although they would seek help for themselves in cases of domestic violence, they believe that other Portuguese-speaking women would not, or would do so quietly, due to cultural and community pressures.⁷

As a Portuguese immigrant living in England, I became interested in studying domestic violence in the Portuguese community following conversations with Portuguese friends and acquaintances also living in England. In these conversations incidents of domestic violence were sometimes revealed and described as natural in a relationship. Domestic violence clearly had a damaging effect in these women's lives, but was perceived as something that should remain hidden and sometimes even accepted. This led me to become interested in exploring to what extent cultural influences prompted or deterred Portuguese women from engaging with the English justice system to address domestic violence. Although some level of acculturation might allow for other cultural practices to influence Portuguese women's behaviour, my expectation was that Portuguese women living in England were reproducing to a large extent the behaviour adopted or expected in Portugal, that is, they would be reluctant to engage with the justice system to address domestic violence, and would try to hide its existence from others.

Moreover, I was acutely aware of the difficulties that Portuguese women might have navigating English services. Something as trivial as booking an appointment with a doctor can be an extremely confusing experience for someone who is not

⁷ Paula Barata et al., 'Portuguese-Speaking Women Voice their Opinions: Using Their Words to Teach about Wife Abuse' (2005) 15 *Women's Health Issues* 134, 138-139.

accustomed to how the National Health System works. I therefore also became interested in knowing to what extent a lack of understanding of services in England and the of justice system as a whole had an impact on Portuguese women's reactions to domestic violence in England.

There is no indication that domestic violence is more problematic within the Portuguese community than the general community, or any other immigrant group in England. Indeed, one of the difficulties with studying Portuguese immigrants in England is the lack of information about this population. There are studies and reports on the Portuguese community, conducted by Portuguese and English-based institutions and individuals, but these focus mainly on the needs of local populations. As such, Figueiroa discusses health provision for the Portuguese-speaking community in Lambeth;⁸ Valério researches the Portuguese-speaking community in Stockwell in relation to areas such as education, housing and health;⁹ and Collis et al. make an extensive analysis of the needs of Portuguese migrant workers in Norfolk.¹⁰ Whenever domestic violence is mentioned in these studies, it is usually by listing the problems associated with current service provisions, such as understaffing or lack of visibility of the services.¹¹ Specific attention has never been paid to Portuguese women's engagement with the

⁸ José Figueiroa, 'Assessment of the Health Needs of the Portuguese Speaking Community Living in North Lambeth Primary Care Group (NLPCG) Area in Lambeth' (Guy's, King's and St Thomas' School of Medicine, Lambeth, Southwark and Lewisham Authority (LSLHA) Unpublished Research Report 2000).

⁹ Francesca Valério, 'Independent Needs Analysis of the Portuguese-Speaking Community in Stockwell and the London Borough of Lambeth' (Stockwell Partnership 2007).

¹⁰ Alex Collis, Neil Stout and Danielle Ross 'Workers on the Move 3, European Migrant Workers and Health in the UK: The Evidence' (Keystone Development Trust 2010).

¹¹ Figueiroa (n 8) 21, 25; Valério (n 9) 9; Collis et al. *ibid* 58.

English legal system and, in particular, their invocation of law in situations of domestic violence, a gap in knowledge that this dissertation begins to address.

Theoretical underpinning

Several authors have discussed the legal provisions for domestic violence available in England. Burton, for example, provides a comprehensive analysis of the different levels of decision-making and areas of law that comprise the legal system's responses to domestic violence.¹² Her approach highlights the importance of looking at a legal system by analysing its constituent parts, without forgetting that these are interconnected. Looking at court decisions only does not provide a satisfactory view of how the legal system addresses domestic violence; in order to gain such a view, the analysis needs to include how other actors within the legal system operate, for example, how lawyers advise their clients to invoke the law in situations of domestic violence.¹³ To an extent, a similar approach is adopted in this dissertation. However, rather than looking at decision-making in each of the agencies that constitute the justice system, this dissertation discusses the views of women who are or may become its potential users. As such, it includes not only an appreciation of existing law and individuals' relationship with it, but also their interaction with different agencies that are part of the justice system.

Studies on responses to justiciable problems, such as those conducted by Genn, help to understand how individuals broadly address problems for which there are

¹² Mandy Burton, *Legal Responses to Domestic Violence* (Routledge 2008).

¹³ *Ibid* 8.

legal remedies.¹⁴ Theories of legal consciousness, however, provide a contextualised approach to the invocation of law, by taking into account underlying explanations for the use (or non-use) of the justice system. According to theories of legal consciousness, legal consciousness is the process of creating legality, that is, of interpreting everyday events in a legal way. This means that legality can be found in everyday decisions, in what people say and do about the law, but also in what they do not say or do.¹⁵ Theories of legal consciousness are used to study a variety of subjects, from the study of offensive public speech,¹⁶ to welfare applications¹⁷ or changes to local government.¹⁸ Their use in academic research is fairly recent, and, despite the examples provided here, uncommon in the UK.¹⁹ The inclusion of theories of legal consciousness as part of the theoretical framework proposed in this dissertation, therefore, needs clarification.

This dissertation investigates Portuguese women's invocation of law in situations of domestic violence. In doing so it focuses on how Portuguese culture shapes women's perceptions of and reactions to domestic violence. Theories of legal consciousness facilitate this analysis because they acknowledge different factors that influence the way individuals relate to the law, including cultural practices. According to Ewick and Silbey, individuals make sense of the world by referring to

¹⁴ Hazel Genn, *Paths to Justice: What People Do and Think About Going to Law* (Hart Publishing 1999).

¹⁵ Dave Cowan, 'Legal Consciousness: Some Observations' (2004) 67 *6 Modern Law Review* 928, 932.

¹⁶ Laura Beth Nielsen, 'Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment' (2000) 34 *4 Law and Society Review* 1055.

¹⁷ Cowan (n 15) 928.

¹⁸ Davina Cooper, 'Local Government: Legal Consciousness in the Shadow of Juridification' (1995) 22 *4 Journal of Law and Society* 506.

¹⁹ Cowan (n 15) 935.

cultural practices, against which they assess their problems.²⁰ Cultural practices are believed to make up, and in time change and transmit legal consciousness between individuals.²¹ The centrality that cultural practices assume in theories of legal consciousness is, therefore, useful as a starting point for the framework proposed in this dissertation, as it allows for an in-depth study of the role of Portuguese culture, amongst other variables, in Portuguese women's invocation of law.

The use of theories of legal consciousness is also relevant for this dissertation because participants do not necessarily have knowledge of formal law. The purpose of the dissertation is to understand the use that Portuguese women make or are likely to make of the existing provisions for domestic violence in England. Many Portuguese women do not have good knowledge of the English legal system, which does not mean that they do not, or cannot, use it to address domestic violence. For example, one respondent describes her living arrangements after separating from her abuser in a way that clearly indicates that an occupation order was obtained. She does so, however, without ever using the expression 'occupation order' or even referring to civil law. This respondent says that she trusted her lawyers to protect her interests, and that she does not really know the legal framework against which her case was decided. Her story, which is discussed at

²⁰ Patricia Ewick and Susan Silbey, *The Common Place of Law: Stories From Everyday Life* (University of Chicago Press 1998) 22-23, 45; Kathleen Hull, 'The Cultural Power of Law and the Cultural Enactment of Legality: The Case of Same-Sex Marriage' (2003) 28 3 *American Bar Foundation Journal* 629, 630; Cowan (n 15) 935; Amy Blackstone, Christopher Uggen and Heather McLaughlin, 'Legal Consciousness and Responses to Sexual Harassment' (2009) 43 3 *Law and Society Review* 631, 632; Erik Fritsvold, 'Under the Law: Legal Consciousness and Radical Environmental Activism' (2009) 24 4 *Law & Social Inquiry* 799 805.

²¹ Ewick and Silbey *ibid* 40, 43; Cowan (n 15) 932.

different points in the dissertation, is an example of how important it is to go beyond the law to understand women's understanding of legal events and the impact that this has on their use of the justice system. If we were to rely on this respondent's knowledge of formal law only, the information gained would be very limited. By allowing her to express herself in her own words and reveal her experience, we can infer how the system worked in her case (specifically, that an occupation order was applied for by her lawyers and granted by a court), and understand not only the impact that the order had on her life, but also the circumstances in which the application was made.

Unlike this respondent, other women choose not to formally mobilise the law; however, this does not mean that they do not configure domestic violence in a legal way. Indeed, many women in this study would rather not invoke the law to deal with domestic violence, despite potentially configuring it as legal problem. The use of theories of legal consciousness allows their reasoning also to be taken into account in this study, even if they decide not to engage with the justice system. Furthermore, all Portuguese women are potentially susceptible to the influence of Portuguese culture when invoking the law in situations of domestic violence. By focusing on culture rather than solely on the use of law, theories of legal consciousness allow the theoretical framework used in the dissertation to broaden the scope of the analysis beyond experiences of victimisation and subsequent use of the justice system, by including the experiences of women who were not victimised and/or did not use the justice system.

It may be argued that by looking at law as part of everyday life, theories of legal consciousness either dilute law in society to such an extent that it loses its

relevance, or that, in contrast, they give the law too much weight when assessing individual interactions, as not all interactions will be legally meaningful.²² Regardless of whether theories of legal consciousness over- or underestimate the role of the law in individual decision-making, they are useful for this dissertation because they help to frame the discussion surrounding Portuguese women's invocation of law in a way that includes women's subjective interactions and cultural influences. This may lead to the criticism that research based on legal consciousness merely provides a description of individuals' perceptions of legality.²³ Ewick and Silbey's detailed analysis of resistance, as a potential consequence of adopting the form of legal consciousness 'against the law', for example, indicates that theories of legal consciousness are not merely descriptive. Although this dissertation does not focus on resistance, it also departs from a purely descriptive approach, by providing a critical analysis of the data gathered and of the theoretical framework used, in an attempt to systematically explain Portuguese women's invocation of law in situation of domestic violence, and suggest ways in which this community could be better supported in England.

²² Cowan (n 15) 934; Rosie Harding, "'Dogs are "Registered", People Shouldn't Be': Legal Consciousness and Lesbian and Gay Rights' (2006) 15 *Social & Legal Studies* 511, 515; Anna-Maria Marshall, 'Communities and Culture: Enriching Legal Consciousness and Legal Culture; *Communities and Law: Politics and Cultures of Legal Identities* by Gad Barzilai' (2006) 31 1 *Law and Social Inquiry* 229, 238.

²³ Harding *ibid* 517.

Research methodology

In order to ensure that the research that informs this dissertation meets the required ethical safeguards for researching human participants, ethical approval was obtained from the Research Ethics Advisory Group at Kent Law School before any participants or stakeholders were contacted. The Kent Law School's ethical review process ensures compliance with the key recommendations included in the research guidelines from the Economic and Social Research Council and the Socio-Legal Studies Association.²⁴ Issues such as a duty of care towards participants, confidentiality and informed consent are all covered by Kent Law School's ethical review process and were implemented accordingly in this research project.

The ethics review process consisted of an initial lengthy discussion of the project with my supervisor. Once the details of the research were agreed, a form was submitted to the Kent Law School's Research Ethics Advisory Group describing the project and seeking the Advisory Group's approval for the research. In the form I was asked to describe the methodology used, the recruitment process (both of these aspects are discussed in more detail in the following sections) and how results would be disseminated. Because the research proposed included potentially vulnerable women, an added duty of care was required to minimise any harm that may have resulted from the interview process. The two main risks associated with the research that were identified were emotional distress resulting

²⁴ Socio-Legal Studies Association 'Statement of Principles of Ethical Research Practice' (SLSA 2009) <http://www.slsa.ac.uk/images/slsadownloads/ethicalstatement/slsa%20ethics%20statement%20_final_%5B1%5D.pdf> accessed 11 February 2014; ESRC 'ESRC Framework for Research Ethics (FRE) 2010' (ESRC 2012) <http://www.esrc.ac.uk/_images/framework-for-research-ethics-09-12_tcm8-4586.pdf> accessed 11 February 2014.

from the recollection of violent experiences and the possibility of further abuse from a partner if collaboration with the project was discovered. The measures taken to ensure participants' safety consist of ensuring that the interviews were conducted in a place of the participants' choice, where they felt safe and comfortable; assuring participants that the information given is confidential and for research purposes only, and that their participation was voluntary; giving participants information on available support services; and asking participants the way in which they would like to be contacted should they wish to receive information related to the research. In terms of securing informed consent, participants were given a consent form containing a description of the project, my contact details and those of my main supervisor and an explanation that participation in the study was voluntary and that respondents could stop the interview and withdraw their consent at any time (see appendix 1).

Recruitment

Finding information on the Portuguese community in England is difficult and indeed prompts the question of whether the appropriate term is 'community' or 'communities'. In order to understand the impact of Portuguese culture on women's invocation of law, Portuguese culture needs to be disassociated from the cultures of other immigrants with whom the Portuguese share close ties for historical reasons, such as those from Brazil, Angola or East Timor. A separation also needs to be made between Portuguese immigrants and other ethnic groups with whom the community is often associated, such as those from Spain and South America. This is, however, made more difficult due to the lack of exact data on the size and makeup of the Portuguese immigrant population in England. Official data

on the Portuguese population in England conflates individuals within the same ethnic category, but with few cultural or historical ties, such as 'white European' or 'white other', which makes eliciting information specifically on the Portuguese population very difficult.²⁵ The number of immigrants registered with Portuguese embassies in the UK in 2012 was 163,773.²⁶ The Portuguese Observatory for Emigration,²⁷ however, places the number of Portuguese citizens, or individuals of Portuguese origin, in the UK at an estimated 500,000 in 2010.²⁸ Registration with Portuguese embassies in the UK is not compulsory, which partly explains the large discrepancy in numbers. The Portuguese Observatory for Emigration does not define Portuguese citizens or individuals of Portuguese origin, but considering the current law on Portuguese nationality, these may include not only those born in Portugal of Portuguese parents, but also those born in the UK of Portuguese parents, and, under stricter circumstances, those born in Portugal of non-Portuguese parents.²⁹ Due to its colonial past, individuals born in territories under Portuguese administration until their independence are also considered Portuguese.³⁰ Of the 24 participants interviewed, two have Portuguese nationality

²⁵ See Office for National Statistics, '2011 Census Household Questionnaire England' (Office for National Statistics 2012) <<http://www.ons.gov.uk/ons/guide-method/census/2011/the-2011-census/2011-census-questionnaire-content/index.html>> accessed 31 May 2012.

²⁶ Observatório da Emigração, 'Reino Unido, Quadro 2. Registos Consulares, Stock em 2008-2012' (Observatório da Emigração 2013) <<http://www.observatorioemigracao.secomunidades.pt/np4/paises.html?id=76>> accessed 8 April 2013.

²⁷ In Portuguese, Observatório da Emigração.

²⁸ Observatório da Emigração 'Reino Unido, Quadro 3. População Portuguesa e de Origem Portuguesa, 2003-2010' (Observatório da Emigração 2013) <<http://www.observatorioemigracao.secomunidades.pt/np4/paises.html?id=76>> accessed 8 April 2013.

²⁹ Decreto-Lei n° 237-A/2006 of 14 de Dezembro, Diário da República I Série n° 143 4º Suplemento, artigos 3º, 5º e 8º.

³⁰ Decreto-Lei n° 308-A/75 de 24 de Junho, Diário da República I Série, n° 239, artigo 1º/1b); most territories under Portuguese administration in the 20th Century became independent in the 1970s; Macau is an exception to this, becoming independent in 1999.

but were born in African territories under Portuguese administration at the time of their birth.

The interviews analysed in this dissertation include Portuguese women who are and are not victims of domestic violence. The decision to be more inclusive regarding respondents' previous experience of domestic violence emulates the research methodology used by Barata et al. in which participants were asked to talk about domestic violence, without the pre-requisite that they were themselves victims of violence.³¹ A reason behind this decision was to avoid a very low level of participation in the research due to cultural factors preventing Portuguese women from disclosing details of their personal lives. In order to maximise participation, the fact that the study did not require participants to be victims of domestic violence was made evident whenever approaching potential participants and institutions that might support the research. During the interviews, six participants disclosed that they had been victims of domestic violence. Direct victimisation is highlighted whenever relevant throughout the analysis.

The subject of domestic violence deterred a number of potential participants from the interviews. Some women (two) contacted by email or telephone said that they did not have an opinion on the subject or that they did not feel comfortable talking about it, as they did not know who I was. Other women (two) volunteered for the research having understood that the project was on the Portuguese community living in England, and ceased any contact once they understood that the topic of the research was specifically domestic violence. This happened despite an emphasis placed on the fact that interviewees did not have to be victims of

³¹ Barata et al. (n 7) 137, 142.

domestic violence, but only willing to discuss the matter in general terms. In contrast, most of the women who eventually agreed to participate were eager to share their experiences of the Portuguese community and of domestic violence. A method followed in some cases to reach the first participants in an area was to conduct interviews with women with some degree of active participation in the local Portuguese community, who would assess for themselves how intrusive the questions were and recommend the study to friends and family. This method worked well and led to the recruitment of 15 of the 24 participants.

The first step adopted in terms of recruitment of participants was to identify areas of concentration of Portuguese immigrants in England. The identification of these areas was done by researching news outlets, either in Portuguese or reporting news about the Portuguese population, as well as local council websites, and local and national policies that referred specifically to Portuguese immigrants. Areas that made reference to a Portuguese population were considered to have a high density of Portuguese immigrants for the purpose of this study. These are areas where the representation of Portuguese immigrants is large enough to be reported in the media or to deserve special attention from local councils. The areas identified were: London, Jersey, Norfolk, Reading and, to a lesser extent, Manchester. Research on Jersey was not considered feasible within the time and financial restrictions of this study, and a decision was made to recruit participants in the areas that showed a higher concentration of Portuguese immigrants within mainland England only, more specifically London, Reading and Norfolk. The areas explored in more detail for research in London were Lambeth, in Reading, the borough of Reading and in Norfolk, Thetford and King's Lynn. These areas were chosen because they have a high concentration of Portuguese immigrants living in

them. Camden was initially included in the list of areas to explore in more detail but it quickly became evident that it would be difficult to find participants for the research in this borough, and a decision was made to concentrate solely on Lambeth instead.

In the 1960s and 1970s, Portuguese emigrants generally consisted of unskilled workers, who would emigrate to European countries, such as France, Luxembourg and Switzerland searching for work. Since the 1990s, the characteristics of Portuguese emigrants have been changing, with highly skilled and educated emigrants choosing to move to different countries, such as England and Spain.³² This means that England, which had been receiving mainly unskilled Portuguese workers, has also been receiving skilled and highly educated professionals, since then.³³ An example of the recent increase in skilled professionals immigrating to England is the recruitment of high numbers of Portuguese nurses by the NHS.³⁴ In order to secure the participation in this study of immigrants with a higher academic background than that associated with the traditional Portuguese

³² Jorge Malheiros, 'Portugal 2010: O Regresso do País de Emigração?' (2010) 21 *JANUS.NET e-journal of International Relations* 135 <observare.ual.pt/janus.net/pt_vol2_n1_not3> accessed 5 February 2013.

³³ *Ibid* 137.

³⁴ Michael Howie, 'Spanish and Portuguese Nurses Fill the Gaps in the NHS' *The Guardian* (20 December 2011) <<http://www.guardian.co.uk/society/2011/dec/20/nurses-spain-portugal-fill-gap-in-nhs>> accessed 5 February 2013; BBC News Kent, 'Kent Hospitals' Recruitment Drive for Portuguese Nurses' *BBC News Kent* (24 January 2012) <<http://www.bbc.co.uk/news/uk-england-kent-16696804>> accessed 5 February 2013; David Williams, 'Trust Looks to Portugal for New Nursing Recruits' *Nursingtimes.net* (26 July 2012) <<http://www.nursingtimes.net/nursing-practice/clinical-zones/management/trust-looks-to-portugal-for-new-nursing-recruits/5047509.article>> accessed 5 February 2013; Anil Dawar, 'Hospital Cuts Hundreds of Jobs...Then Hires Nurses from Abroad' *Express.co.uk* (19 October 2012) <<http://www.express.co.uk/posts/view/352961/Hospital-cuts-hundreds-of-jobs-then-hires-nurses-from-abroad>> accessed 5 February 2013; Kate Cowhig International Healthcare Recruitment, 'Portuguese Nurses Looking to Move to England for Work' (Kate Cowhig International Healthcare Recruitment 2012) <<http://www.kcr.ie/blog/post/491224/portuguese-nurses-looking-to-move-to-england-for-work>> accessed 5 February 2013.

community, the Portuguese Association of Researchers and Students in the United Kingdom (PARSUK) was contacted. The contact was made via email and PARSUK's Facebook page. The association's support was gained for this research project, and an advertisement asking for participants was published on the organisation's Facebook page. This yielded access to four interviewees, two living in Reading and the other two in London. Other Portuguese associations with Facebook 'profiles', discovered using various combinations of the keywords 'Portuguese', 'Portugal', 'UK', 'England', 'immigrants', 'London', 'Reading' and 'Norfolk' (and the equivalent translations in Portuguese), were also contacted and two were used to advertise the study and ask for participants, albeit with no success. Participants from the traditional Portuguese community were reached through contacts established with service providers who introduced active members of the community to the research.

Between August and December 2011, 26 letters and six emails were sent to different council agencies, women's support groups, health organisations, organisations for Portuguese immigrants and police domestic violence units in Lambeth and Camden; these were followed by phone calls in the week after the letters were sent. The letters and emails explained the purpose of the research and asked for the organisations' support in finding participants for the interviews; this could be done by liaising with Portuguese users of the services, displaying an advertisement for the research project on their premises or however else they saw fit. The criteria for the selection of participants was that they were Portuguese, women, over 18 years of age, and living in England on a permanent basis, that is, who were not in England for a set period of time such as on holidays. Of the 32 pieces of correspondence sent, the result was that five organisations agreed to

support the research. The remaining organisations either did not reply to the letters, emails or phone calls, or replied stating that they could not help because they were understaffed or because they did not support external academic research as a general principle.

Only one participant in London was reached directly through a domestic violence support service that she was using. All other participants were reached through contacts made with staff working at the organisations that agreed to support the research and, in turn, knew someone else who was Portuguese and who could help with reaching members of the local Portuguese community. A major breakthrough was made with the help of the Community Police Consultative Group for Lambeth, which helped me to establish contacts with two active members of the Portuguese community in London. Through them, it was possible to reach the first interviewees, and a snowball method was used from then on to reach 13 more participants, making the total number of participants in London 15. In addition to the contacts described so far, an advertisement was put on a Portuguese language on-line news outlet for Portuguese-speakers living in England,³⁵ asking for participants in the study.

The approaches to Reading and Norfolk were made at a later stage, with the hope of maximising the experience gained from making contacts in London. In Reading, 12 institutions were contacted in November 2011, using the same selection criteria described above for London. The contacts made in Reading elicited no results. None of the contacts made with council or voluntary organisations dealing with domestic violence, immigrants or victims of crime were able to provide any

³⁵ PALOPNews.com <<http://www.palopnews.com/index.php>> (accessed 26 February 2013).

contacts to be pursued in this area. Interestingly, the two participants in this research who live in Reading were contacted through the online social networking webpage of PARSUK. The contacts for Norfolk started in April 2012, with 27 letters and emails being sent to different organisations. Two organisations that provide support to migrant workers, amongst other projects (KLARS and the Keystone Development Trust) agreed to support the research and seven interviews were conducted as a result. The Keystone Development Trust also made some of its publications on the local Portuguese community available and these inform the research presented here. There were originally 25 participants in the study; however, one withdrew her consent to her interview being used and therefore her interview is not part of the analysis.

Data gathering

The research process used to gather the data for this dissertation consisted of in-depth semi-structured interviews with Portuguese women living in England. Interviews were selected as the primary research method because they allow participants to describe events and ideas in their own words and time. Although the overt use of a theoretical framework may be uncommon in empirical legal research,³⁶ theories of legal consciousness inform the research process adopted in this dissertation, albeit with the caveats described in chapter four. Theories of legal consciousness propose a 'bottom-up' approach to the understanding of legal phenomena, which relies on subjective experiences of legality. This means that although the researcher may ask participants to discuss certain topics, it is

³⁶ John Baldwin and Gwynn Davis 'Empirical Research in Law' in Peter Cane and Mark Tushnet (eds) *The Oxford Handbook of Legal Studies* (OUP 2003) 893.

important to also allow participants to describe their understanding of both legal and non-legal situations in their own words. Qualitative research and interviewing in particular maximise this approach as they encourage participants to reveal their experiences with a level of depth that would not be possible, for example, were quantitative methods of research used.³⁷ Moreover, semi-structured interviews infuse the interview process with flexibility, as they allow the researcher to probe into topics mentioned by respondents that would not have been necessarily covered in the interview schedule. The use of semi-structured interviews forces the interviewer to adapt to change in responding to interviewees' discourses, in what can be described as a creative and dynamic research process. Qualitative research methods lend themselves to the use of discretion and reflexivity by the researcher, and as such the fact that empirical legal research is often a creative process should not be seen as a hindrance to the value of the research.³⁸

Indeed, being open to change both in the theory and the research methods used are important aspects of empirical legal research. Similarly to many other empirical legal research projects,³⁹ as the research for this dissertation evolved, so did the theoretical approach used. At the initial stages of the research, the aim was to interview Portuguese victims of domestic violence to understand their experiences of the English justice system. As the recruitment process unravelled, it became clear that interviewing solely victims of domestic violence would be impractical. A decision was then made to emulate Barata et al's approach to

³⁷ Lesley Noaks and Emma Wincup *Criminological Research, Understanding Qualitative Methods* (Sage 2004) 75.

³⁸ *Ibid*; Baldwin and Davis (n 36) 893

³⁹ Mandy Burton 'Doing Empirical Research' in Dawn Watkins and Mandy Burton (eds) *Research Methods in Law* (Routledge 2013) 56.

recruitment instead, which meant interviewing both victims and non-victims of domestic violence. The result was an evolution of the scope of the research, from focusing on experiences of the justice system to a broader understanding of Portuguese women's responses to domestic violence in England. This does not represent an abandonment of the initial theoretical standpoint, but rather the realisation that it would need to be complemented with other theoretical approaches that took into account wider socio-cultural views of immigrant women in relation to domestic violence.

Because the interviews were designed to address a pre-set framework of analysis, an interview schedule was used (see appendix 2). The interview schedule focuses on four generic areas of interaction of Portuguese women with the English justice system: relationship with the justice system, relationship with service providers, the influence of culture and the personal characteristics of the respondents. Due to the partly exploratory nature of the study, open-ended questions were used. Questions were skipped whenever they were deemed irrelevant, for example, if the information had been provided in answering a different question, or a number of respondents had previously declined to answer them. Examples of answers to questions that could be elicited from other questions include the respondents' level of income, which could be inferred from the question related to their employment. Questions that participants showed reluctance in answering and that may have deterred them from continuing with the interview or from referring other participants to the research (such as the question about participants' class - question 30) were also skipped.

A number of times, respondents did not answer the question put to them directly, but instead told a personal story related to the subject; in some cases, the story did not answer the question altogether. Whenever answers did not relate to the questions being asked, prompts were used to refocus respondents' attention back on to the question; this was done with varying degrees of success. As such, the information collated varies sometimes from question to question, with some questions being answered by all respondents and others not, something which will be highlighted in the analysis whenever relevant. The variation in responses should not be seen as a serious limitation for two reasons; first this is a qualitative study that explores experiences and opinions and not merely an attempt to quantify the answers to various questions; the second is the fact that although there was a defined framework for analysis, the study had an exploratory nature, making it important to allow participants to express themselves, narrating the events that they saw as important and not limiting the answers to pre-determined categories, which could lead to misrepresentations of the participant's true meaning.⁴⁰ Allowing participants to express themselves freely arguably enables a better understanding of participants' legal consciousness. Participants were not expected to have any knowledge of the law or court procedures and so it was important to allow them to describe their problems and responses in their own words to better assess how legality is formed and how it impacts on respondents' invocation of law. Furthermore, because legal consciousness can be inferred from what people say and do about the law,⁴¹ descriptive accounts of how respondents resolved their problems were encouraged. Respondents' thoughts and

⁴⁰ Herbert J Dubin and Irene S Dubin, *Qualitative Interviewing: The Art of Hearing Data* (Sage 1995) 7.

⁴¹ Ewick and Silbey (n 20) 46; Elizabeth Hoffmann, 'Legal Consciousness and Dispute Resolution: Diferente Disputing Behavior at Two Similar Taxicab Companies' (2003) 28 3 *Law and Social Inquiry* 691, 693; Hull (n 20) 634; Cowan (n 15) 932.

characteristics are referred to in the present tense to reinforce the central role that they assume in delineating experiences of domestic violence and the English justice system, and to better distinguish them from the researcher's analysis. It also highlights the continuity of respondents' experiences, which do not cease to exist at the end of the interview.

The interviews were mainly conducted in Portuguese, both the interviewees' native language and mine. Respondents were not paid for their participation but refreshments were offered, whenever possible. Interviews were recorded whenever participants agreed to the recording. An effort was made to accept all answers as equally valid and, as far as possible, not to be judgemental. There was often a strong interaction with participants, which led to me revealing personal details, such as region of origin or length of stay in England, during the initial stages of the interviews to establish a rapport with the participants. Building a rapport with interviewees is often part of the use of interviews as a research method.⁴² It is an approach not uncharacteristic of feminist qualitative research and represents a greater approximation between researcher and research subjects in an attempt to overcome a natural hierarchy between the two.⁴³

It was common for respondents who had been in England for more than eight years to go back and forth between English and Portuguese during the interviews, especially when describing emotional events. The interviews were translated from Portuguese into English and it is the English translation that is used to illustrate respondents' direct speech. Interviews were not transcribed word for word but a

⁴² James Spradley 'Asking Descriptive Questions' in Mark P. Pogrebin (ed) *Qualitative Approaches to Criminal Justice* (Sage 2003) 44.

⁴³ Noaks and Wincup (n 37) 76.

summary of the respondents' answers was made, including a large number of direct quotations, which were translated from Portuguese into English. Due to the small number of interviews conducted, a software analysis tool such as NVivo did not need to be used. The analysis was conducted first by identifying which parts of the data met the key themes of the interview schedule, and which did not. Once the data that reflected the interview schedule was identified and organised, it was systematically grouped into thematic areas that emulate the theoretical framework adopted, most strikingly the three forms of legal consciousness proposed by Ewick and Silbey ('before', 'with' and 'against' the law). Data that did not meet the themes of the interview schedule was used to supplement the analysis of respondents' legal consciousness and their views of Portuguese culture and family life. For example, if a respondent offered her views on how children are raised in by Portuguese immigrants in England, although this bears no direct connection with the interview schedule, it offers an insight into Portuguese culture and family life that can be important in understanding women's interaction with the justice system in situations of domestic violence (namely by placing the interest of children ahead of their own).

The interviews were conducted between the 13th of December, 2011 and the 18th of September, 2012. Participants chose the venues for the interviews. All interviews were conducted in public places, mainly coffee shops, and only the participant and myself were present, except for two cases where the interviewees brought their children with them to the interview. In these situations, an effort was made to keep the children busy, for example by providing them with paper and pen to draw, while the interview was being conducted. Each respondent was given

a different pseudonym for the purposes of the data analysis in order to ensure their anonymity.

Structure of the dissertation

The dissertation is divided into six chapters.

Chapter two discusses Portuguese national identity and culture and how these contribute to the organisation of family life and gender relations in Portugal. This chapter provides a first step in the development of the theoretical framework proposed in chapter four, by concentrating on the impact of Portuguese culture on the organisation of the family and relationships between its members.

Chapter three discusses current legal provisions, and central and local policies to address domestic violence in England. Existing mechanisms to address domestic violence can be problematic for both English and non-English victims, and as such are discussed in depth in this chapter. The analysis of legal provisions and policies on domestic violence informs the theoretical framework proposed in chapter four, as well as the critical reflections on this framework and recommendations for the prevention of domestic violence and support for its victims in the Portuguese community in England, presented in chapter six.

Chapter four proposes a theoretical framework for the discussion of Portuguese women's invocation of law in situations of domestic violence. The theoretical framework proposed draws heavily from theories of legal consciousness, especially in relation to the impact of culture on individuals' experiences of

legality. The chapter relies on an understanding of Portuguese culture already outlined in chapter two, and expanded upon in this chapter by literature on immigrant women and domestic violence. It also forms the basis of the data analysis in chapter five and the critical analysis in chapter six.

Chapter five contains an analysis of the interviews conducted with Portuguese women living in England within the framework proposed in chapter four, in order to understand Portuguese women's invocation of law in situations of domestic violence. This chapter informs the critical analysis provided in chapter six and the recommendations proposed therein.

Chapter six reflects upon the findings of chapter five and suggests ways in which the prevention of domestic violence and support for victims in the Portuguese community might be enhanced. It provides a critical analysis of the theoretical framework suggested in chapter four, in light of the analysis of the interviews with Portuguese women living in England included in chapter five. It also acknowledges that there are limitations to this study and identifies areas that should be further researched for a fuller understanding of Portuguese women's invocation of law in situations of domestic violence.

The dissertation concludes that Portuguese women's invocation of law is complex, with a clear preference for using informal mechanisms to address domestic violence. This results in part from the influence of Portuguese culture and has consequences for the development of practical ways of helping Portuguese women living in England deal with domestic violence. The influence of culture on Portuguese women's invocation of law becomes clearer when articulated with an

analysis of the resources available to them, such as language proficiency, levels of education and economic independence. Finally, women's experiences and expectations of service providers not only reflects the dynamic nature of the relationship between culture and resources but also shapes women's invocation of law in its own right. As a result, Portuguese women's responses to domestic violence in England represent the culmination of a process that acts at cultural, individual and institutional level.

Chapter 2: Portuguese national identity and culture and their impact on perceptions of gender and family relationships

National identity and culture are interrelated concepts that impact on individuals' acceptance and promotion of gender roles and organisation of family life. Culture is often the result of a state's efforts to promote an ideal of national identity. Once successfully assimilated by a population, cultural traits determine how individuals organise their daily lives, including how they perceive and manage family life. As such, culture influences how women relate to domestic violence and the mechanisms in place to address it. Due to its impact on family organisation and women's role in society, an understanding of Portuguese cultural traits is important for the understanding of how Portuguese women invoke the law in situations of domestic violence.

This chapter is divided into five sections. It begins with a discussion surrounding the role of the state in the creation of a nation's cultural identity, followed by an analysis of how this specifically applies to the Portuguese national identity. An account of the evolution of women's rights in Portugal is also provided, with a focus on the role of Portuguese feminists and of the Catholic Church in defining the importance of women, children and the family unit in the Portuguese national consciousness. The last section of this chapter provides an analysis of two large scale studies conducted in Europe in 2002/03 and 2005, that reveal contemporary

notions of gender, the family unit and the role of children in individual happiness in Portugal, and other countries in Europe.

National identity and culture

In order to understand current cultural practices associated with a national group, it is important to also understand the underlying dynamic that allowed certain cultural practices to exist to the exclusion of others. The study of the nation and national identity help this understanding, as they are intrinsically related to the development of cultural practices and their adoption by individuals.

Nation and national identity are complex concepts that may be defined differently according to the academic standpoint adopted. Whether from sociological, historical or psychological perspectives, a common feature in the definition of these concepts is the fact that the state always takes centre stage.¹ The concepts of nation and national identity are usually based on the existence of a common territorial space, language and cultural traditions. These three aspects command profound emotional reactions from individuals, who, by including them in their actions and beliefs, further legitimise the existence of the nation.² The creation of national identities is a relatively recent phenomenon,³ and a nation is described by Anderson as an 'imagined political community'.⁴ It is an imagined community and not a 'real' one because of the anonymity of its members and the sense of

¹ Lúcia Ferreira, 'Preâmbulo' in Joana Miranda and Maria Isabel João (eds), *Identidades Nacionais em Debate* (Celta Editora 2006) 3.

² Benedict Anderson, *Imagined Communities* (Verso 1991) 4; Ferreira *ibid* 3.

³ Anderson *ibid* 2; Eric J Hobsbawm 'Introduction: Inventing Traditions' in Eric J Hobsbawm and Terence O Ranger (eds), *The Invention of Tradition* (Cambridge University Press 2000) 1.

⁴ Anderson *ibid* 6.

camaraderie and lack of hierarchical relationship between them; its members do not know each other but believe that there is a shared commonality amongst them.⁵

Hobsbawn locates in the 19th Century the appearance of a number of what he calls 'imagined traditions'. These are 'traditions' that were created by the large social and economic changes that followed the Industrial Revolution and that eventually became the backbone of modern nationalisms.⁶ Gellner also links the entrance into an industrial era to the rise of nationalism in Europe.⁷ With the rise of an industrialised era in Europe, 'tradition' was used to create social cohesion and legitimise the authority of the state within its boundaries and upon groups. It is partly the recognition of each other as members of a nation that makes the existence of the nation possible.⁸

Anderson sees the rise of the sentiment of nationalism as, partly, the result of the secularisation of societies that led to a need to substitute the certainty and comfort provided by religion with a sentiment of equal strength.⁹ As the state starts interfering more in people's private lives, for example through the regulation of marriage, separation and parenthood, institutions such as civil marriage replace religious tradition.¹⁰ The transfer of influence from religion to the state is not, however, as pressing in places where religion still holds a strong hold over society. Hobsbawn illustrates this with the example of Southern Italy, a region where the

⁵ Ibid 7.

⁶ Hobsbawn, 'Introduction: Inventing Traditions' (n 3) 263.

⁷ Ernest Gellner, *Nations and Nationalism: New Perspectives on the Past* (Blackwell 1994) 40.

⁸ Ibid 54.

⁹ Anderson (n 2) 11.

¹⁰ Hobsbawn, 'Introduction: Inventing Traditions' (n 3) 271.

transference of legitimacy to the state was not as pressing as in the rest of Europe due to the strength of religion,¹¹ and I add Portugal as another example, in the period up until the establishment of the first Republic, and after the establishment of the political regime known as the Estado Novo, which had very close ties to Catholicism. Both these political regimes will be discussed in more detail in this chapter, when addressing the creation of the Portuguese national identity and the evolution of feminism and women's rights in Portugal.

An important factor in the success of the development of a nationalist discourse is the widespread use of a common language and print. For a nation to survive, it is important that individuals forego their subjective perception of events and accept the official, national discourse as true.¹² For example, the replacement of Latin by national languages allowed for greater identification of individuals with their geographical region, and the widespread availability of printed books and newspapers in the national language allowed developing 'imagined communities' to reach more and more people and be accepted as true communities.¹³ In fact, Anderson considers the use of the printed vernacular, fuelled by a rising capitalism, so important towards the success of the creation of nationalism that he sees print languages as the base of the formation of a national consciousness.¹⁴ Basic systems of communication such as a common language and education are therefore essential for the survival of the culture that is developed by the elites.¹⁵ When these mechanisms are in place and culture becomes accessible to the whole

¹¹ Ibid 271.

¹² Lauren Berlant, *The Anatomy of National Fantasy: Hawthorne, Utopia and Everyday Life* (University of Chicago Press 1991) 11, 21-22, 32.

¹³ Anderson (n 2) 42, 49.

¹⁴ Ibid 44.

¹⁵ Gellner (n 7) 48.

population, then a generalised acceptance of the nation and its cultural aspirations becomes possible. More than an acceptance of cultural ideals, there is in fact some identification with them at individual level, a sense of pride and love that can be seen in cultural and artistic manifestations, such as showing respect for national anthems at sporting events, the creation of national songs, a standardised national education programme, a national dish and a national sport.¹⁶

An aspect that is thus essential in the creation of a nation is the will, or at least the consent, of its nationals.¹⁷ The political unification of those who share the same culture is made possible through communication and education and the population's adherence to the nation's values and goals. Berlant highlights the importance of the law in shaping citizenship and in defining what she calls the 'National Symbolic' through the individual identification with national culture.¹⁸ The National Symbolic operates through the use of iconography, such as flags or statues, that individuals easily identify with, and a complete assimilation of the individual by the national discourse. The identification with the nation's cultural precepts is so strong that it becomes central to the individual's subjective experiences of her public and private lives.¹⁹

Theorisations of nationality, such as the ones discussed here so far, tend to overlook gender relations and the role of women in shaping a nation's identity. They place too much importance on the role of the state and intellectual elites in

¹⁶ Ibid 48; Berlant (n 12) 22, 168.

¹⁷ Eric J Hobsbawn, 'Mass-Producing Traditions: Europe, 1870-1914' in Eric J Hobsbawn and Terence O Ranger (eds), *The Invention of Tradition* (Cambridge University Press 2000) 269.

¹⁸ Berlant (n 12) 5, 20.

¹⁹ Ibid 20.

creating a shared cultural identity, and not enough thought is given to women in this process.²⁰ Yuval-Davis, without explicitly using the concept of patriarchy, believes that women's oppression in society is endemic and integral to social relations, including the creation of national identity, and that gender, ethnicity and class are intertwined in these social relations.²¹ Women are affected by the nationalist discourse in different ways. A way of ensuring that nations maintain their distinct identities is through manipulating genetics and defining acceptable male and female behaviour, which means that women who are often not involved in the wider political debate can nevertheless be the main targets of social policies.²²

Gender relations often stipulate the adoption of different forms of acceptable behaviour between men and women. As such, rules are set up in terms of familial and intergenerational relations, regulation of domestic and everyday activities, and the division of labour between genders. These practices include setting up the framework for trivial activities, such as determining meal times, but also more directly in the regulation of the body.²³ In a nationalist discourse, women tend to occupy the role of carriers of the group's identity and honour, symbols of virtue or representations of historical key moments. This is visible in the use of the figure of a woman to represent the nation, or freedom acquired (such as Joan of Arc in France or the Statue of Liberty in America).²⁴ In Portugal, examples of this can be found in the image of Our Lady of the Conceição, the country's patron saint; and

²⁰ Nira Yuval-Davis, *Gender and Nation* (Sage 1997) 2.

²¹ *Ibid* 7.

²² *Ibid* 7, 36.

²³ *Ibid* 43.

²⁴ Berlant (n 12) 22; Yuval-Davis *ibid* 47.

also, the praise of the figure of the 'Padeira de Aljubarrota', a mythical 14th Century figure, whose name became associated with triumph over Spanish invaders.

Because of women's supposed inherent frailty, however, women are also believed to be in need of protection from others and from themselves.²⁵ To avoid women's engagement in unacceptable behaviour that may bring shame to the group, a number of policies are usually put in place. These can take the form of birth control or stimulation, which necessarily have an impact on women's lives and bodies. In these cases, women become centre stage for national policy through the discussion of, for example, the availability of contraception or the criminalisation of abortion.²⁶ Women are not passive bystanders in these policies, though. There is often an informal role for older women in controlling the reproduction of the nation by telling younger women what constitutes appropriate behaviour.²⁷

Not all women are oppressed in the same way. Women's stance in society results from a complex relationship with men and other women. National discourses play a central role in gender relations, as they determine acceptable relationships within each group. National identity is the product of an internal group struggle; when a hegemonic discourse emerges, it becomes the accepted national discourse, which is then acted out by the individual.²⁸ This includes discourses on gender relations, which is why it is important to understand the origins and characteristics of the Portuguese national identity in order to understand Portuguese women's relationship with domestic violence.

²⁵ Yuval-Davis *ibid* 23.

²⁶ *Ibid*.

²⁷ *Ibid* 29.

²⁸ Anderson (n 2) 4; Yuval-Davis *ibid* 37-38.

Portuguese national identity and culture

Portuguese national identity is heavily associated with its historical past. This close relationship led to the promotion of certain cultural aspects that still today influence individuals' perception of family life. Other factors that characterise Portuguese national identity and its culture are education, class and emigration. Each of these aspects will be discussed in more detail in this section.

History and the development of a shared cultural identity

Research shows that Portugal's historical past is highly valued by the Portuguese and seen as a large part of what makes up their national identity.²⁹ This relationship is not surprising if we accept Hobsbawn's proposition that history often works as a 'legitimater' of invented traditions.³⁰ This legitimisation of traditions can be achieved through a process of education and communication with the masses, akin to that proposed by Anderson and Gellner, described in the previous section.

The development of the concepts of a 'Portuguese people' and a 'Portuguese nation', and systematic studies on the history of Portugal, date back to the 19th Century. During this period, the Portuguese intellectual community was set on bringing to light the greatness of Portugal as a nation. Portugal's history and geographical location were often used as sources of national pride, as both were believed to have helped the development of a people with very specific

²⁹ Joana Miranda, 'A Nação Portuguesa: Memória e Construção Simbólica' in Joana Miranda and Maria Isabel João (eds), *Identidades Nacionais em Debate* (Celta Editora 2006) 61.

³⁰ Hobsbawn, 'Introduction: Inventing Traditions' (n 3) 13.

characteristics. Portugal's geographical situation, locked between the sea and Spain, was deemed unique and determinant in shaping its people and distinguishing them from others, especially the close neighbours, the Spanish.³¹ The relationship that the Portuguese have with the sea is thought to define Portugal as a nation. The sea was the gateway towards adventure and the unknown, that led to 'great' feats such as the discoveries of 'new' worlds in the 15th Century, finding a maritime way between Europe and India and achieving numerous technological breakthroughs in maritime history. A great ability to adapt to change and resourcefulness to survive in adversity is also perceived as a result of this close geographic relationship with the sea and with Spain.³²

At the beginning of the 20th Century, studies were published on the Portuguese 'race', an ethnic group held together by the 'brave' blood of its ancestors.³³ There was an idealised notion of what it meant to be Portuguese, which included having a common destiny to be fulfilled, greatness to be achieved, and a longing to restore past historical glories.³⁴ This longing for a glorious past is sometimes described as the *saudosismo Português*. The Portuguese were, and still often are, described as a people of *brandos costumes* (which may be translated as a people of gentle ways), and *saudosistas* (a word of difficult translation, the closest in English would be a profound nostalgia).³⁵ For most of the 20th Century, it was in the family, more specifically the patriarchal rural family, that the Portuguese ethnicity was thought

³¹ Maria Isabel João, 'Historiografia e Identificação de Portugal' in Joana Miranda and Maria Isabel João (eds), *Identidades Nacionais em Debate* (Celta Editora 2006) 173.

³² Luís Cunha, 'A Identidade da Nação: Encenação e Narrativa' in Joana Miranda and Maria Isabel João (eds), *Identidades Nacionais em Debate* (Celta Editora 2006) 101,103.

³³ João (n 31) 178, 180.

³⁴ *Ibid* 165.

³⁵ Miranda (n 29) 56.

to be best represented. Cunha argues, much along the lines of reasoning of Hobsbawn and Gellner, that the idealised characteristics of what it is to be Portuguese became so ingrained in social expectations of behaviour, that they were assumed to be natural characteristics of the individuals that make up the population.³⁶ A survey conducted by Cabecinhas, Lima and Chaves in 2003 confirms how these shared social representations are still present in contemporary society.³⁷

During the political regime headed by Salazar, between 1932 and 1968, called Estado Novo, three elements that were considered to best encapsulate the Portuguese spirit were cultivated; these are: *fado*, *futebol* and *Fátima*. *Fado* is a traditional Portuguese song that incorporates a number of influences and can be described as representing the spirit of the *saudosismo Português*. *Futebol* is the Portuguese word for football, which can be described as the 'national sport'. *Fátima* refers to a place of worship in the centre of Portugal, where it is said that a number of miracles happened; it is still a place of great religious importance in Portugal and there are annual pilgrimages to Fátima that gather thousands of Catholics to this town to celebrate the events that are thought to have taken place there. *Fado*, *futebol* e *Fátima* were promoted as linked to Portugal's immemorial past, but none of them existed in Portugal before the 18th Century. The symbolic function of traditions by reference to the past and the use of repetition to promote them resonate with Hobsbawn's concept of invented traditions, discussed in the previous section.

³⁶ Cunha (n 32) 103-105.

³⁷ Rosa Cabecinhas, Marcus Lima and Antônio Chaves, 'Identidades Nacionais e Memória Social, Hegemonia e Polémica nas Representações da História' in Joana Miranda and Maria Isabel João (eds), *Identidades Nacionais em Debate* (Celta Editora 2006) 68.

Between the 1930s and the 1970s, textbooks used in schools often mentioned the 'noble Portuguese spirit', and the family unit (consisting of a heterosexual, married couple with children) was considered essential for the happiness of the individual and society as a whole.³⁸ The building of a nationalist consciousness is not uncommon for states in the early part of the 20th Century. Anderson describes the development of nationalism as part of the development of 'official nationalism',³⁹ a form of self-preservation used by states, achieved by exploiting and promoting nationalist ideals. This is compatible with the historical evolution of Portugal in the beginning of the 20th Century, with multiple changes of government and socio-economic instability between the end of the monarchic regime in 1910 and the beginning of a dictatorship in 1933, and then in the consolidation of the Estado Novo that was in place between 1933 and 1974.

By the middle of the 20th Century, Portuguese historians and sociologists were more likely than before to acknowledge the complexity of Portuguese society. Nevertheless, when pressed to find a common ground to justify the existence of a Portuguese nation and a Portuguese people, they would still resort to Portugal's historical past to find answers. This was done with some disregard for the structural dimensions that influence individuals' experiences of the world, such as ethnicity, class and gender.⁴⁰ By the 1970s, Portuguese intellectuals were more sceptical of using the past as a source for national pride. The wars that led to the fall of colonialism in the 1970s, and the end of colonialism itself, bringing with it the return of Portuguese soldiers from the colonies, many married to native wives

³⁸ João (n 31) 167, 169.

³⁹ Anderson (n 2) 108.

⁴⁰ Cunha (n 32) 106.

and with children, and the influx of immigrants, especially from Africa, would not allow for a linear account of Portuguese ethnicity and culture anymore. Nevertheless, it is history that scholars still refer to when seeking a common identity for the Portuguese people, even if just in an idealised way of what the Portuguese were (or should have been) in their time of glory.⁴¹ In the 2000s, scholars are more conscious of the multi-dimensional and multi-cultural reality of Portuguese society; whilst still paying tribute to Portugal's great historical past, there is also a more cynical approach to the Portuguese as a people, for example, with envy being identified by researchers as a common characteristic of the Portuguese population.⁴² Even though there is difficulty in accepting that there is such a thing as a homogenous people in today's society, there still is a tendency to rely on an idealised, essentialist identity that leads to an almost one-dimensional people at its core.⁴³

Notwithstanding the realisation by the academic community of the heterogeneous nature of the Portuguese population, this has not necessarily been assimilated by the larger population. An indication of this is visible in a study conducted by Cabecinhas, Lima and Chaves in 2003. In this study, respondents were asked to list the most important historical actors for them. Perhaps unsurprisingly, women and ethnic minorities were overwhelmingly overlooked, with greater prominence given to male figures acting in key moments of Portugal's historical past, such as gaining independence from Spanish kingdoms, or setting out on voyages to India and the 'new' world.⁴⁴

⁴¹ Ibid 107.

⁴² Ibid 109.

⁴³ Ibid 111.

⁴⁴ Cabecinhas et al. (n 37) 87.

Education, class and emigration

Sociological studies on class and education became more common in Portugal from the 1980s onwards, adding to the realisation of the diverse nature of the Portuguese population. Throughout the 19th and up to the middle of the 20th Centuries, levels of education in Portugal were poor when compared with other European countries.⁴⁵ Literacy levels of Portuguese children aged 10 to 14 only started to show a marked increase from the 1940s onwards, which means that 60 per cent of children in this age group were literate, compared with 42 per cent ten years before.⁴⁶ In the 1960s the level of literacy for children aged 10 to 14 reached 97 per cent and this continued to increase to 99 per cent in the 1990s.⁴⁷ When considering levels of literacy in the adult population in the same time frame, for example those aged between 20 to 24 years, percentages of literacy were at 80 per cent in the 1960s rising to 96 per cent in 1970 and 99 per cent in the 1990s.⁴⁸ It is therefore not surprising that by 1991, 99 per cent of all children and adults aged 10 to 40 were literate but that this percentage dropped considerably when considering older age groups, with only 74 per cent of those aged 60 to 64 being literate.⁴⁹ As already discussed here, the use of the written language is key to the modernisation of societies and development of cultural practices.⁵⁰ In Portugal, it was not until the 1940s that an investment was made in education, which

⁴⁵ António Candeias, 'Modernidade e Cultura Escrita nos Séculos XIX e XX em Portugal; População, Economia, Legitimação Política e Educação' (2010) 31 *Educação, Sociedade e Culturas* 143, 179-180.

⁴⁶ *Ibid* 180.

⁴⁷ *Ibid*.

⁴⁸ *Ibid*.

⁴⁹ *Ibid*.

⁵⁰ Anderson (n 2) 48; Candeias (n 45) 175.

impacted on the levels of literacy of later generations.⁵¹ The increase in the levels of literacy during the period of dictatorship was accompanied by an educational system which had as its primary objective the transformation of individuals according to the aspirations of the regime, and the dissemination of state propaganda.⁵² It would therefore not be surprising if the rise of levels of literacy during this period was reflected also in an increase in the assimilation of state propaganda on gender roles and family life.

Studies on class in Portugal date as far back as the late 1960s and early 1970s, at a time in which higher education was a privilege of the upper classes.⁵³ Studies of this period found that there was a stark difference between rural and urban populations, with especially high levels of poverty amongst the former.⁵⁴ These discrepancies in wealth and access to higher education reflect the country's less advanced social and economic status compared with other European countries. Later studies add other dimensions to the sociological analysis of class in Portugal, such as the development of the services sector and the associated emergence of a new 'petite bourgeoisie', alongside a rural economy that lasted until the second half of the 20th Century.⁵⁵ The use of terminology influenced by Marxist theory was common in sociological studies on class from the middle of the 1970s onwards. It was not however until the 1980s that class became the focus of a more elaborate

⁵¹ Candeias *ibid* 181.

⁵² Fernando Rosas, 'O Salazarismo e o Homem Novo: Ensaio Sobre o Estado Novo e a Questão do Totalitarismo' (2001) XXXV (157) *Análise Social* 1031, 1040.

⁵³ Elísio Estanque and José Mendes, 'Análise de Classes e Mobilidade Social em Portugal: Um Breve Balanço Crítico' (1998/99) 52/53 *Revista Crítica de Ciências Sociais* 173, 177.

⁵⁴ Elísio Estanque, 'Class and Social Inequalities in Portugal: From Class Structure to Working Class Practices on The Shop Floor' (Centro de Estudos Sociais, Faculdade de Economia da Universidade de Coimbra 2004) 2.

⁵⁵ Estanque and Mendes (n 53) 177.

approach in sociological studies in Portuguese universities, making this a recent area of study in this country.⁵⁶

Studies on social mobility in the 1970s revealed that the level of education of parents was a large determining factor in Portuguese children's social mobility.⁵⁷ In the 1990s, however, further studies revealed a more complex picture of social mobility, in which 75 per cent of those in the category of 'business people and leaders' came from a lower social position than the one that they held at the time. Manual workers and independent workers were the two groups with highest levels of social reproduction, with 55 per cent social reproduction for the first group and 37 per cent for the second. Also remarkable was the downward social progression of 45 per cent of manual workers who were previously in higher classes.⁵⁸ Upward social progression was attributed partly to an increase in levels of education, especially at university level.⁵⁹ Studies of this time concluded that there were two leading social groups in Portugal, that of the 'business people and leaders', which was overwhelmingly male and not very educated, and the 'highly educated professionals', which was seeing an increase of women amongst its ranks. Both of these groups represented small parts of the population, especially when compared with the proletariat and the petit bourgeoisie.⁶⁰ There were however, on par with high levels of social mobility in these groups, high levels of

⁵⁶ Ibid 178.

⁵⁷ Ibid 185.

⁵⁸ Ibid.

⁵⁹ Ibid 185-186.

⁶⁰ Ibid 186.

social reproduction as well, with many individuals keeping the same social status as their parents.⁶¹

Later sociological studies abandoned the neo-Marxist approaches of earlier research and started including subjective experiences of class and culture in their research. These allowed for a more critical stance towards social mobility and highlighted the complexities that shape Portugal's class divisions.⁶² For example, many individuals interviewed for these studies saw themselves as part of the middle class, even manual workers, thus showing both the desirability of belonging to the middle class and a perception of social position that does not necessarily reflect sociological stratifications of class.⁶³ As education became more easily accessible to individuals, there was a progressive devaluation of the weight of diplomas in social and work settings.⁶⁴ Also, despite overall numbers reflecting the existence of social mobility, class differences in access to education and employment remained stable, leading some authors to say that education is one of the greatest contributing factors to lack of intergenerational social mobility.⁶⁵ Furthermore, it is not clear whether social mobility reflects change in real terms, as differences between classes have remained very much the same throughout time.⁶⁶ It is also questionable that an increase in the services sector led to an increase of the middle class, due to high numbers of employees with low education levels, volatile work status and conditions, and no access to property and power,

⁶¹ Ibid 187.

⁶² Estanque (n 54) 4.

⁶³ Ibid.

⁶⁴ Estanque and Mendes (n 53) 188.

⁶⁵ Ibid; José Mendes, 'Todos iguais? Uma Análise Comparada da Mobilidade Intergeracional e das Desigualdades Sociais' (2001) 61 *Revista Crítica de Ciências Sociais* 79, 98, 100.

⁶⁶ Estanque and Mendes ibid 189.

factors that put them closer to the unqualified manual labourers of the working class.⁶⁷

Although gender does feature in some of the sociological analysis on class mobility, little attention is granted to women's specific social mobility. It would be useful to further discuss the impact of an increase of female representation in higher education and the tertiary sector on social mobility, as this would potentially clarify current models of family organisation and gender roles.⁶⁸ Despite the difficulty in making a clear analysis of the impact of gender in class structure and mobility in Portugal, it is possible to discern that education has a greater impact on women's than on men's social mobility. Whenever women do not have a family with a high social status, they can rely on education to achieve a more comfortable social position. Men, however, despite having greater access to wealth in general, find it more difficult to move upwards in terms of class structure if they do not have high educational capital to start with, or access to property.⁶⁹

Another factor that greatly influences Portuguese national identity is emigration. Portugal has been a country of emigrants for many years, and more recently of immigrants as well. Although emigration levels decreased in the 2000s, these have increased substantially in recent years.⁷⁰ Emigration has, in part, shaped the

⁶⁷ Elísio Estanque, 'Classes, Precaridade e Ressentimento: Mudanças no Mundo Laboral e Novas Desigualdades Sociais' (Centro de Estudos Sociais, Universidade de Coimbra 2005) 6-7, 9.

⁶⁸ Estanque and Mendes (n 53) 190.

⁶⁹ Ibid 192; Mendes (n 65) 89.

⁷⁰ Maria Beatriz Rocha-Trindade, 'Afirmações Identitárias em Quadro Migratório' in Joana Miranda and Maria Isabel João (eds), *Identidades Nacionais em Debate* (Celta Editora 2006) 5; Instituto Nacional de Estatística, *Emigrants (No.) by Future Place of Residence; Annual* (INE 2010)

<http://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_indicadores&indOcorrCod=0006053&contexto=bd&selTab=tab2> accessed 24 May 2012.

Portuguese national identity through the actions of returning emigrants, who bring new customs with them, and those of second-generation emigrants, who strive to keep their roots alive whilst living in different countries.⁷¹ Emigration is such a large part of the Portuguese identity that the Portuguese state uses the expression 'Portuguese Communities' as a general designation for the groups of Portuguese emigrants in different countries, thus including emigrants within the notion of Portuguese culture and wider community.⁷²

Generally, first generation Portuguese emigrants make little effort to integrate into the host community, except for those with higher levels of education and language proficiency. First generation emigrants' children and grandchildren, already born abroad, are the ones who best accomplish integration in the new community.⁷³ A strong attachment to Portuguese culture is maintained through the celebration of national, local and religious Portuguese holidays, both by younger and older generations of emigrants. The older and the bigger the community, the easier it is to maintain a relationship with the culture of the country of origin. This relates to a better level of organisation of these communities, which provide a forum for the celebration of a cultural identity in the country of destination, and is not solely a Portuguese characteristic.⁷⁴

⁷¹ Rocha-Trindade *ibid* 9.

⁷² Secretaria de Estado das Comunidades Portuguesas, 'Portal das Comunidades Portuguesas, Postos Consulares' <<http://www.secomunidades.pt/web/guest/PostosConsulares>> accessed 2 December 2008.

⁷³ Rocha-Trindade (n 70) 9.

⁷⁴ *Ibid* 9, 14.

A way for emigrants to keep in touch with their cultural roots is through the support for Portuguese and local clubs affiliated to those existing in Portugal.⁷⁵ Partly fulfilling this role, national delegations are sent to sporting events, the national anthem is played, and the national flag is revered. All these are easily identifiable as symbols of sovereignty that command respect from nationals and non-nationals. They represent the entire nation, its ways of thinking, history, and culture.⁷⁶ Indeed, Hobsbawn considers sport to be one of the most efficient forms of social policy.⁷⁷ Other ways of maintaining links with the Portuguese culture are through interaction with Portuguese media, the use of services and products of Portuguese origin or considered traditionally Portuguese, the purchase of Portuguese brands and showing appreciation for the national identity through emblems, flags or other displays of nationalism.⁷⁸ The projection of a nation's culture across countries is made easier due to the proliferation of news channels and the investment of the Portuguese media in reporting for Portuguese populations in different parts of the world,⁷⁹ much in the same way as the English immigrant population settled, for example, in the Algarve, are catered for, and maintain distinct cultural practices from the local population.

The fact that part of national culture accompanies individuals when they start a life in another country, despite being exposed to a new culture, is important for the study of domestic violence in an immigrant population as it influences notions of domestic life and acceptable behaviour. This probably became more acute in the

⁷⁵ Ibid 11.

⁷⁶ Hobsbawn, 'Introduction: Inventing Traditions' (n 3) 11.

⁷⁷ Hobsbawn, 'Mass-Producing Traditions: Europe, 1870-1914' (n 17) 298.

⁷⁸ Rocha-Trindade (n 70) 11.

⁷⁹ Ibid.

case of Portuguese emigrants from the 1960s onwards, with more women travelling abroad to set up permanently in another country, usually accompanied by their families, rather than men travelling alone as was the case until then.⁸⁰

Yuval-Davis also argues that emigrant communities usually insist on keeping ties with the nation of origin alive and therefore detach themselves to an extent from the state in which they settle.⁸¹ Without entering into debate about the benefits and drawbacks of this social policy, the idea of a multi-cultural society also eases the pressure on immigrants to assimilate into the culture of the welcoming country and helps maintain cultural practices from the country of origin.⁸² Finally, the preservation of these links with the country of origin has been made easier with the increased speed and reliability and lower costs of travel and communication media, as already discussed.

Evolution of feminism and women's rights in Portugal

The analysis of the history of feminism in Portugal provided in this section has a dual purpose. It illustrates women's role in society and within the family, and helps to understand the reasoning of Portuguese women in the 21st Century on these subjects. The impact that the Estado Novo had in erasing from public consciousness the work of the feminist movements of the early 20th Century is put forward by Tavares as one of the reasons that Portuguese feminist movements post-1974 did not manage to effectively promote women's rights.⁸³ A detailed

⁸⁰ Manuela Tavares, *Feminismos, Percursos e Desafios (1947-2007)* (Texto 2010) 90.

⁸¹ Yuval-Davis (n 20) 16.

⁸² Ibid 17.

⁸³ Tavares, *Feminismos, Percursos e Desafios* (n 80) 246.

historical look into the Portuguese feminist movement is therefore required, not only to understand the evolution of women's rights throughout the 20th Century, but also the impact that the feminist struggle, or lack of it, had in contemporary women's perceptions of gender relations, family organisation and domestic violence. The analysis provided here is in no way exhaustive, as this would go beyond the scope of this dissertation; feminist women and groups will be discussed whenever they illustrate the evolution of women's rights in Portugal, and especially changes related to gender roles and family organisation.

There is debate amongst Portuguese academics on whether there was actually a feminist movement in Portugal in the 20th Century. This is because feminist organisations that existed at the time lacked visibility and formal organisation, when compared with those of other countries such as England and the USA.⁸⁴ It is perhaps easier, therefore, for the purpose of this chapter, to look at organisations that professed a feminist ideology, rather than at a movement as a whole. Not all feminists would be represented by these organisations since, as in many other countries, some would act in an individual and unorganised way. Focusing on feminist organisations, however, enables us to better speculate on the strength of the pursuit of feminist goals in a more general sense than focusing on individual actions would allow.

The term feminism is not in itself easy to define, as is easily understandable from the proliferation of 'feminisms' in the second half of the 20th Century, to which

⁸⁴ Manuela Tavares, 'Existem em Portugal Agendas Feministas Diferentes' (Congresso Feminista 2008 2008)

<http://congressofeminista2008.org/index.php?option=com_content&task=view&id=58&Itemid=57>
accessed 22 May 2009.

Portugal was no exception.⁸⁵ For the purpose of this study and in order to grasp the variety of goals pursued to enhance women's social participation in Portugal, feminists are defined as individuals and organisations concerned with the promotion of women's rights. This is a deliberately broad definition that allows the inclusion in this analysis of women's groups with different political stances.

The first feminist groups appeared in Portugal at the beginning of the 20th Century. Examples of these are, in 1907 the Grupo de Mulheres de Estudos Feministas; in 1909 the Liga Republicana das Mulheres Portuguesas; in 1911 the Associação de Propaganda Feminista; in 1914 the Conselho Nacional das Mulheres Portuguesas, the Círculo Feminista Português, and the União das Mulheres Socialistas;⁸⁶ in 1915 the Associação Feminina de Propaganda Democrática; in 1928 the Associação de Mulheres Universitárias de Portugal and the publication of the periodical *Alma Feminina*;⁸⁷ and in 1936 the Associação Feminina para a Paz.⁸⁸

The number of feminist organisations that were created in the early 20th Century shows the existence of an active feminist community in Portugal at the time.⁸⁹ The

⁸⁵ Anne Cova, 'O Primeiro Congresso Feminista e da Educação em Portugal numa Perspectiva Comparada' in Lígia Amâncio et al. (eds), *O Longo Caminho das Mulheres, Feminismos 80 anos depois* (Dom Quixote 2007) 33.

⁸⁶ Ibid 33-34, 39.

⁸⁷ João Esteves, 'Os Anos 20: A Afirmação de uma Nova Geração de Feministas' in Lígia Amâncio et al. (eds), *O Longo Caminho das Mulheres, Feminismos 80 anos depois* (Dom Quixote 2007) 74.

⁸⁸ Irene Flunser Pimentel, 'O Estado Novo, as Mulheres e o Feminismo' in Lígia Amâncio et al. (eds), *O Longo Caminho das Mulheres, Feminismos 80 anos depois* (Dom Quixote 2007) 101, 105.

⁸⁹ Zília Castro, 'Seminário Evocativo do I Congresso Feminista e da Educação em Portugal' in Lígia Amâncio et al. (eds), *O Longo Caminho das Mulheres, Feminismos 80 anos depois* (Dom Quixote 2007) 25, 26; Ana Vicente, 'O Pensamento Feminista na Primeira Metade do Século XX e os Obstáculos à sua Afirmação' in Lígia Amâncio et al. (eds), *O Longo Caminho das Mulheres, Feminismos 80 anos depois* (Dom Quixote 2007) 60.

main concern of Portuguese feminist groups was the education of women and children, which was seen to be holding women back in society.⁹⁰ Another goal for feminists at the time was securing women's right to vote, as was the case with feminists in other countries. Issues of sexuality and contraception were, however, not discussed openly, as for many Portuguese women the link between being a woman and being a mother was seen as natural and an indelible part of human nature.⁹¹ Indeed, the link between women and motherhood was deemed so great that the sale of contraceptives was made illegal in Portugal in 1929, a position that was reinforced in 1942.⁹² Other aspects discussed in feminist organisations were divorce, parenthood and prostitution.⁹³

Portugal's Civil Code at this time stated in many ways women's duty of obedience towards their fathers and husbands, and was highly criticised by feminists for this.⁹⁴ However, at the same time, many women supported women's domestic and maternal roles. It was therefore not altogether surprising that feminist groups, which argued for the right to divorce and equal access to professions, also saw women as essential educators of children and valued women's domestic role as naturally feminine.⁹⁵

⁹⁰ Helena Costa Araújo, 'Direitos, Cidadania das Mulheres e Educação, Um Caminho Esperado?' in Lúcia Amâncio et al. (eds), *O Longo Caminho das Mulheres, Feminismos 80 anos depois* (Dom Quixote 2007) 49.

⁹¹ Manuela Tavares, 'Feminismos em Portugal – Rupturas e Continuidades na Luta Pela Despenalização do Aborto' in Lúcia Amâncio et al. (eds), *O Longo Caminho das Mulheres, Feminismos 80 anos depois* (Dom Quixote 2007) 293.

⁹² Decreto-Lei nº 17636 de 1929; Decreto Lei nº 32171 de 1942, *Diário da República I Serie nº 175*, artigo 21º/2; see also Tavares *ibid* 293.

⁹³ Vicente (n 89) 61.

⁹⁴ Cova (n 85) 40.

⁹⁵ João Esteves, *As Origens do Sufragismo Português* (Bizâncio 1998) 31, 101.

The feminist groups that existed in the early 20th Century were heterogeneous in their participants' views of how best and how far to advance women's rights. Differences existed, for example, in relation to the extent of the attribution of the right to vote to women, the role that should be given to religion in education, the employment of women on night shifts and the legality of abortion.⁹⁶ This diversity of thought partly explains the proliferation of different women's groups. An example of the creative power of such differences is the emergence of the Associação de Propaganda Feminista (APF) in 1911, created out of a divergence within the women's group Liga Republicana das Mulheres (LRM) regarding the importance of women's vote.⁹⁷ Unlike the LRM, the APF strongly advocated women's right to vote and saw a blatant injustice in uneducated males being able to vote and educated females not, and it placed particular importance on the right to vote as a vehicle for women's education. According to the APF, the right to vote would encourage the education of women in the largely rural and illiterate country that Portugal was at the time. This political stance was however received with ridicule by many and supported in Parliament by few men.⁹⁸

Portuguese feminists had limited impact in terms of political change. They were heard and respected for being 'respectable' women. They were not seen as a threat or a nuisance to political power, and were not taken very seriously either. They were certainly not seen as a force to contend with, as were the feminists in

⁹⁶ Cova (n 85) 40; Vanda Gorjão, 'Oposição Feminina (?) Oposição Feminista (?) ao Estado Novo' in Lígia Amâncio et al. (eds), *O Longo Caminho das Mulheres, Feminismos 80 anos depois* (Dom Quixote 2007) 108, 109.

⁹⁷ Esteves (n 95) 22-23.

⁹⁸ *Ibid* 52.

England at the time of the suffragettes' campaigns.⁹⁹ Some women held positions of power in local government or Universities; however, many, both men and women, would still defend the domestic role of women for being more in accordance with 'female nature'. One of the explanations put forward by the Republican governments, which were supposedly progressive, for not granting women the same rights as men was the fear that women would take on a more conservative stance because they were deemed to be under a high degree of influence from the Catholic Church. It was thought that if women were to be politically active, this would endanger the effort that the Republican party had made in terms of reducing the political, social and economic influence of the Church in Portugal since the fall of the Monarchy in 1910.¹⁰⁰ Notwithstanding political reasons, some politicians rather simplistically argued that the political intervention of women would not agree with their delicate constitution.¹⁰¹

An event that changed the way Government saw how serious women were regarding their constitutional rights was the first Portuguese woman exercising the right to vote in 1911. This was a single event that would not be repeated until the 1930s, but that changed the perception of how determined some women were to secure the right to vote. The electoral law in 1911 demanded that, in order for someone to be able to vote, they had to be over 21, able to read and write and be the head of the household. No mention of gender was made in the law.¹⁰² Carolina Beatriz Ângelo was over 21, could read and write (in fact, she was a doctor) and, as a widow, she was the head of the household and so she proceeded to vote amidst

⁹⁹ Ibid 42.

¹⁰⁰ Ibid 74; Araújo (n 90) 48.

¹⁰¹ Esteves *ibid*; Vicente (n 89) 65-66.

¹⁰² Lei eleitoral de 14 de Marco de 1911.

great controversy. A number of appeals were decided before her right to vote was indeed confirmed by the judiciary, making Carolina Beatriz Ângelo an icon of the female struggle for the right to vote and even giving her international recognition in suffragette communities throughout Europe.¹⁰³ The Portuguese electoral law of 1913, as a reaction to this event, specified that a person had to be male in order to be able to vote, thus delaying for nearly 20 years the right for women to vote.¹⁰⁴ It was not until 1931 that women were first granted the right to vote, although under limited conditions.

When Portugal officially declared war on Germany in 1916, the feminist discourse was replaced by a nationalist one. Ideas of the greatness of the Portuguese race and the need to defend its colonial rights circulated within the APF. In a similar way to what happened in other European countries, there was also a strong belief that when the war was over, the fact that women were taking on male roles in society, such as entering typically male professions as part of the war effort, would lead to a general openness of the job market to women. This however never took place, and when the war was over, women were asked to return to what was considered to be their natural role of housewives.¹⁰⁵

Another important feminist group in Portugal was the Conselho Nacional das Mulheres Portuguesas (CNMP). The CNMP was one of the groups that lasted for longer and had a larger profile in terms of number of members.¹⁰⁶ The majority of members of the CNMP were from the middle and upper classes, and many were

¹⁰³ Esteves (n 95) 60-61.

¹⁰⁴ Lei nº 3 de Julho 1913, Diário da República I Série nº 153, artigo 1º.

¹⁰⁵ Tavares, *Feminismos, Percursos e Desafios* (n 80) 58.

¹⁰⁶ Gorjão (n 96) 110-111.

also affiliated with the Republican Party and the Women's Freemasonry.¹⁰⁷ Their influence was visible in the initiatives of the Republican government at the time, which, at least in law if not in practice, extended education to children of both sexes and widened the doors of teaching as a career to women.¹⁰⁸ In this context, the CNMP organised a six-day congress in 1924 to share and discuss feminist ideas, entitled I Congresso Feminista e da Educação.¹⁰⁹ The congress was attended by the President of the Republic, and 17 of the 25 papers were presented by men.¹¹⁰

In 1933, a new constitution formed the basis of the strong right wing dictatorship headed by Antonio Salazar. The regime of the Estado Novo came into force following a military coup in 1926 which established a military dictatorship for a few years, until in 1932 Salazar became the equivalent to a Prime Minister. The Estado Novo lasted until 1974, although Salazar stepped down in 1968, and was one of the longest periods of political and economic stability in Portugal since it became a Republic in 1910. During this period, there was one single political party and no legal opposition to Government was allowed. The Estado Novo worked under the principle of corporatisation and, as such, there was no individual assertion of rights in various areas, as these would be negotiated by corporations to which individuals belonged.¹¹¹ With the Estado Novo women's legal and public roles suffered gravely due to a renewed emphasis on women's natural characteristics as mothers and wives being considered determinant to fulfil their

¹⁰⁷ Cova (n 85) 34; Esteves (n 87) 86; Pimentel (n 88) 101.

¹⁰⁸ Women already held the majority of teaching positions of young children, as teaching was deemed to be linked to their maternal nature; teaching older male children was however not done by women for fear that they would 'feminise' the young men: Araújo (n 90) 46-47, 51.

¹⁰⁹ Castro (n 89) 19.

¹¹⁰ Ibid 20-21.

¹¹¹ Constituição Portuguesa de 1933, artigo 5º.

place in society, which was one of domesticity and subservience to men.¹¹² The Constitution of 1933, whilst stating the equality of all individuals before the law, quickly added a caveat in relation to women who, due to their nature and for the good of the family, could be exempted from equal access to the law.¹¹³ Salazar therefore proposed a mythologised concept of femininity and family life that served to further entrench and 'naturalise' gender inequalities.¹¹⁴ Faced with such political circumstances, the CNMP pushed forward its agenda by making appeals and protests directed to Parliament (the Assembleia Nacional) on issues such as the right to vote, or the place granted to women by the Portuguese Constitution of 1933.¹¹⁵

In the 1930s, women were granted the right to vote in Portugal. This was a right acquired in stages. Firstly it was applicable only to some elections and under some conditions, such as having the appropriate moral qualities. This right was extended at a later stage to include the right to vote for and be elected to Parliament, if the candidates were over 21 years of age, single and working, heads of households, or married with a certain degree of education, or paying a certain amount of property tax.¹¹⁶ The first women members of Parliament were elected in 1934. This openness towards women's rights was not, however, the result of feminist struggle, but a conscious decision by Prime Minister Salazar, who believed that

¹¹² Constituição Portuguesa de 1933 artigo 5º; Lúcia Amâncio, 'Género e divisão de trabalho doméstico – o caso português em perspectiva' in Karin Wall and Lúcia Amâncio (eds), *Família e Género em Portugal e na Europa* (ICS 2007) 189; Cova (n 85) 41.

¹¹³ Constituição Portuguesa de 1933, artigo 5º.

¹¹⁴ Vicente (n 89) 67; Tavares, *Feminismos, Percursos e Desafios* (n 80) 65.

¹¹⁵ Gorjão (n 96) 116, 118.

¹¹⁶ Pimentel 'O Estado Novo, as Mulheres e o Feminismo' (n 88) 92.

women could help in certain areas of the State provision, such as education.¹¹⁷ According to the Government's discourse, women's role in society was not less important than that of men, in fact, it could be seen as more important as they were the moral compass of the nation, the educators of young children and therefore responsible for the early formation of Portuguese nationals.¹¹⁸ Feminism, in turn, was considered a threat to women's natural place in society and the stability of family life.¹¹⁹

In terms of civil law, the civil code of 1867, which was in place until 1966, kept the wife very much dependent on the husband, who could do whatever he wanted with the family assets, whilst the wife could not contract debts or sell assets without his consent. Separation on the part of wives was also regulated in highly stringent ways, with divorce being impossible after 1940.¹²⁰ Many of the studies that influenced the creation of the Civil Code of 1966 were written by former ministers or collaborators of the Estado Novo.¹²¹ It is therefore not surprising that, in its original form,¹²² the Civil Code reflected the Estado Novo's philosophy towards gender relations and subjected women to their husbands and fathers. There was a clear division between the public and private spheres and those who would 'govern' each sphere and under which circumstances.¹²³ Women were forbidden to have certain jobs, such as those related to public administration,

¹¹⁷ Ibid 94.

¹¹⁸ Ibid 90-91.

¹¹⁹ Tavares, *Feminismos, Percursos e Desafios* (n 80) 68, 71.

¹²⁰ Lei de 1 de Junho de 1867 artigos 1104, 1116-1118; Pimentel, 'O Estado Novo, as Mulheres e o Feminismo' (n 88) 95-97.

¹²¹ Luís Mendonça, 'As Origens do Código Civil de 1966: Esboço para uma Contribuição (1982) XVIII *Análise Social* 829.

¹²² The Civil Code of 1966 is still in force today, albeit in a revised form.

¹²³ Pimentel 'O Estado Novo, as Mulheres e o Feminismo' (n 88) 91.

diplomacy and the law, or in others had to ask permission to get married.¹²⁴ In case of separation, if a woman wanted to leave her husband, she had to have a court order to be 'deposited' with a respectable family of the judge's choice; if she did not have this court order, the husband could request the court for an order to have her delivered back to him.¹²⁵ This denotes a clear objectification of women that is revealing of women's poor social condition at the time.¹²⁶

The Estado Novo promoted a well-defined role for women in society, that of mother, wife and daughter. Women's role was said to be greatly respected and an integral part of the family unit, which was the essential building block upon which Portuguese society existed.¹²⁷ The state proposed an idealised representation of womanhood that did not, however, correspond to the reality of many women at the time, who worked in fields, in factories, as maids or as prostitutes, in order to maintain themselves and help their families.¹²⁸ According to Pimentel, even though the state's official discourse justified a strict gender separation in terms of work and public and private spheres, its purpose was actually to avoid competition between women and men in the workplace, as often women and children would be preferentially hired because they were paid lower wages than men.¹²⁹

¹²⁴ The same rule applied to men in certain professions such as the military. Irene Flunser Pimentel, *História das Organizações Femininas do Estado Novo* (Temas e Debates 2001) 41; Pimentel 'O Estado Novo, as Mulheres e o Feminismo' *ibid* 99.

¹²⁵ Código de Processo Civil 1876.

¹²⁶ Maria Teresa Beza, *Mulheres, Direito, Crime ou a Perplexidade de Cassandra* (AAF DL 1993) 158.

¹²⁷ Pimentel, *História das Organizações Femininas do Estado Novo* (n 124) 27; Vicente (n 89) 66.

¹²⁸ Vicente *ibid* 67.

¹²⁹ Pimentel, *História das Organizações Femininas do Estado Novo* (n 124) 44; Pimentel, 'O Estado Novo, as Mulheres e o Feminismo' (n 88) 99; Tavares, *Feminismos, Percursos e Desafios* (n 80) 90.

In 1945, the CNMP saw its numbers rise to their greatest level in the history of the organisation and, to some extent, its members were influenced by ideas of the left of the political spectrum; there was also wider recruitment in terms of class, which allowed for a distancing from its elitist socio-economic origins.¹³⁰ The CNMP was dissolved by the State in 1947, following a show of foreign books which was deemed to have links to the Communist Party.¹³¹ Pimentel argues that the Government's relative tolerance towards the CNMP until 1947 was due to the fact that the State did not see much of a threat in a women's organisation and accepted that women might participate in public life, if the matters they dealt with were suitable for women, that is, related to children and education.¹³² Political groups that opposed the Estado Novo would usually create commissions to deal with women's issues. In Gorjão's opinion, this was, however, more a way to reach the female electorate, rather than a genuine concern for women's rights.¹³³ Evidence of this can be found in the poor representation of issues that impacted primarily on women in the debates that followed the end of the dictatorship, with the exception of the law on divorce, for which there was overwhelming male support.¹³⁴

The Estado Novo created two organisations dedicated to the education of Portuguese women and girls, the Mocidade Portuguesa Feminina (MPF) and the Obra das Mães pela Educação Nacional (OMEN). These organisations worked closely together, especially in their initial years, when the OMEN had an

¹³⁰ Although the CNMP always maintained an apolitical stance, some of its members did participate in an illegal opposition to Government: Pimentel 'O Estado Novo, as Mulheres e o Feminismo' *ibid* 102.

¹³¹ Cova (n 85) 42; Pimentel 'O Estado Novo, as Mulheres e o Feminismo' *ibid* 103-104 .

¹³² Pimentel, 'O Estado Novo, as Mulheres e o Feminismo' *ibid*.

¹³³ Gorjão (n 96) 119.

¹³⁴ *Ibid* 119.

organisational input in the MPF.¹³⁵ Their role was to reflect and reinforce the state's social policies, for example, in terms of educating women on the best use of feminine characteristics connected with household tasks and childrearing, bringing out the supposed best ethnic characteristics of Portuguese women, such as dedication and self-sacrifice, providing assistance to the 'deserving poor', helping schools and the Church in promoting education and sport and fighting atheism.¹³⁶

The Mocidade Portuguesa was a youth organisation divided into a male and a female section.¹³⁷ The female section was generally regarded as less important than the male one, and was hardly mentioned by the state propaganda. Perhaps paradoxically, because of its lesser visibility and importance, it had its own internal organisation, separated from the male section, instead of being subjected to it.¹³⁸ The female Mocidade Portuguesa, or MPF, aimed at educating young girls towards domesticity and motherhood at a young age, so that they would better fulfil this role as adults. Girls of the middle and upper classes were given advice on how to dress and conduct themselves; the books they read and the music they heard was controlled.¹³⁹ The MPF acted mainly at school level in urban areas; it therefore had little influence in universities, rural areas and populations working in factories and the service sector.¹⁴⁰ Membership of the MPF was compulsory during its first years, a position that was revised to include both compulsory and voluntary

¹³⁵ Pimentel, *História das Organizações Femininas do Estado Novo* (n 124) 124.

¹³⁶ *Ibid* 402, 408.

¹³⁷ Decreto-Lei nº 26611, Diário da República I Série nº 116, artigo 40º.

¹³⁸ Pimentel, *História das Organizações Femininas do Estado Novo* (n 124) 201.

¹³⁹ *Ibid* 231, 319, 411.

¹⁴⁰ *Ibid* 411.

membership in the 1950s, and a completely voluntary regime in the 1970s.¹⁴¹ Many girls who joined the MPF saw it as a way of socialising or having access to sport. There was also some resistance to its indoctrination by members of lower and upper classes, who disagreed with the regime and its discouragement of female further education and class mobility.¹⁴² In fact, during the Estado Novo, there was a significant growth in female education and success rates sometimes rivalled those of their male counterparts.¹⁴³ The MPF was thus of limited success for the Estado Novo, especially when compared with the existing military youths in Italy and Germany at the time.

The OMEN was meant to counteract the voices of existing feminist groups, but never really had the support of a significant number of women or a significant political role.¹⁴⁴ Its members were upper class women of Catholic faith, who were recruited by the minister for education to help educate other women to be good wives and mothers. The OMEN also provided support for those in need, as the Estado Novo was deliberately not a welfare state. However, the OMEN was poorly funded, which meant that only a few nurseries were opened and classes on child rearing were few and had poor attendance. Child mortality in Portugal remained one of the highest in Europe during this period, and support for women in rural areas was scarcely put in place. The OMEN lost its role in directing the MPF in the 1950s and its members were progressively substituted by poorly paid school

¹⁴¹ Ibid 228, 238.

¹⁴² Ibid 411-412.

¹⁴³ Ibid 404-405; Pimentel, 'O Estado Novo, as Mulheres e o Feminismo' (n 88) 100.

¹⁴⁴ Pimentel, *História das Organizações Femininas do Estado Novo* ibid 405-406.

teachers and civil servants, with the organisation losing its initial impact on moral indoctrination and support for motherhood.¹⁴⁵

The 1960s represented the beginning of a new wave of Portuguese emigration, especially to France and Germany, with a larger number of women leaving the country.¹⁴⁶ Research conducted in 1963/64 on university students in Coimbra showed some modernisation in terms of customs but still with only a minority accepting the use of contraception other than that sanctioned by the Church, and although 45.8 per cent of men and 32.7 per cent of women agreed with a divorce in seriously difficult situations for the couple, only a small minority (4.6 per cent for men and 1.6 per cent for women) accepted it as an expression of free will, as marriage was deemed an unbreakable contract. The majority of respondents also thought that women should only work in case of extreme necessity or if their work hours did not interfere with the demands of family life.¹⁴⁷ Women took part in three student movements in the 1960s, participated in protests and were arrested; however, their participation in the decision-making process behind these movements was low, and their visibility sporadic.¹⁴⁸ Due to the censorship process enacted by the government, international feminist texts, such as Simone de Beauvoir's *The Second Sex*, were only accessible to Portuguese audiences long after their publication.¹⁴⁹ Women's political participation was small and feminist organisations practically invisible. In 1968, the Movimento Democrático das Mulheres was created, which was a movement with roots in the Communist Party

¹⁴⁵ Ibid 226, 405, 407.

¹⁴⁶ Tavares, *Feminismos, Percursos e Desafios* (n 80) 90.

¹⁴⁷ Ibid 91.

¹⁴⁸ Ibid 109.

¹⁴⁹ Ibid 123.

and one of the few expressions of the women's movement in Portugal at that time.¹⁵⁰ A number of women were tortured by the political police (the *Polícia Internacional e de Defesa do Estado*) for political reasons, most commonly association with the communist party, a practice that was almost only ever used on men until this decade.¹⁵¹

After 1974, with the revolution of the 25th of April which ended the *Estado Novo*, there was a wider scope for women to be heard in their struggle for equal political and social rights. This does not, however, mean that change came about easily or quickly in these areas. Joaquim describes the attitude towards women in this transition from a dictatorship to a democracy by saying that in the first instance, women could only listen and were not allowed to speak, and after 1974, women could say anything they wanted but that did not mean they were heard; there was a transition from invisibility to indifferent visibility.¹⁵² There were few women in decision-making positions, such as members of parliament or in the direction of political parties. The fight for women's rights was not part of mainstream politics of the time and it took until 1976 for women to be granted the right to vote in local elections.¹⁵³ In 1977, the government created what is currently called the *Comissão para a Cidadania e Igualdade de Género*, a governmental department dedicated to promote gender equality,¹⁵⁴ in what Joaquim calls a period of

¹⁵⁰ Gorjão (n 96) 120.

¹⁵¹ Tavares, *Feminismos, Percursos e Desafios* (n 80) 114.

¹⁵² Teresa Joaquim, 'Feminismos, Estudos Sobre as Mulheres ou "Para Onde Vai Este Barco?"' in Lúcia Amâncio et al. (eds), *O Longo Caminho das Mulheres, Feminismos 80 anos depois* (Dom Quixote 2007) 204.

¹⁵³ Tavares, *Feminismos, Percursos e Desafios* (n 80) 244.

¹⁵⁴ Originally, *Comissão para a Igualdade e Direitos das Mulheres*.

institutionalised feminism.¹⁵⁵ The aim was to create an organisation that ensured equality between men and women in Portugal. Once again, it was the state and not the non-governmental sector that was actively pushing for a change in the condition of women.¹⁵⁶

Women's struggle for equality at this time was concentrated more on equal pay and the right to vote, than matters of a 'private' nature, such as family planning, abortion or domestic violence. Debate on such issues was left to more 'radical' groups created in the 1970s, such as the Movimento de Libertação das Mulheres or the Grupo Autónomo de Mulheres do Porto.¹⁵⁷ In 1976, the União de Mulheres Antifascistas e Revolucionárias (UMAR) was created. Its aim was to promote women's rights and discussion in areas such as contraception, abortion and domestic violence. Although with a very political name at the time of its creation (loosely translated into Union of Anti-Fascist and Revolutionary Women), it maintained its status as a non-governmental institution and still exists today as the União de Mulheres Alternativa e Resposta (loosely translated as Alternative Response Union of Women, thus maintaining the same acronym UMAR).¹⁵⁸ The UMAR today still campaigns on women's rights, including the prevention and punishment of domestic violence. Its work in the area of domestic violence includes the creation of safe houses, the implementation of support networks for

¹⁵⁵ Joaquim calls it Comissão para a Igualdade dos Direitos das Mulheres as it was not until 2007 that the name of this organisation was changed. Joaquim (n 153) 207.

¹⁵⁶ Joaquim *ibid* 207.

¹⁵⁷ Tavares, 'Feminismos em Portugal – Rupturas e Continuidades na Luta Pela Despenalização do Aborto' (n 91) 295.

¹⁵⁸ UMAR, 'UMAR - Uma Associação com 30 anos de História'

<http://www.umarfeminismos.org/index.php?option=com_content&view=article&id=4&Itemid=5> accessed 25 May 2012.

victims of domestic violence, the development of specialised training for police officers, education and campaigning against domestic violence, and reinforcement of victims' rights.¹⁵⁹

The first Portuguese female Prime Minister, Maria de Lurdes Pintassilgo, was appointed in 1979. Pintassilgo was one of the few women to graduate in chemical engineering in the 1950s and the only female Portuguese Prime Minister to date. She was president of the Juventude Universitária Católica (a Catholic University students' movement) and of the Pax Romana (an international Catholic student movement) and a founding member of the Portuguese GRAAL (an international movement of Catholic women). Pintassilgo was invited to become a member of the Assembleia Nacional (the Portuguese Parliament under the Estado Novo) in 1969 but declined. She became Prime Minister ten years later, and stayed in office for less than one year, a period not uncommonly short in a time of political instability. Pintassilgo spoke about the promotion of women's rights throughout her life.¹⁶⁰ Despite this, her time in power did not result in a significant increase in the political representation of women's rights in Portugal. Pintassilgo's main political contributions while Prime Minister are usually considered to be a re-vitalising of the social welfare system and of labour legislation.¹⁶¹

¹⁵⁹ UMAR, 'História - 5ª Fase 1997/2007'

<http://www.umarfeminismos.org/index.php?option=com_content&view=article&id=12&Itemid=13> accessed 25 May 2012.

¹⁶⁰ Fátima Gracio, '..."Quando Ja Estou Perto do Fim"...A Última Conversa com Maria de Lurdes Pintassilgo' in Lígia Amâncio et al. (eds), *O Longo Caminho das Mulheres. Feminismos 80 anos depois* (Dom Quixote 2007) 446-453.

¹⁶¹ European Institute for Gender Equality, 'September – Maria de Lurdes Pintassilgo'

<<http://www.eige.europa.eu/content/september-maria-de-lourdes-pintasilgo>> accessed 6 July 2012.

In the 1980s, the visibility of the work of Portuguese feminist groups dropped, prompting the question, as in other countries, of whether there still was a feminist movement in Portugal at the time.¹⁶² Regardless, a number of organisations dedicated to discuss and promote women's rights and gender equality were created in this decade. These include the REDE in 1980 and the Grupo de Mulheres do Porto in 1982, each providing a locus for information and debate on gender, sexuality and women's role in society.¹⁶³ In 1988, the Associação Portuguesa de Mulheres Juristas was created, an institution dedicated to the legal study of women's rights.¹⁶⁴ In the 1990s, the academic dimension of women's rights received further impetus with the creation of the Associação Portuguesa de Estudos sobre as Mulheres. At the same time, the protection of victims of crime, including victims of domestic violence, gained greater visibility with the creation of the Associação Portuguesa de Apoio à Vítima (APAV), a non-governmental organisation with a purpose akin to that of Victim Support in England.¹⁶⁵

As with other countries, the 1990s saw an internationalisation and pluralisation of the concerns of feminists in Portugal. Political representation of women in Parliament and abortion are two examples of debates that occurred in this decade. It was also the beginning of an awareness campaign to cut down on domestic violence rates and the adoption of a legal framework on par with that of other Western European countries. Some of the innovations introduced to support victims of domestic violence include measures to allow the offender to be moved

¹⁶² Tavares, *Feminismos Percursos e Desafios* (n 80) 307.

¹⁶³ *Ibid* 316.

¹⁶⁴ APMJ, 'Quem Somos'

<http://www.apmj.pt/index.php?option=com_content&view=article&id=46&Itemid=27> accessed 25 May 2012.

¹⁶⁵ Which can be loosely translated as the Portuguese Association for the Support of Victims.

from the family home (Lei 59/98 de 25 de Agosto), the creation of a National Plan Against Domestic Violence (Resolução do Conselho de Ministros nº 55/99 de 15 de Julho),¹⁶⁶ changes in the regulation of the protection of witnesses (Lei 93/99 de 14 de Junho), the regulation of compensation for victims of domestic violence (Lei, 129/99 de 20 de Agosto), the creation of a network of safe houses, and highlighting the need to prevent domestic violence (Lei 107/99 de 3 de Agosto and Lei 112/2009), the end to the need for a complaint to exist for the public authorities to pursue an offence of domestic violence (Lei 7/2000 de 27 de Maio) and the protection of people who live together as a couple but are not married under provisions for domestic violence (Leis 6/2001 de 11 de Maio e 7/2001 de 11 de Maio). There was a quick evolution from the criminalisation of domestic violence in 1982 (Decreto-Lei nº 400/82 de 23 Setembro),¹⁶⁷ to raising wider awareness, the development of a national plan for the prevention of domestic violence, and the provision of support to victims in the 1990s.¹⁶⁸ The provisions to address domestic violence are mainly found in criminal law and criminal procedural law and, although an effort has been made to include different agencies within the national plan, a centralised, state-led approach to the prevention of domestic violence and provision of support for its victims remains in place.

The study of women's rights and feminism in Portugal has been developing, especially in the 2000s. An example of this is the introduction in 1998/99 of an optional course on Women's Rights and Social Equality (Direito das Mulheres e da

¹⁶⁶ The current Plan is the fourth consecutive one created since the first one in 1999, and relates to the years 2011 to 2014.

¹⁶⁷ Decreto-Lei nº 400/82 de 23 Setembro, Diário da República I Série 1º Suplemento nº 221/82, artigo 152º.

¹⁶⁸ The most recent plan dates from 2010; Resolução do Conselho de Ministros 100/2010, Diário da República I Série nº 243.

Igualdade Social) by the Law faculty at the Universidade Nova de Lisboa. It was shortly after re-named Social Equality Law (Direito da Igualdade Social) in 1999/2000, thus dropping any specific reference to women in its title. This is an example of how the study of women is far from mainstream in Portuguese legal academia and far from the development shown in Anglo-Saxon countries.

Religion and Portuguese cultural identity

Religion can have an important influence in the development and perpetuation of gender roles.¹⁶⁹ Indeed, research shows that there is a correlation between regular religious practice and the adoption of a conservative stance towards the organisation of family life.¹⁷⁰ In 2011, Catholics in Portugal made up an estimated 79.5 per cent of the population, a figure that represented a decrease of almost 10 per cent since 2004.¹⁷¹ Although its number of followers has been dropping, Catholicism is, by a large margin, the most professed religion in Portugal. This section evaluates the influence of the relationship between the Catholic Church and the Portuguese state on women's rights and the organisation of family life, including female domesticity, abortion and domestic violence.

¹⁶⁹ Yuval-Davis (n 20) 71.

¹⁷⁰ Sofia Aboim, 'Clivagens e Continuidades de Género Face aos Valores da Vida Familiar' in Karin Wall and Lígia Amâncio (eds), *Família e Género em Portugal e na Europa* (ICS 2007) 75.

¹⁷¹ Alfredo Teixeira, 'Identidades Religiosas em Portugal: Representações, Valores e Práticas – 2011 Resumo do Relatório Apresentado na Assembleia Plenária da Conferência Episcopal Portuguesa, Fátima 16 a 19 de Abril de 2012' (Centro de Estudos e Sondagens de Opinião & Centro de Estudos de Religiões e Culturas 2012) 2 <http://www.agencia.ecclesia.pt/dlds/bo/Inquirito2011_Resumo.pdf> accessed 9 July 2012.

Portugal had had close links to the Vatican since it was considered an independent state in 1143. It was not until the end of the Monarchy, in 1910, that a separation between state and Church occurred for the first time in its history. Although the Republican Party that ensued strove to end the Catholic Church's wealth and visibility, for example by nationalising its land and ending tax benefits, it did not succeed in loosening the Church's grip on Portuguese morals. In this context, the professed natural role of women, as wives and mothers, remained firmly in place.¹⁷² During the Estado Novo, the relationship between the Portuguese Government and the Vatican was a very close one. A treaty between these two states was signed, in the form of the Concordata of 1940. Through the Concordata, the Portuguese state recognised Catholic weddings, regulated by canonical law, as part of its legal system, which meant that divorce was not possible.¹⁷³ It was not until 1975 that the 1940 Concordata was first revised and divorce allowed in civil law (albeit discouraged by the Church) and it was not until 2004 that the Concordata ceased to exist.¹⁷⁴ The Concordata of 2004 was signed in its place, maintaining a close relationship between the Portuguese state (which constitutionally professes no religion) and the Vatican.¹⁷⁵

Pope Pius XI wrote an Encyclical in 1931 on the wellbeing of workers and working conditions, in which he reinforced the ideal that the role of women should be one of domesticity and that women's employment should be restricted; Pope Pius XII had a similar view of women's social standing that was evident in his speeches in

¹⁷² Araújo (n 90) 50.

¹⁷³ Lei n° 1984 de 30 de Maio, Diário da República I Série n° 125, artigo 24°; Pimentel, 'O Estado Novo, as Mulheres e o Feminismo' (n 88) 96.

¹⁷⁴ Decreto n° 187/75 de 4 de Abril, Diário da República I Série n° 79.

¹⁷⁵ Resolução da Assembleia da República n° 74/2004, Diário da República I-A Série n° 269.

the 1940s and 1950s.¹⁷⁶ This was a position that was wholly supported by the Portuguese state at the time, as already discussed.¹⁷⁷ Despite the proclaimed domesticity of women by the Church, some Portuguese women found a certain degree of independence through paid work. However, women were paid less than their male counterparts and had a limited choice of professions available.¹⁷⁸ A further barrier to women's independence during the Estado Novo was the fact that the state would not give welfare support to working mothers. During this period, welfare was dispensed solely by charities, many of which were of a Catholic background and operated under Catholic principles in relation to family and gender expectations.¹⁷⁹ This context made it very difficult for a Portuguese woman, at least until the middle of the 1970s, to choose to live outside the accepted gender roles and seek independence or equality with men.

Despite the close relationship between state and the Catholic Church, there was growing criticism by Catholics of the Estado Novo, especially from the 1960s onwards. The criticisms related to the use of torture on political prisoners, wars with the Portuguese colonies, and the lack of democratic opportunities to express an interest in the political choices of the country.¹⁸⁰ A complex relationship between the Catholic message and the Portuguese Catholic and non-Catholic

¹⁷⁶ Pope Pius XI, 'Quadragesimo Anno, Encyclical of Pope Pius XI on Reconstruction of the Social Order' (The Holy See 1941)

<http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_pxi_enc_19310515_quadragesimo-anno_en.html> accessed on 9th July 2012 71; Pope Pius XII 'Discorso di Sua Santità Pio XII alle Lettrici Della Rivista Alba' (The Holy See 1942)

<http://www.vatican.va/holy_father/pius_xii/speeches/1942/documents/hf_p-xii_spe_19420517_lettrici-alba_it.html> accessed on 9th July 2012.

¹⁷⁷ Vicente (n 89) 67.

¹⁷⁸ Araújo (n 90) 47.

¹⁷⁹ Pimentel, 'O Estado Novo, as Mulheres e o Feminismo' (n 88) 99.

¹⁸⁰ Tavares, *Feminismos Percursos e Desafios* (n 80) 141, 144.

populations remains in existence today. In 2012, a Portuguese Cardinal commented on the detrimental effect of women's work on the upbringing of children and expressed the desire that women would be able to work reduced hours to stay at home to fulfil their natural role; the comments were immediately disseminated by the media and considered by many as controversial and out of touch with reality.¹⁸¹

In terms of the relationship between women and motherhood, abortion was illegal in any circumstances until 1984, after which time it was legalised in cases where there were medical reasons for interrupting the pregnancy or it resulted from rape.¹⁸² It was deemed that religious belief was one of the reasons behind the resistance to the legalisation of abortion in the early 1980s.¹⁸³ A referendum on the legalisation of abortion in 1998 led many of the Catholic Church's representatives in Portugal to take a public stance against it. Examples of the most vocal opponents were the Bishop of Viseu, the Bishop of Bragança, and the priest of Amares, the latter saying that he would not include in his mass those who voted

¹⁸¹ Rosa Veloso and Michael Gore, 'Bispo Português no Vaticano quer Mulheres em Casa a Formar os Filhos' *RTP Noticias* (17 February 2012) <<http://www.rtp.pt/noticias/index.php?article=528241&tm=8&layout=122&visual=61>> accessed 9 July 2012; Secundino Cunha, 'Mulher Deve Ficar em Casa' *Correio da Manhã* (17 February 2012) <<http://www.cmjornal.xl.pt/detalhe/noticias/nacional/portugal/mulher-deve-ficar-em-casa>> accessed 9 July 2012; DN Portugal, 'A Mulher Deve Poder Ficar em Casa' *DN Portugal* (17 February 2012) <http://www.dn.pt/inicio/portugal/interior.aspx?content_id=2311476> accessed 9 July 2012; Alexandra Correia, 'Mulheres pra (sic) Casa' *Visão* (24 February 2012) <<http://visao.sapo.pt/mulheres-pra-casa=f648400>> accessed 9 July 2012; Catalina Pestana, 'O Cardeal e a Função das Mulheres' *Sol* (27 February 2012) <http://sol.sapo.pt/inicio/Opiniao/interior.aspx?content_id=42580&opiniao=Opini%E3o> accessed 9 July 2012.

¹⁸² Lei n° 6/84 de 11 de Maio, Diário da República I Série n° 109.

¹⁸³ Tavares, *Feminismos Percursos e Desafios* (n 80) 337.

for the legalisation of abortion.¹⁸⁴ The Criminal Code remained unchanged for that year. However, in the referendum of 2007, the legalisation of abortion was supported by the majority of the population. This resulted in a change to the criminal code that states that abortion is not illegal at the request of the woman, with no reason having to be given for the request, providing the pregnancy is not over 10 weeks (a period which is extended in the case of rape or for medical reasons).¹⁸⁵ The Catholic Church was greatly opposed to the legalisation of abortion, although some in the Church who do not support the legalisation of abortion defend its decriminalisation.¹⁸⁶ Recently, the Portuguese Prime Minister expressed the desire to revise the law on abortion, considering it to have gone too far in granting women this right in what he considers to be too easy circumstances.¹⁸⁷ Still today, arguments for abortion are usually along the lines of preventing a public health problem brought about by illegal abortions, rather than the right of women to manage their own bodies.¹⁸⁸

In terms of domestic violence, the message of the Catholic Church is that marriage entails mutual respect between spouses and therefore domestic violence is unacceptable. This position however does not condone divorce; matrimony is a sacred vow and therefore cannot be dissolved, in spite of the provisions to this effect in civil law. The Bishop of Viseu, in March 2009, publicly condoned divorce

¹⁸⁴ Tavares, 'Feminismos em Portugal – Rupturas e Continuidades na Luta Pela Despenalização do Aborto' (n 91) 299.

¹⁸⁵ Lei nº 16/2007 de 17 de Abril, Diário da República I Série nº 75.

¹⁸⁶ Tavares, 'Feminismos em Portugal – Rupturas e Continuidades na Luta Pela Despenalização do Aborto' (n 91) 301.

¹⁸⁷ DN Portugal, 'Passos Coelho quer Alteração à Lei do Aborto' *DN Portugal* (26 May 2011) <http://www.dn.pt/inicio/portugal/interior.aspx?content_id=1862102> accessed on 9th July 2012.

¹⁸⁸ Tavares, 'Feminismos em Portugal – Rupturas E Continuidades na Luta pela Despenalização do Aborto' (n 91) 301.

in cases of domestic violence;¹⁸⁹ this, however, led the Bishop to become controversial in the religious community. It is not only in the Church that there is a discouragement of divorce but also in the more conservative areas of the political spectrum. Recently, the President of the Republic condemned changes to the civil code which made divorce more easily accessible, on the basis that they would generate more poverty in society and lessen the ability to cope with the current economic crisis.¹⁹⁰ This statement was echoed by the Archbishop of Braga, who claimed that divorce would threaten the family structure, the lack of which is the basis for many current social problems.¹⁹¹

Recent research shows that divorce rates have risen in Portugal, as have the number of births out of wedlock, which may reflect the fact that the number of Catholics in Portugal has been decreasing over the years. However, the number of practising Catholics is in the region of 50 per cent and the number of pilgrims to Fátima is still strong, with the media reporting 37,000 pilgrims expected in May of 2013, 7,000 more than in 2012.¹⁹² It is important to take into account the role of religion in shaping current values and attitudes towards family life and, more specifically, the domestic role of women, which may have repercussions in the way domestic violence is perceived and addressed by Portuguese women.

¹⁸⁹ RTP1, 'Bispo de Viseu Defende Divórcio em Casos de Violência Doméstica' *RTP* (3 March 2009) <<http://tv1.rtp.pt/noticias/index.php?t=Bispo-de-Viseu-defende-divorcio-em-casos-de-violencia-domestica.rtp&headline=20&visual=9&tm=8&article=211254>> accessed 23 May 2009.

¹⁹⁰ Octávio Carmo, 'Presidente Critica Nova Lei do Divórcio' *Ecclesia* (30 January 2009) <<http://www.agencia.ecclesia.pt/cgi-bin/noticia.pl?&id=68867>> accessed 22 May 2009.

¹⁹¹ *Ibid.*

¹⁹² Teixeira (n 171) 2; Agência Ecclesia, 'Fátima: Santuário Regista Aumento no Número de Peregrinos' *Agência Ecclesia* (12 May 2012) <<http://www.agencia.ecclesia.pt/cgi-bin/noticia.pl?&id=90903>> accessed 9 July 2012; Público, 'Esperados Mais Sete Mil Peregrinos em Fátima do que no Ano Passado' *Público* (12 May 2013) <<http://www.publico.pt/sociedade/noticia/esperados-mais-sete-mil-peregrinos-em-fatima-do-que-no-ano-passado-1594197>> accessed 14 June 2013.

Family attitudes in the 21st Century

In 2002/2003 a number of surveys were conducted in Europe on gender and family, as part of the *Family and Changing Gender Roles III* research by the International Social Survey Programme (ISSP)¹⁹³ and the project *Families, Employment and Work-Life Integration in Britain and Europe*, conducted by City University, London and funded by the ESRC.¹⁹⁴ These surveys gathered information on the role of gender in the way families organise themselves in various countries in Europe. Variables such as age and education were taken into account, but the emphasis of the research was on discerning where gender in itself was a more important variable in the organisation of the family than others. Both of these studies and their analysis by different authors form the basis of this section.

According to Amâncio, there are two aspects that characterise Portuguese society: a high level of participation of women in the active workforce and the existence of marked differences of gender roles in family life.¹⁹⁵ Although it can be said that there has been an evolution in Europe from a traditional division of gender roles to a more modern one, where equality is preferred, it is also true that gender inequality still exists. An example of this inequality is the entrance of Portuguese women into various areas of work outside the home after the political revolution

¹⁹³ ISSP, *ISSP 2002 - "Family and Gender Roles III" - ZA No. 3880* (ISSP 2003)

<<http://www.gesis.org/en/services/data/survey-data/issp/modules-study-overview/family-changing-gender-roles/2002/>> accessed 26 January 2009.

¹⁹⁴ ESRC, 'Families, Employment and Work-Life Integration in Britain and Europe' (ESRC 2005)

<<http://www.esrcsocietytoday.ac.uk/ESRCInfoCentre/ViewAwardPage.aspx?AwardId=2679>> accessed 26 January 2009.

¹⁹⁵ Amâncio (n 113) 188.

of 1974, which was not accompanied by a symmetric increase in male participation in domestic activities.¹⁹⁶ There is great discrepancy of hours dedicated to domestic work between Portuguese men and women, with women in employment working on domestic tasks an average of ten hours more per week than men, twice the difference found in Great Britain.¹⁹⁷ This discrepancy in domestic work has a clear impact on women's quality of life, with Portuguese women presenting much higher levels of stress associated with a combination of work and private life than men.¹⁹⁸ In terms of acceptance of the division of labour, more than 80 per cent of both men and women believe that men should contribute more towards domestic work, however this does not occur.¹⁹⁹

Depending on the area of family life discussed, men and women adopt ambivalent stances. The overall tendency is for both men and women to be liberal regarding marriage, cohabitation and divorce and the sharing of the breadwinner and domestic roles. Only 4 per cent of respondents agree that it is better to have a bad marriage than not to be married and nearly 80 per cent agree that it is better to divorce than to have a bad marriage.²⁰⁰ Indeed, the number of cohabitations between 1991 and 2001 doubled and the number of births out of wedlock increased by 7 per cent in the same period of time.²⁰¹ When comparing responses

¹⁹⁶ Aboim (n 171) 37-38.

¹⁹⁷ Amâncio (n 113) 188; Rosemary Crompton and Clare Lyonette, 'Família, Género e Articulação entre Trabalho e Vida Privada: Comparação dos Casos Britânico e Português' in Karin Wall and Lígia Amâncio (eds), *Família e Género em Portugal e na Europa* (ICS 2007) 120.

¹⁹⁸ Crompton and Lyonette *ibid* 122.

¹⁹⁹ *Ibid.*

²⁰⁰ Aboim (n 170) 45.

²⁰¹ Sofia Aboim Inglez, 'Mulheres Entre o Público e o Privado. Ideias de Igualdade e Ambivalências Normativas na Divisão Sexual do Trabalho' in Lígia Amâncio et al. (eds), *O Longo Caminho das Mulheres, Feminismos 80 anos depois* (Dom Quixote 2007) 351.

of Portuguese participants with those of participants from the 15 other European countries, the Portuguese have a moderately liberal perspective on family life.²⁰²

It is important, however, to highlight that there are differences in this spectrum according to the age, religious practice and education of the respondents, with closer perspectives between men and women of the same age and education, than between members of each gender with different ages and levels of education. Indeed, participants' education is a very strong indicator of social attitudes, with a marked decrease in traditional attitudes as levels of education increase, especially when reaching higher education levels.²⁰³ Older generations and men between 30 and 44 years of age are those who adopt a more traditionalist approach to family life. Those with regular religious practice, the majority of whom are women, also tend to have a more traditional stance.²⁰⁴

In relation to parenthood and the happiness of children, the attitude is traditionalist and even 'maternalistic', that is, great importance is put on the role of women in raising children and there is great concern about the negative impact that mothers who work in paid jobs have on the happiness of young children.²⁰⁵ Women's work is encouraged, with 90 per cent of respondents believing that both men and women should contribute to the household income.²⁰⁶ Despite 75 per cent of respondents saying that the best way for a woman to acquire independence is through paid work, more than 60 per cent also think that what women want in

²⁰² Aboim (n 170) 54, 82.

²⁰³ Karin Wall, 'Atitudes Face à Divisão Familiar do Trabalho em Portugal e na Europa' in Karin Wall and Lúcia Amâncio (eds), *Família e Género em Portugal e na Europa* (ICS 2007) 224.

²⁰⁴ Aboim (n 170) 69, 73.

²⁰⁵ Ibid 41; Crompton and Lyonette (n 197) 102; Wall (n 203) 228, 247.

²⁰⁶ Aboim *ibid* 44.

order to be happy is to have a home and children.²⁰⁷ Huge importance is placed on children by the Portuguese; 97 per cent of male and female respondents believe that the happiest thing in life is to watch your children grow and 58 per cent believe that people who never had children have empty lives (despite birth rates falling for the last forty years).²⁰⁸ As a result, Portuguese women struggle between independence through employment and assimilation with womanhood, motherhood and domesticity, the result of which is what Aboím calls a lesser 'individualisation' of women than men, that is, women identifying themselves in relation to others, usually their partners and their children.²⁰⁹

The transfer of happiness from the individual to the family generates tension in Portuguese women when they adopt the role of working mothers. One of the factors that helps to maintain the male breadwinner model in Portugal stems from the contradiction pointed out by Wall in that, although the Portuguese agree in principle with the dual model and put it into practice more than any other country in Western Europe, there is also a strong belief that female work has a negative impact on child rearing, something which seems to leave women in a moral double bind.²¹⁰ The events brought about by the change in political regime on the 25th of April 1974 led to a very quick modernisation of the country. This meant the promotion of modernist ideals, such as women entering the workforce at the same level as men, without addressing traditionalist views of family organisation, as was

²⁰⁷ Ibid 44, 67.

²⁰⁸ Crompton and Lyonette (n 197) 101.

²⁰⁹ Aboim (n 170) 46, 67.

²¹⁰ Wall (n 203) 216-218, 228.

the case in neighbouring Spain, and may explain some of the specific positions in terms of gender roles and the centrality of children which are still visible today.²¹¹

Portuguese women have thus one of the highest rates of participation in full-time employment in Europe.²¹² Wall draws attention to other aspects that might explain women's active participation in the workforce and concern with domestic life. These include the prolonged existence of a rural economy, where the whole family worked to provide for its own survival, an industrial economy with low wages, a migratory culture that demanded that both men and women worked to support the family, the push given to female employment as a way to achieve women's economic independence after 1974, and the investment in child care facilities in the 1980s and 1990s instead of in part-time work.²¹³ Indeed, comparing the responses from Great Britain to those from Portugal reveals that, although there are well established gender roles in Great Britain, when compared to Portuguese respondents, the British place less emphasis on female domestic work and on having children as essential for a couple's happiness.²¹⁴ As Inglez puts it, it seems that in Portugal women conquered the right to enter the public sphere more quickly than men the domestic one.²¹⁵

²¹¹ This does not mean that women were not already part of the Portuguese workforce before 1974 due to a rural economy, the emerging industrialisation and a shortage of male workers who were serving in the army in the wars with the then colonised countries: Aboim (n 170) 81; Crompton and Lyonette (n 197) 96; Amâncio (n 112) 189.

²¹² Maria das Dores Guerreiro and Helena Carvalho, 'O Stress na Relação Trabalho-Família: Uma Análise Comparativa' in Karin Wall and Lúcia Amâncio (eds), *Família e Género em Portugal e na Europa* (ICS 2007) 136.

²¹³ Wall (n 203) 252-253.

²¹⁴ Aboim (n 170) 72.

²¹⁵ Inglez (n 201) 361.

Conclusion

The promotion of cultural ideals by states, when successful, leads to the adoption of cultural practices at an individual level. In the case of Portugal, women's domesticity was promoted with more or less emphasis by successive governments, until the end of the dictatorial regime in 1974. Feminism in Portugal, which until the 1930s had some visibility through a number of organisations, faced considerable opposition from the state during the Estado Novo. In its place, the state proposed that women's natural role was one of domesticity, a position that was supported by the creation of state sanctioned women's groups, and the lack of political and social participation for women, except where this reflected what was considered to be women's natural gender role. At the same time, literacy levels throughout the country remained very low and class mobility was limited. The education syllabus reflected the traditional gender stereotypes promoted by the Estado Novo that defended women's domesticity and the importance of a narrowly defined family for the good of the nation. Emigration levels from Portugal during this period were high, with the possibility that a number of emigrants took with them the cultural values promoted by the state in terms of family organisation to their destination countries.

With a change in political regime in the 1970s, Portuguese women gained access to the same rights as men. Women's work outside the household became commonplace as a result, but this was not accompanied by a profound change in the organisation of family life and gender roles. As such, women's association with a domestic role, especially in relation to child rearing, remains strong in contemporary Portuguese society. In terms of family life, Portuguese culture is

somewhat polarised, with divorce and births out of wedlock socially accepted, but a traditional stance towards the sharing of family responsibilities remains in place. This has potential implications for the way Portuguese women address domestic violence, especially as children and the family are highly valued in terms of individual happiness. The lack of promotion of women's rights during most of the 20th Century led to a lack of policies to address violence against women, including domestic violence, until recently. An example of this is that, unlike in a number of European and North American countries, the setting up of women's refuges for victims of domestic violence did not occur in Portugal until the 1990s. The past twenty years have therefore been dedicated to catching up with developments in other parts of the world in creating a legal framework that protects women from domestic violence and raising awareness against it.

The cultural aspects discussed in this chapter will be used to inform the theoretical framework proposed in chapter four, as well as the analysis of the interviews conducted with Portuguese women living in England provided in chapters five and six. The following chapter analyses existing provisions for domestic violence in England.

Chapter 3: Domestic violence legislation and policy

Until the 1970s in the UK, the only legal options available for victims of domestic violence to address their situation were the general measures provided by civil and criminal law, with no particular emphasis on domestic violence.¹ Since then, domestic violence has been addressed in the UK through the concerted effort of different agencies within the justice system, in which the work of the voluntary sector has become integrated with and recognised by formal agencies such as the police forces and the Crown Prosecution Service (CPS), in what can be described as an inter- or multi-agency approach to domestic violence.²

It was not however until the 1990s that a more systematic effort from governments to promote inter-agency work occurred.³ This was done through changes in legislation, such as the introduction of the Family Law Act 1996 (FLA) and the Domestic Violence Crime and Victims Act 2004 (DVCVA), and the creation of a number of institutions designed to put these into practice, such as Specialist

¹ Mandy Burton, *Legal Responses to Domestic Violence* (Routledge 2008) 2.

² The terms 'inter' and 'multi'-agency will be used as interchangeable due to the common underlying ethos of these agreements, regardless of the specific form they may take. This follows the same approach as Harwin et al. when discussing multi-agency approaches to domestic violence: Nicola Harwin et al., 'Introduction' in Nicola Harwin, Gil Hague and Ellen Malos (eds), *The Multi-Agency Approach to Domestic Violence: New Opportunities, Old Challenges?* (Whiting & Birch 1999) 2; Women's Aid, 'Our History' <<http://www.womensaid.org.uk/page.asp?section=0001000100190004&itemTitle=Our+history>> accessed 2 June 2010; Refuge, 'History' (Refuge 2009) <<http://refuge.org.uk/about-us/who-we-are/history/>> accessed 2 June 2010.

³ Gil Hague et al., *Multi-Agency Work and Domestic Violence, A National Study of Interagency Initiatives* (Policy Press 1996) 3-4; Harwin et al. *ibid* 2.

Domestic Violence Courts (SDVCs), Multi-Agency Risk Assessment Conferences (MARACs) and Independent Domestic Violence Advisors (IDVAs).

This chapter analyses current legal provisions to address domestic violence both in civil and criminal law, national and local policies to address domestic violence and the mechanisms used to implement these policies. The chapter starts with an analysis of legislation, followed by an analysis of English domestic violence policy and the most important institutions through which it operates. It then proceeds with an analysis of the local implementation of domestic violence policy in three areas with a high density of Portuguese immigrants

Legal provisions

Civil law

The first attempts to implement specific legislation on domestic violence in the UK consisted of the Domestic Violence and Matrimonial Proceedings Act 1976 (repealed in 1997), which set up, amongst other things, the ways in which injunctions could be granted by a judge to restrain one party from using violence against the other,⁴ and the Domestic Proceedings and Magistrates' Courts Act 1978, which dealt mainly with aspects of financial support of one party by another.⁵ This legislation lacked an overall underlying rationale; for example, although removal orders were available, these were hard to obtain and there was

⁴ Domestic Violence and Matrimonial Proceedings Act 1976, ss 1-2.

⁵ Domestic Proceedings and Magistrates' Courts Act 1978, s 1(c).

no protection for former cohabitants.⁶ Moreover, judges tended to be conservative in the application of the legislation, especially when property rights were involved.⁷

In order to address the lack of underlying coherence of existing legislation, Part IV of the FLA was introduced, and since then updated by the DVCVA. As part of civil law, proceedings under the FLA are brought to court by the parties involved in the dispute and not by the state. It is possible to apply for an order without the other party being present (*ex parte* order),⁸ although research has found that judges are reluctant to attach powers of arrest to *ex parte* occupation orders, reducing the practical value of this mechanism.⁹ The current government is considering the implementation of s 60 of the FLA, which would allow ‘prescribed persons’ such as local authorities or the police to act on the victim’s behalf under the FLA, for example by requesting an occupation or a non-molestation order. If implemented, this could increase the use of occupation orders, which has been declining steadily since 2002. In 2002, they represented one third of orders granted, but only one sixth in 2011, with a 17 per cent decrease in applications between 2010 and 2011.¹⁰ Consideration should however be given to how this would impact on the victim, especially if she does not support the application for the order. As will become clearer in the analysis provided in chapters five and six, *ex parte* orders

⁶ Susan Edwards, *Policing Domestic Violence: Women, the Law and the State* (Sage 1989) 58; Jonathan Herring *Family Law* (3rd edn Pearson 2007) 263.

⁷ Burton (n 1) 11.

⁸ Family Law Act 1996 s 45(1).

⁹ Lynne Harne and Jill Radford, *Tackling Domestic Violence: Theories, Policies and Practice* (Open University Press 2008) 98.

¹⁰ Ministry of Justice, ‘Judicial and Court Statistics 2011’ (Ministry of Justice 2012)

<<http://www.justice.gov.uk/downloads/statistics/courts-and-sentencing/jcs-2011/judicial-court-stats-2011.pdf>> accessed 3 April 2013 8, 22, 29.

could be rejected in the first instance by Portuguese women due to an overwhelming preference to adopt informal solutions to address domestic violence. Should informal solutions for domestic violence fail, then there is scope for *ex parte* orders to be welcomed, especially by those who have been identified as 'with the law' and 'against the law'. The first because they would see *ex parte* orders as an added legal mechanism that they could use to address domestic violence, and the latter because they would prefer to leave the deployment of legal mechanisms in the hand of professionals. It is expected that the Ministry of Justice will finish analysis this matter by December 2013.¹¹ There are currently two types of remedies available to victims of domestic violence in Part IV of the FLA which will be looked at here in more detail: non-molestation orders and occupation orders.

A non-molestation order is an order by a court for one party not to molest the other. Molestation is not defined in the Act but has been found to include harassment of the applicant.¹² The parties who can apply for a non-molestation order are described as 'associated persons'; these include spouses or ex-spouses and civil partners and current or former cohabitants.¹³ Non-molestation orders aim to protect applicants from future violence (rather than punishing offenders for past violence).¹⁴ If a person is aware that a non-molestation order exists, and without reasonable excuse, violates it, that person is committing a criminal

¹¹ Home Office, *Call to End Violence Against Women and Girls: Action Plan* (Home Office 2011) 43 <<http://www.homeoffice.gov.uk/publications/crime/call-end-violence-women-girls/vawg-action-plan-2013?view=Binary>> accessed 14 March 2013.

¹² *C v C (Non-Molestation Order: Jurisdiction)* [1998] 1 FLR 554 [70].

¹³ Family Law Act 1996 s 62(3).

¹⁴ Mary Welstead and Susan Edwards, *Family Law* (2nd edn Oxford University Press 2008) 106.

offence.¹⁵ The situation thus becomes a criminal matter and the decision whether to prosecute the offender is not the victim's but the CPS's. Because the breach of a non-molestation order is a criminal offence, the proof of this violation must be beyond reasonable doubt and not on the balance of probabilities.¹⁶ Should the CPS decide not to prosecute the abuser, the victim may seek a remedy through contempt of court,¹⁷ leaving the victim uncertain about the future of the proceedings until the CPS decides whether or not it will take action.

An occupation order is an order to remove occupants (the abusers) from their homes. This allows victims to remain in their homes free from further violence. Because these orders collide with rights of property of respondents, they are more difficult to obtain than non-molestation orders.¹⁸ Different sections of the FLA apply depending on the applicant's entitlement to occupy the property. This is especially problematic as it depends on whether the applicant has statutory or contractual rights to the property, in short and using the law's terminology, whether she is considered 'entitled' or 'non-entitled'.¹⁹ According to section 33 of the FLA, a person may ask for an occupation order on the basis of owning the property, being a tenant or having a beneficial interest, or on the basis of being married to or in a civil partnership with the owner, tenant or someone with a beneficial interest. If the applicant is co-owner or joint tenant of the property, then

¹⁵ Family Law Act 1996 s 42A.

¹⁶ Claire Bessant, *Domestic Violence, Crime and Victims Act 2004: A Guide to the New Law* (Law Society 2005).

¹⁷ Crown Prosecution Service, 'Policy for Prosecuting Cases of Domestic Violence' (Crown Prosecution Service 2009) 35 <<http://www.cps.gov.uk/publications/docs/DomesticViolencePolicy.pdf>> accessed 15 February 2010.

¹⁸ Herring (n 6) 270; Welstead and Edwards (n 14) 100.

¹⁹ Family Law Act 1996 s 33.

she falls into the category of entitled and it is easier to successfully apply for an occupation order; if the applicant is considered non-entitled, then the application is limited to former spouses or civil partners or cohabitants or former cohabitants, who otherwise would have difficulty remaining in the property and benefiting from the occupation order.²⁰ In cases of cohabitation when the applicant has no entitlement to the property, the protection is lessened and only short term occupation orders can be granted (no longer than six months and only renewable once)²¹ and the housing needs, wellbeing and financial means of both parties are amongst the factors to be taken into account by the court before issuing the order.²² The procedure to determine which part of the legislation is applicable to a specific case can be lengthy, something which may make the order useless for victims seeking a quick form of protection from abuse.²³

For cases falling under section 33 of the FLA, before the order is granted, the court must apply a balance of harm test. This means that there is a need to assess whether the applicant is likely to suffer significant harm as a result of the actions of the abuser, if the occupation order is not granted.²⁴ The term 'significant harm' is not defined by the FLA, but the definition has been held in *Chalmers v Johns*²⁵ to mean an exceptional form of harm. If there is a likelihood of the applicant suffering significant harm, the next thing to consider is the impact of the order on the respondent. If it is likely that the harm suffered by the respondent, or a relevant child, if the order is made, will be less than that likely to be suffered by the

²⁰ Family Law Act 1996 ss 35(3)-(4), 36(3)-(4); Welstead and Edwards (n 14) 104.

²¹ Family Law Act 1996 s 36(10).

²² *Ibid* s 36(6)-(7).

²³ Herring (n 6) 271.

²⁴ Family Law Act 1996 s 33(7).

²⁵ [1999] 1 FLR 392.

applicant if the order is not made, then the court must grant the order.²⁶ If the balance of harm test is not satisfied, the court retains a discretion to grant an order depending on aspects such as the housing needs of the parties, their financial resources, the impact of the lack of an order on the wellbeing of the parties and the general conduct of the parties.²⁷

In *B v B*²⁸ the balance of harm test was analysed. In this case, the wife left the house where she lived with her husband and their respective children in an abusive relationship and was re-housed with her daughter, by the council, in temporary accommodation. Both husband and wife had a dependent child in their care and the wife applied for an occupation order. When applying the balance of harm test to determine whether to grant the occupation order to the wife, the court found that the harm that would be caused to the child that was in the husband's care, as his father would be considered voluntarily homeless, outweighed the harm that would be caused to the mother and daughter in her care, who would be re-housed by the council. *Re Y (Children) (Occupation Order)*²⁹ further analysed the balance of harm test. Here, both parties could claim housing needs as each had a dependant in their care. It was decided that the harm that would be caused to the husband, who suffered from diabetes, of having to find alternative accommodation, did not outweigh the harm that would be caused to the child in the care of the wife, a 16 year old with a newborn, who would be housed in accommodation provided by the local authority. The court found that even though it would be likely that the daughter with a newborn would more easily find alternative accommodation than

²⁶ Family Law Act 1996 s 33(7)(a)-(b).

²⁷ *Ibid* s 33(6).

²⁸ [1999] 31 HLR 1059.

²⁹ [2000] 2 FCR 470.

the ill husband, this would mean living in conditions that the court considered to be 'too appalling'.³⁰

In *G v G*³¹ the court, when considering the balance of harm test, stated that the intention to cause harm by the husband is not relevant, the question is whether his actions cause actual harm or not, and as such whether not issuing the order would allow for that harm to continue.³² *G v G* was an appeal of a refusal to grant an occupation order in which the judge based his reasoning on the lack of intentionality of the husband's actions. On appeal, the decision to refuse the occupation order was nevertheless sustained because there was no significant harm posed to the wife or the children from the husband's conduct and because occupation orders are 'draconian' and only to be used in 'exceptional cases'.³³ When considering the balance of harm test, the case law described here has tended to focus on the welfare of the children affected by the orders rather than that of the women suffering the abuse. Coupled with this is a general sense in the courts that an occupation order should only be granted exceptionally and after careful consideration of its implications. *Chalmers v Johns* is often quoted for considering this type of order 'draconian',³⁴ while in *Re Y* it was described as 'a last resort in a (*sic*) intolerable situation',³⁵ something which only adds to the difficulty in obtaining occupation orders in cases of domestic violence, even if the applicant has an entitlement to the property.³⁶

³⁰ *Ibid* [25].

³¹ [2000] 2 FLR 36.

³² *Ibid* [30].

³³ *Ibid* [27].

³⁴ [1999] 1 FLR 392 [18]; *Burton* (n 1) 274.

³⁵ [2000] 2 FCR 470 [46].

³⁶ *Burton* (n 1) 41.

Occupation orders can only state that someone has the right to remain in the property, or enforce or prevent the enforcement of existing rights, such as allowing someone to remain in or enter the property regardless of the other party's wishes, or forbidding one of the parties from entering the property.³⁷ Supplemental orders regarding the obligation to pay rent or other financial undertakings are foreseen under s. 40, in order to support the practical application of the occupation order. However, according to *Nwogbe v Nwogbe*³⁸ there is no possibility to enforce compliance with these financial orders, making 'section 40 of no value to the spouse or co-habitee remaining in that property unless the partner who is excluded is prepared to obey the law without sanction'.³⁹

Unlike the breach of a non-molestation order, the breach of an occupation orders is not a criminal offence, but is subject only to a penalty for contempt of court, at the instigation of the applicant. There is, however, the possibility to attach a power of arrest to an occupation order.⁴⁰ This would come into force if there were a breach of the order that was not coupled with a criminal offence (in which case the police would already have the power to arrest for the criminal action though not for the breach of the order itself). It seems puzzling that if someone breaches a non-molestation order, they commit a criminal offence and the matter is then in the hands of the police and CPS, but if they breach an occupation order, which is much harder to get and usually involves more extreme situations, there is not an automatic offence, but the court has to grant the power of arrest to the police.

³⁷ Family Law Act 1996 s 33(3).

³⁸ [2000] 2 FLR 744.

³⁹ *Ibid* [27].

⁴⁰ Family Law Act 1996 s 47(1).

The Crime and Security Act 2010 includes two orders designed to further protect victims of domestic violence that have not yet come into force but which have been piloted in three police forces: Domestic Violence Protection Notices (DVPN) and Domestic Violence Protection Orders (DVPO). A police officer of at least superintendent rank may issue a DVPN, which prevents the abuser from having contact with the victim or returning to the victim's home for a maximum of 48 hours. Within these 48 hours, the police must apply for a DVPO, which is a civil order issued by a magistrates' court that will set a period of no contact between victim and offender of between 14 and 28 days.⁴¹ The pilot schemes ran for two years in three police forces, concluding in the summer of 2013.⁴² Should DVPNs and DVPOs come into force, they could protect victims when they are at their most vulnerable and give them more time to decide what to do, for example, whether to leave the abuser or to apply for a non-molestation or occupation order.⁴³ Because they depend from police initiative, DVPOs and DVPNs have the benefit of offering victims immediate relief from a situation of violence without the cost associated with other civil orders discussed here. However, the use of DVPOs and DVPNs could become problematic should victims feel that as a result, they are losing control of how to address their victimisation. This could be especially problematic in the case of Portuguese women who, as will become clearer if chapters five and six, prefer to deal with domestic violence informally, going as far as deliberately avoiding any engagement with service providers to ensure this. Such a measure

⁴¹ Crime and Security Act 2010 ss 25, 27-28.

⁴² Home Office 'Domestic Violence Protection Notices and Orders'

<<http://www.homeoffice.gov.uk/crime/violence-against-women-girls/domestic-violence/dv-protection-orders/>> accessed 12 March 2013.

⁴³ Ibid.

could see more victims avoiding the police for fear of the use of what they may see as too heavy-handed response from the justice system to the situation of violence.

Criminal law

The Domestic Violence, Crime and Victims Act 2004 (DVCVA) was described by the Home Office as the 'the biggest overhaul of the law on domestic violence in the last 30 years'.⁴⁴ Despite making numerous changes to civil law, the DVCVA did not have as great an impact on criminal law. As such, general provisions of criminal law apply to domestic violence, such as those covered by the Offences against the Person Act 1861, which include homicide and assault, and the Protection from Harassment Act 1997 (PHA), which considers actions to amount to harassment if they cause alarm or distress to the victim, on two or more occasions.⁴⁵ The PHA makes the harassment of a person punishable by a fine or imprisonment.⁴⁶ A restraining order may also be granted, in order to protect the victim from further harassment or fear of violence.⁴⁷ In addition, victims may also pursue civil remedies for anxiety and financial loss caused by the harassment.⁴⁸ The lack of a specific crime of domestic violence does not mean that domestic violence incidents should be treated more leniently than those occurring outside a domestic setting. The Sentencing Guidelines Council stated that, in fact, the proximity between the

⁴⁴ Home Office, 'The Domestic Violence, Crime and Victims Act 2004' (Home Office Circular 9/2005) <<http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2005/009-2005/>> accessed 30 September 2009.

⁴⁵ Protection from Harassment Act 1997 s 7.

⁴⁶ *Ibid* s 2.

⁴⁷ *Ibid* s 5.

⁴⁸ *Ibid* s 3.

parties may even be considered an aggravating factor (such as an abuse of trust or power or the victim's special vulnerability).⁴⁹

The DVCVA, by introducing changes to the FLA, made the violation of non-molestation orders a criminal offence and allowed judges to grant powers of arrest to the police in case of the violation of an occupation order.⁵⁰ There is thus an emphasis on the protection of victims in the DVCVA, and a punitive stance towards offenders. In line with these initiatives, the Code of Practice for Victims of Crime was created, with the aim to improve the quality of the information and support provided to victims of crime.⁵¹ Police and Crown Prosecution Service practices in prosecuting cases of domestic violence are discussed later in this chapter.

Finally, a Domestic Violence Disclosure Scheme is currently being piloted in Greater Manchester, Gwent, Wiltshire and Nottinghamshire in an effort to enhance the protection of victims of domestic violence. The scheme works similarly to the Child Sex Offender Disclosure Scheme and allows individuals to discover whether their new partners have a history of violence. The disclosure of information about a former partner can be made under a 'right to ask', in which a member of the public makes a direct application for information to the police or under a 'right to know', in which the police receive information that is relevant to the safety of an individual and, after making the appropriate checks, disclose the information to

⁴⁹ Sentencing Guidelines Council, *Overarching Principles: Domestic Violence Consultation Guideline* (Sentencing Guidelines Council 2006) 3-6.

⁵⁰ Family Law Act 1996 ss 42A, 47.

⁵¹ Office for Criminal Justice Reform 'Code of Practice for Victims of Crime' (Office for Criminal Justice Reform 2005) 1 <<http://www.homeoffice.gov.uk/documents/victims-code-of-practice?view=Binary>> accessed 24 August 2009.

the person at risk.⁵² This approach to domestic violence is unparalleled in Portugal, not least because it would potentially collide with the right to privacy and the presumption of innocence that inform the Portuguese justice system. It is unlikely that Portuguese women would be familiar with the mechanism of the scheme and would use the 'right to ask' to find out whether their partners have a history of violence against women.

In contrast to the legal position in England, domestic violence in Portugal is a specific type of crime, punishable with imprisonment for one to five years.⁵³ The legal provisions applicable to domestic violence are mostly codified in the criminal code and civil law intervenes only to regulate marriage, separation and divorce. Any orders that the abuser may be subject to (such as not to contact the complainant or not to return to the property where a crime is suspected to have occurred) are included in the Portuguese criminal procedural code,⁵⁴ which is a significant difference from the English provisions for domestic violence. Consequently, most Portuguese immigrants are more likely to be familiar with a criminal justice-based approach to domestic violence than the mixture between civil and criminal options that the English approach offers.

⁵² Home Office 'Domestic Violence Disclosure Scheme Pilot: Guidance' (Home Office 2012) <<http://www.homeoffice.gov.uk/publications/crime/dvds-interim-guidance?view=Binary>> accessed 21 December 2012.

⁵³ Decreto-Lei n° 400/82 de 23 Setembro, Diário da República I Série n° 221/82 1º Suplemento, artigo 152º.

⁵⁴ Decreto-Lei n° 78/87 de 17 de Fevereiro, Diário da República I Série n° 40/87, artigo 200º.

Policy

Multi-agency cooperation has been adopted in England as the preferred way to address domestic violence from a policy viewpoint, especially since 1995 with the Home Office Inter-Agency Circular on domestic violence,⁵⁵ and the Crime and Disorder Act in 1998.⁵⁶ Domestic violence is often not an isolated incident and creates a range of problems that are unlikely to be effectively addressed by a single agency.⁵⁷ A multi-agency approach provides victims with a variety of support that could be more difficult to access without the concerted work of different agencies.

A multi-agency approach is not, however, completely unproblematic. A concern raised by early studies on multi-agency approaches to domestic violence is that differences in power, resources, working ethos and practices between the various participating agencies may lead to situations where one agency feels undermined by others and pressured to comply with the 'lead' agency's agenda. This is particularly acute when contrasting working practices and resources available to the police and local authorities with those of voluntary organisations.⁵⁸ Yet another concern is that multi-agency initiatives work as a mere forum for discussion with few practical results, or even as a 'smokescreen' for local

⁵⁵ Home Office, 'Domestic Violence: Break the Chain Multi-Agency Guidance for Addressing Domestic Violence' (Home Office 1998) 3

<http://ec.europa.eu/justice_home/daphnetoolkit/files/projects/1998_064/domestic_violence_multi_agency_guidance_uk.pdf> accessed 9 April 2013.

⁵⁶ Crime and Disorder Act 1998 ss 5-6; Home Office *ibid* 3.

⁵⁷ Home Office *ibid* 3, 7.

⁵⁸ Pragna Patel, 'The Multi-Agency Approach to Domestic Violence: A Panacea or Obstacle to Women's Struggles for Freedom from Violence' in Nicola Harwin, Gil Hague, and Ellen Malos (eds), *The Multi-Agency Approach to Domestic Violence: New Opportunities, Old Challenges?* (Whiting & Birch 1999) 65, 72.

government to draw attention away from ineffective practices, and a way to show good will and engagement in finding solutions for domestic violence. There is also a fear that multi-agency work is a way for the police to address a crisis of legitimacy that saw police forces and communities growing apart⁵⁹ (this has been especially problematic when dealing with ethnic minorities, as the Brixton Riots in 1981, the damning McPherson report which accused the Metropolitan Police of being institutionally racist in 1999, and more recently the riots that followed the shooting of Mark Duggan confirmed). Yet another concern with multi-agency partnerships is that, although multi-agency approaches are effective in raising the profile of voluntary organisations, they can also be a way for the police and local authorities to divert accountability for their actions to the multi-agency structure.⁶⁰

Regardless of the problematic nature of such an approach, multi-agency work has been considered by governments to be essential in addressing domestic violence, leading Hague to comment on how multi-agency work went from being something that interested few to being 'the name of the game'.⁶¹ The argument that the success of responses to domestic violence will be measured not by the number of multi-agency agreements established but by the quality of the services provided to

⁵⁹ Gil Hague, 'The Multi-Agency Approach to Domestic Violence: A Dynamic Way Forward or a Face-Saver and Talking Shop?' in Nicola Harwin, Gil Hague, and Ellen Malos (eds), *The Multi-Agency Approach to Domestic Violence: New Opportunities, Old Challenges?* (Whiting & Birch 1999) 12, 13-14; Patel *ibid* 67.

⁶⁰ Patel *ibid* 62.

⁶¹ Hague (n 59) 12.

women⁶² is thus a pertinent one to bear in mind when analysing governmental policy on domestic violence.

Governmental policy

To a large extent, the current governmental policy on domestic violence provides continuity with the mechanisms of multi-agency cooperation adopted by previous governments,⁶³ namely the prevention of violence, and the provision of services to and protection of women and girls who are victims of violence,⁶⁴ albeit now with an emphasis on decentralisation.⁶⁵ The provision of support for victims therefore remains devolved to local services.⁶⁶ According to the *Call to End Violence Against Women and Girls*, decentralisation entails continuing to fund IDVAs and MARACs,⁶⁷ and developing further ways in which voluntary organisations, health services and the police can work together to achieve good results in both preventing domestic violence and supporting its victims.⁶⁸ Sharing of information and good practice and training of staff are also ways to help local institutions provide the best possible support for victims. This entails, amongst other things, the use of Crown

⁶² Nicola Harwin, 'New Opportunities, Old Challenges? A Perspective from Women's Aid' in Nicola Harwin, Gil Hague and Ellen Malos (eds), *The Multi-Agency Approach to Domestic Violence: New Opportunities, Old Challenges?* (Whiting & Birch 1999) 44.

⁶³ Home Office, *Together We Can End Violence Against Women and Girls: A Strategy* (Home Office 2009) <<http://www.homeoffice.gov.uk/documents/vawg-strategy-2009/end-violence-against-women2835.pdf?view=Binary>> accessed 14 March 2013.

⁶⁴ Home Office, 'Victims of Crime' <<http://www.direct.gov.uk/en/CrimeJusticeAndTheLaw/VictimsOfCrime/index.htm>> accessed 1 June 2010.

⁶⁵ Home Office, *Call to End Violence Against Women and Girls* (n 11) 7, 20.

⁶⁶ Home Office, *Together We Can End Violence Against Women and Girls: A Strategy* (n 63) 8.

⁶⁷ Home Office, *Call to End Violence Against Women and Girls* (n 11) 8, 15.

⁶⁸ *Ibid* 15.

Prosecution Service specialist coordinators to help implement CPS policy locally.⁶⁹ There is, therefore, a political desire to maintain and further develop a structured approach to domestic violence that goes beyond the legislation and the more 'traditional' agents of the criminal justice system, such as the police and the Crown Prosecution Service, and incorporates the work of local authorities and voluntary organisations alongside these.⁷⁰ An example of the Government's continued support of an integrated approach can be seen in the work of Co-ordinated Action Against Domestic Abuse (CAADA), a charity that provides training and guidance in different areas of multi-agency work, such as how to set up and run MARACs.⁷¹

The Government published the *Call to End Violence Against Women and Girls: Action Plan*, revised most recently in 2013, which elaborates how the objectives set out in *Call to End Violence Against Women and Girls* will be acted upon. The implementation of policy will be done by continuing to raise awareness about domestic violence, increasing women's confidence in the justice system, developing police training with the College of Policing, and considering the implementation of section 60 of the FLA, discussed above, which would allow a 'prescribed person' to apply for an occupation or non-molestation order on the victim's behalf.⁷²

The most prominent institutions involved in the multi-agency approach to domestic violence will now be analysed individually to assess their success in

⁶⁹ Ibid 17.

⁷⁰ Ibid 9.

⁷¹ CAADA, 'National Roll Out of Development Programme for Multi-Agency Risk Assessment Conferences (MARACs)' <<http://www.caada.org.uk/news/press-release-02-07-2012.htm>> accessed 14 March 2013.

⁷² Home Office, *Call to End Violence Against Women and Girls: Action Plan* (n 11) 17, 38, 41, 43.

supporting victims of domestic violence. These include both the institutions created more recently (SDVCs, MARACs and IDVAs) as well as traditional institutions within the justice system (police and CPS). A final note will be made on housing policy and the mechanisms used therein to provide support to victims of domestic violence as part of the multi-agency approach to domestic violence.

Specialist Domestic Violence Courts

SDVCs are specialist courts created to address domestic violence within a multi-agency framework. The strategy used in the adversarial court system of discrediting victims and the inadequacy of sentences are some of the complaints made about traditional criminal courts when deciding domestic violence cases.⁷³ Specialist Domestic Violence Courts were introduced in England in 1999 partly in order to address these complaints, and to enable the fast tracking and clustering of cases of domestic violence.⁷⁴ Protection of the victim and the accountability of the offender are the underlying ideas for the creation of SDVCs, and for these purposes, multi-agency cooperation is deemed essential.⁷⁵ Agencies included in this multi-agency initiative range from the police, to victim support groups, health

⁷³ Burton (n 1) 106.

⁷⁴ Dee Cook et al., 'Evaluation of Specialist Domestic Violence Courts/Fast Track Systems' (Crown Prosecution Service and Department of Constitutional Affairs 2004) 3, 5 <<http://www.cps.gov.uk/Publications/docs/specialistdvcourts.pdf>> accessed 13 February 2010; Burton *ibid* 112; Home Office 'Specialist Domestic Violence Courts Review 2007/08: Justice With Safety' (Home Office 2008) 3 <<http://www.crimereduction.homeoffice.gov.uk/violentcrime/dv018a.pdf>> accessed 25 November 2009.

⁷⁵ Home Office, 'Specialist Domestic Violence Court Programme Resource Manual' (Home Office 2006) 4, 7 <<http://www.nordaf.co.uk/public/Editor/assets/Library/SDVC%20Resource%20Manual.pdf>> accessed 25 November 2009; Burton *ibid* 109.

services, housing services and other agencies that may assist in the assessment of risk and the protection of individuals in a given area.⁷⁶

The creation of SDVCs followed research conducted on previous pilot schemes in Leeds, East London, Wolverhampton and Cardiff that were proven successful, especially due to the independent advice and support offered to victims. Research commissioned by the CPS and the Department for Constitutional Affairs in 2004, however, showed that SDVCs' success was not so obvious when considering more 'traditional' criminal justice targets, such as speeding up cases,⁷⁷ or reducing victim retraction.⁷⁸ Also, evidence gathering was more effective in SDVCs but there was a lack of coordination between civil and criminal courts.⁷⁹ Victims were happy with the support given, especially from independent advocates, but it was found that there was a lack of communication with CPS representatives.⁸⁰ As for sentencing, victims were happy to see appropriate sentencing applied in SDVCs.⁸¹ A 2007/2008 review of 23 SDVCs reiterated the positive role of this court structure in bringing more perpetrators to justice and improving victim satisfaction and safety, although there were three weaknesses that needed addressing: poor access to translation services and lack of culturally aware practices, an improvement of data collection and analysis, and the need for standardisation of child protection.⁸²

⁷⁶ Home Office, 'Specialist Domestic Violence Court Programme Resource Manual' *ibid* 4

⁷⁷ Burton (n 1) 113.

⁷⁸ Cook et al. (n 74) 100, 133-134; Burton *ibid*.

⁷⁹ Cook et al. *ibid* 118; Burton *ibid*.

⁸⁰ Cook et al. *ibid* 81, 83.

⁸¹ *Ibid* 122.

⁸² Crown Prosecution Service 'Specialist Domestic Violence Courts Review 2007/08' (Crown Prosecution Service 2010) 6, 7, 148

<http://www.cps.gov.uk/publications/equality/sdvc_review_exec_sum.html> accessed 28 April 2010.

Overall, SDVCs are seen as making a positive contribution to the institutional response to domestic violence⁸³ and are supported by Women's Aid as an alternative to the traditional court structure.⁸⁴ SDVCs were considered by the Home Office as the 'centrepiece of the National Domestic Violence Delivery Plan' and still feature prominently in the current government's policy on domestic violence.⁸⁵ The Ministry of Justice decided, however, to close 93 magistrates' courts by September 2013, with 89 courts having closed so far.⁸⁶ This measure is likely to lead to an increase in the volume of work of SDVCs, and victims having to travel longer distances to access them, making it more difficult for victims of domestic violence to benefit from an integrated court approach to domestic violence.

Multi-Agency Risk Assessment Conferences

MARACs are part of a wider multi-agency structure to support victims of domestic violence that includes IDVAs and SDVCs. MARACs are a forum for different agencies to come together and assess the levels of risk that individuals incur in a specific violent relationship;⁸⁷ MARACs also facilitate and coordinate the sharing of

⁸³ Cook et al. (n 74) 3, 6.

⁸⁴ Women's Aid 'Criminal Law' (Women's Aid 2009).

<http://www.womensaid.org.uk/domestic_violence_topic.asp?section=0001000100220007§ionTitle=Criminal+Law> accessed 2 July 2009.

⁸⁵ Home Office, 'National Domestic Violence Delivery Plan: Annual Progress Report 2008-09' (2010) 24 <<http://www.crimereduction.homeoffice.gov.uk/domesticviolence/domesticviolence069a.pdf>> accessed 2 February 2010; Home Office, *Call to End Violence Against Women and Girls* (n 11).

⁸⁶ Ministry of Justice, 'Court Estate Reform Programme' (Ministry of Justice 2013)

<<http://www.justice.gov.uk/about/hmcts/courts>> accessed 13 August 2013.

⁸⁷ Home Office, 'Specialist Domestic Violence Court Programme Resource Manual' (n 75) 15.

information between different agencies regarding high risk victims of domestic violence.⁸⁸ The success of MARACs, especially in terms of victim satisfaction, prompted a recommendation for their use nationally, alongside SDVCs.⁸⁹ Despite involving local government and voluntary agencies, it is common for MARACs to be coordinated by local police forces and the vast majority of referrals come from the police.⁹⁰ The fact that the police usually take the lead in MARACs has received less positive feedback from voluntary agencies, which can feel marginalised and with no real impact on the decisions made.⁹¹ Once an assessment of the risk level has been done, MARACs develop risk management plans to support those considered to be in high risk situations.⁹²

Victims who are deemed to be at high risk in a domestic violence setting can be identified via the use of the Domestic Abuse, Stalking and Honour Based Violence (DASH) checklist, which should be used in conjunction with the practitioner's and ultimately the MARAC's assessment of the situation.⁹³ High risk victims include

⁸⁸ CAADA, 'Information about MARACs' <about_MARACs.html> accessed 14 March 2013; Home Office, 'Specialist Domestic Violence Court Programme Resource Manual' ibid 16.

⁸⁹ Home Office, 'Specialist Domestic Violence Court Programme Resource Manual' ibid 10.

⁹⁰ Home Office, *Together We Can End Violence Against Women and Girls: A Strategy* (n 63) 17; Nerissa Steel, Laura Blakeborough and Sian Nicholas, *Supporting High-Risk Victims of Domestic Violence: A Review of Multi-Agency Risk Assessment Conferences (MARACs)* (Research Report 55 Home Office 2011) 15, 19 <<http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/horr55/horr55-report?view=Binary>> accessed 14 March 2013.

⁹¹ Hague (n 59) 19; Liz Kelly, 'What Happened to the 'F' and 'P' Words? Feminist Reflections on Inter-Agency Forums and the Concept of Partnership' in Nicola Harwin, Gil Hague and Ellen Malos (eds), *The Multi-Agency Approach to Domestic Violence: New Opportunities, Old Challenges?* (Whiting & Birch 1999) 89, 90.

⁹² Home Office, 'Specialist Domestic Violence Court Programme Resource Manual' (n 75) 16.

⁹³ CAADA, *CAADA Risk Identification Checklist (RIC) & Quick Start Guidance for Domestic Abuse, Stalking and 'Honour'-Based Violence* (CAADA 2009) 1 <http://www.caada.org.uk/practitioner_resources/Quick%20Start%20Guidance%20&%20RIC%2009062009.pdf> accessed 17 March 2010.

those experiencing physical or sexual abuse, coercion, threats and intimidation (from their partner or extended family), economic or emotional abuse, are pregnant or have children.⁹⁴

MARACs have been described by government as essential for the protection of victims.⁹⁵ According to an evaluation of SDVCs commissioned by the Home Office, MARACs are essential for the success of SDVCs in providing a coordinated response to incidents of domestic violence.⁹⁶ A recent review of MARACs reveals that these are perceived by IDVAs, MARAC chairs and coordinators as effective tools for the improvement of victims' protection due to enhanced sharing of information, the representation of required agencies and the role of the IDVA.⁹⁷ However, there are also aspects that need to be improved, such as achieving greater representation of the communities that they work with, especially in terms of minority groups, and increasing the number of BME representatives.⁹⁸

Independent Domestic Violence Advisors

IDVAs were created as part of a multi-agency approach to domestic violence and in order to better address concerns regarding the safety of medium to high risk

⁹⁴ *ibid* 2-3.

⁹⁵ Home Office, *Together We Can End Violence Against Women and Girls: A Strategy* (n 63) 9-10, 37, 49

⁹⁶ Home Office 'National Domestic Violence Delivery Plan Annual Progress Report 2007/2008' 14
<<http://www.crimereduction.homeoffice.gov.uk/domesticviolence/domesticviolence069a.pdf>> accessed 2 July 2009.

⁹⁷ Steel et al. (n 90) 6.

⁹⁸ *Ibid* 21.

victims.⁹⁹ Victims may be referred to IDVAs by a number of agencies, such as the police or voluntary organisations. After a victim has been referred to an IDVA, the IDVA will usually contact her in order to establish what can be done from the victim's perspective to improve her safety; IDVAs will then present the victim's views to the MARAC for a risk management plan to be developed, if the victim is considered to be at high risk.¹⁰⁰ The IDVA also works with the victim in terms of housing options and other practical aspects. Moreover, the IDVA should keep the victim informed of the actions being taken by other agencies and ensure that these do the work they have agreed to do.¹⁰¹ The IDVA's work may thus start before a case is taken to court (should that be the outcome) and continue after that, in order to make sure that the victim is effectively protected.¹⁰² The IDVA's priority is to assure victims' safety and ensure long-term solutions are found.¹⁰³ Although IDVAs are in contact with a number of agencies, they should always maintain their independent status.¹⁰⁴ The Home Office recommends that IDVAs receive certified

⁹⁹ Home Office, 'Specialist Domestic Violence Court Programme Resource Manual' (n 75) 21; CAADA, *National Definition of IDVA Work* (CAADA 2008)

<http://www.caada.org.uk/practitioner_resources/IDVAresources.htm> accessed 23 March 2010.

¹⁰⁰ Home Office, 'Specialist Domestic Violence Court Programme Resource Manual' (n 75) 20-21; Steel et al. (n 90) 7.

¹⁰¹ Home Office, 'Specialist Domestic Violence Court Programme Resource Manual' *ibid* 18.

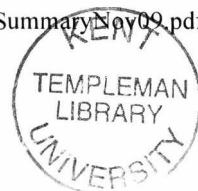
¹⁰² *Ibid* 22.

¹⁰³ Home Office, 'Independent Domestic Violence Advisors'

<<http://www.homeoffice.gov.uk/crime/violence-against-women-girls/domestic-violence/idva/>> accessed 14 March 2013; CAADA *National Definition of IDVA Work* (n 99).

¹⁰⁴ Emma Howarth, Louise Stimpson, Diana Barran and Amanda Robinson, *Safety in Numbers: Summary of Findings and Recommendations from a Multi-site Evaluation of Independent Domestic Violence Advisors* (Henry Smith Charity 2009) 2

<<http://www.henrysmithcharity.org.uk/documents/SafetyinNumbers16ppSummaryNov09.pdf>> accessed 19 February 2010.



training, which is provided by CAADA, with the aim of achieving high quality and comparable levels of service throughout England and Wales.¹⁰⁵

Despite the good reviews of the work of IDVAs so far, there are concerns that IDVAs are overstretched, with each advisor having around 150 cases to supervise in 2010.¹⁰⁶ An evaluation of seven IDVAs in England and Wales found that they had positive results in reducing the abuse suffered by victims and their children; indeed it was found that the abuse stopped altogether for two thirds of the victims who received support.¹⁰⁷ However, this extremely positive outcome needs to be balanced with the fact that around 40 per cent of victims who were supported by the IDVAs under evaluation lost contact with the IDVA during the process. This is possibly due to victims feeling unsafe during the process but little more information is given on this group of victims in the evaluation.¹⁰⁸ This evaluation also found a high engagement of victims from black and minority ethnic origin with the IDVAs;¹⁰⁹ it seems therefore that the IDVA format is very well suited to reach these communities, although no information is given on the proportion of victims from this group who stop engaging with the IDVA, something which would

¹⁰⁵ Home Office, 'Specialist Domestic Violence Court Programme Resource Manual' (n 75) 21; CAADA *Accreditation for IDVA Services – CAADA Leading Lights* <<http://www.caada.org.uk/dvservices/accreditation-for-IDVA-services-leading-lights.html>> accessed 14 March 2013.

¹⁰⁶ House of Commons Home Affairs Committee, 'Domestic Violence, Forced Marriage and "Honour"-Based Violence' (Home Affairs Committee 2008) 149 <http://refuge.org.uk/cms_content_refuge/attachments/Final%20HC%20263.pdf> accessed 2 February 2010; Home Office, *Together We Can End Violence Against Women and Girls: a Strategy* (n 63) 9-10, 37, 49.

¹⁰⁷ Howarth et al. (n 104) 1.

¹⁰⁸ *Ibid* 7.

¹⁰⁹ *Ibid* 4.

be interesting to know in assessing the long term effectiveness of IDVAs in working with ethnic minorities.

Police

The police were criticised for their interaction with victims of domestic violence for a number of years. Since Home Office Circular 60/1990 was approved, research has shown an improvement in training of police officers in dealing with and recording domestic violence incidents.¹¹⁰ However, studies from the late 1990s and early 2000s found that there were a great variety of approaches amongst police forces towards domestic violence incidents, and substantial frustration from victims with the effectiveness of police responses.¹¹¹ Harne and Radford explain this diversity by saying that the success in the development and implementation of domestic violence policy owes more to the dedication of Domestic Violence Officers, than to guidelines issued for the police forces.¹¹²

The now extinct National Policing Improvement Agency published, in 2008, detailed guidance on the investigation of domestic violence on behalf of the Association of Chief Police Officers (ACPO).¹¹³ This document provides guidance for police officers on various aspects of the investigation and prosecution of domestic violence incidents, as well as on working in a multi-agency setting. It states from the outset that the priorities of the police forces when addressing

¹¹⁰ Sharon Grace, *Policing Domestic Violence in the 1990s* (Home Office Research Study 139 HMSO 1995) 16.

¹¹¹ Burton (n 1) 93; Harne and Radford (n 9) 122.

¹¹² Harne and Radford *ibid*.

¹¹³ NPIA, *Guidance on Investigating Domestic Abuse* (NPIA 2008) 7

<<http://www.acpo.police.uk/documents/crime/2008/2008-cba-inv-dom-abuse.pdf>> accessed 1 April 2010.

domestic violence are to protect those at risk of domestic violence, to pursue all reports of domestic violence, to act in a way so that offenders can be effectively prosecuted and to work with other agencies in order to reduce domestic violence.¹¹⁴

A quick response to an incident of domestic violence is deemed essential to protect victims and witnesses;¹¹⁵ it is therefore important that the deployment of police officers reflects this. A number of guidelines are provided to ensure that this goal is met, from the role of call takers to that of deployed police officers.¹¹⁶ The call taker, being often the first point of contact of the police officer with the domestic violence incident, plays a very important role in the subsequent events, as they filter and shape the information that reaches the officers who attend the scene and can help form the idea that this is an 'unimportant domestic incident', as was the case in many police responses in the 1980s, and can still be seen more recently as a reflection of the adoption of a 'crime-fighting' model of policing.¹¹⁷ In gaining a first account of the situation when speaking to the parties involved, the officer should speak to each individual separately and in a safe environment and the officer should try to gain a first account as soon as possible after the events. Before this, the investigation process should be explained to the victim and possible witnesses and there should be a reassurance that the matter is being treated seriously by the police. The feeling that the issue is not treated seriously by the police has been found to be one of the reasons that leads victims to withdraw their complaints,¹¹⁸

¹¹⁴ Ibid 7.

¹¹⁵ Ibid 22.

¹¹⁶ Ibid.

¹¹⁷ Edwards (n 6) 108; Marisa Silvestry and Chris Crowther-Dowey, *Gender & Crime* (Sage 2008) 89.

¹¹⁸ Harne and Radford (n 9) 131.

and this reassurance may be a way to avoid victim withdrawal. Police should also explain to victims what support is available, including referral details for an IDVA service; this is of special relevance for victims from black and minority ethnic groups who may experience further barriers in understanding and accessing the UK's criminal justice system, as well as victims whose sexuality, disability or any other characteristic may increase their vulnerability.¹¹⁹ Nevertheless, information should only be passed to victim support services when officers have the victim's explicit consent.¹²⁰ Voluntary support agencies in the 1990s often complained that the police did not inform victims of the possibility of finding help in these institutions, in particular women's refuges;¹²¹ this is something that this guidance clearly seeks to overcome, perhaps due to the criticism that the previous policy towards domestic violence was more focused on prosecuting offenders than supporting victims.¹²²

As part of the investigation and response to domestic violence, officers should conduct a risk identification of the situation. When a number of risk factors are identified, the case should then be notified to a domestic abuse officer and to the relevant support services for a risk assessment to be made.¹²³ To help police officers make a correct risk assessment, a risk assessment checklist was developed

¹¹⁹ NPIA (n 113) 33.

¹²⁰ Ibid 39.

¹²¹ Grace, 'Policing Domestic Violence in the 1990s' (n 110) 47; Sharon Grace, 'Policing Domestic Violence and Inter-Agency Work' in Nicola Harwin, Gil Hague and Ellen Malos (eds), *The Multi-Agency Approach to Domestic Violence: New Opportunities, Old Challenges?* (Whiting & Birch 1999) 216.

¹²² Harné and Radford (n 9) 135.

¹²³ NPIA (n 113) 35.

by ACPO in collaboration with the Home Office and CAADA in 2008.¹²⁴ ACPO is currently trialling in one police force a practice of leaving the use of the risk assessment checklist to the officers' discretion, a position that has already been criticised by CAADA.¹²⁵ The police should assist in developing and implementing safety plans and a plan that suggests victim accountability should be rejected.¹²⁶ Neighbourhood policing teams should be included and informed of incidents of domestic violence, domestic violence offenders and associated levels of risk in their geographic area. This is essential for an effective short and long term management of risk of offenders. Neighbourhood policing teams should also be briefed on cases that were taken to MARACs in the area so that they can be in a position to contribute to the MARAC's action plan if necessary.¹²⁷

Part of the discourse on taking domestic violence seriously was the introduction of a pro-arrest policy, advising officers to arrest offenders as in any other violent assault¹²⁸ and an encouragement for police officers to gather as much evidence as possible when on the scene, in order for the prosecution's case not to be solely based on the victim's testimony. This approach may be a response to the acknowledgement that machismo is prevalent in the police forces and that police discretion often reflects individual prejudices, both determining the use of

¹²⁴ This is called the DASH model (Domestic Abuse, Stalking and Harassment and Honour Based Violence): Home Office 'National Domestic Violence Delivery Plan Annual Progress Report 2007/2008' (n 96) 32.

¹²⁵ ACPO, 'ACPO Comment on a Domestic Incident Trial' (ACPO 2013) <<http://www.acpo.presscentre.com/Press-Releases/ACPO-comment-on-a-domestic-incident-trial-1e6.aspx>> accessed 15 March 2013; CAADA, 'ACPO Pilot to Reduce Police Bureaucracy Through Discretionary Use of Risk Assessment at Domestic Incidents' (CAADA 2013) <<http://www.caada.org.uk/news/press-releases.html>> accessed 15 March 2013.

¹²⁶ NPIA (n 113) 82.

¹²⁷ Ibid 73.

¹²⁸ Grace, 'Policing Domestic Violence in the 1990s' (n 110) 11.

mechanisms such as arrests when dealing with domestic violence.¹²⁹ Victims should not be asked whether they want the suspect to be arrested or not as the decision for arrest lies solely with the police officer, and the CPS' decision to prosecute should not interfere with the police officer's decision to arrest either.¹³⁰ Should the officer decide not to make an arrest, the reasons for the decision need to be recorded and the officer should consider a proceeding by summons or using a police notice under the PHA 1997 and the ACPO Practice Advice on Investigating Harassment. When deciding whether to release the suspect on bail, risk factors should be taken into account. The officer should also try to consult the victim, read the victim's statements (including the victim personal statement, if there is one)¹³¹ and records of interviews before making this decision. All decisions should be justified and recorded. Before a suspect is released from a police station, the victim should be informed of the impending release, and this notification should be recorded. If the police decide not to charge the suspect, they should inform the victim of this decision. It is also the police's responsibility to inform the victim when there is a decision not to prosecute, following a discussion between the investigating officer and the CPS. This should be done within one to five working days of the charge occurring.¹³²

Whenever a victim decides to withdraw support for the prosecution, the domestic abuse officer should take a withdrawal statement describing the reasons for this decision; this should include confirmation of the truthfulness of the original

¹²⁹ Robert Reiner *The Politics of the Police* (OUP 2010) 128, 172; Silvestry and Crowther-Dowey (n 117) 90.

¹³⁰ NPIA (n 113) 26.

¹³¹ *Ibid* 70.

¹³² *Ibid* 68.

statement made to the police, whether the victim was put under pressure to withdraw, the nature of the complaint, the victim's reasons for withdrawing it and with whom the case has been discussed, whether civil proceedings will be considered and the impact on the victim and children if the prosecution continues.¹³³ This statement should be accompanied by a revision of the risk assessment and safety plan for the victim. The withdrawal statement should then be sent to the CPS along with a report from the officer working on the case.¹³⁴

The ACPO guidance emphasises the importance of multi-agency work in preventing and addressing domestic violence incidents.¹³⁵ Included in this multi-agency approach is the participation in Domestic Violence/Abuse Forums, which assist in the delivery of agreed targets, such as providing assistance to victims and Local Safeguarding Children Boards.¹³⁶ Domestic abuse officers should also supervise the risk assessment and monitor the implementation of safety measures, especially in high-risk cases. Whenever required by the domestic abuse coordinator, they should also participate in the relevant MARAC and help prepare subject profiles and intelligence briefings. Domestic abuse officers have a large responsibility in ensuring that the correct procedures are put in place so that the investigation process is done appropriately and the victim receives support throughout the procedure; however, there is some concern that the establishment of Domestic Violence Units (DVU) has done little to improve the approach of the criminal justice system towards domestic violence and has worked better as a way

¹³³ Ibid 51.

¹³⁴ Ibid 52.

¹³⁵ Home Office, *Together We Can End Violence Against Women and Girls: A Strategy* (n 63) 31-32.

¹³⁶ NPIA (n 113) 106.

of diverting victims into civil courts.¹³⁷ The role of the domestic abuse officer is described in detail in the ACPO guidance, perhaps in response to the fact that Domestic Violence Officers, according to a review conducted on behalf of the Home Office in 1998, often felt isolated and little integrated into the police force structure.¹³⁸ A view that was echoed by Walklate's respondents who felt that they were not being 'taken seriously' by their organisations while working in DVUs.¹³⁹

Overall, ACPO provides very detailed guidance on police responses to domestic violence that may, at times, become difficult to keep up with, especially without specific training. This level of detail may be the result of the concern that police discretion is fraught with stereotypes and prejudice regarding domestic violence which results in a poor application of the law to the cases that police officers deal with.¹⁴⁰ By having very precise and detailed guidance, the scope for police discretion would arguably be reduced and a more standardised application of the law would be achieved. However, Hoyle draws attention to the fact that introducing more legislation and guidelines on domestic violence will not change the fact that police officers follow their own 'social and organisational precepts' and react to an interaction with other relevant actors when addressing a situation of domestic violence, particularly the victim, as interaction with the victim, for example, has been found to explain why there was not a significant rise in arrests following the introduction of Home Office Circular 60/1990.¹⁴¹ The lack of

¹³⁷ Patel (n 58) 73.

¹³⁸ Joyce Plotnikoff, and Richard Woolfson, 'Policing Domestic Violence: Effective Organisational Structures' Paper 100 (1998) *Police Research Series* 20.

¹³⁹ Sandra Walklate *Gender, Crime and Criminal Justice* (Willan 2004) 157.

¹⁴⁰ Edwards (n 6) 92; Reiner (n 129) 172; Silvestry and Crowther-Dowey (n 117) 90.

¹⁴¹ Caroline Hoyle, *Negotiating Domestic Violence: Police, Criminal Justice and Victims* (Oxford University Press 2000) 17, 211.

adequate implementation of policy developments on domestic violence is a recurring problem with the justice system.¹⁴² This is most visible in the failure of frontline staff to correctly identify and investigate incidents of domestic violence that have led to the death of women at the hands of partners, former partners or family members, such as Banaz Mahmoud in 2006 (who was killed by members of her extended family in a so called 'honour' crime), or Claire Wood in 2009 (who was killed by her former partner, who had a history of violence against women). The lack of adequate responses in such high-profile cases led the Home Office to commission a review of police responses to domestic violence in 2013, which should elicit its first results in April 2014.¹⁴³

Crown Prosecution Service

The CPS has also tried to improve its approach to domestic violence with a number of initiatives included in the CPS Policy for Prosecuting Cases of Domestic Violence.¹⁴⁴ This policy is designed as guidance for the CPS itself but also, and primarily, for those who support victims of domestic violence to be aware of what the CPS does.¹⁴⁵ The policy seeks to prioritise the safety of victims of domestic violence, while reflecting the government's multi-agency policies to address

¹⁴² Fawcett Society 'Engendering Justice – from Policy to Practice, Final report of the Commission on Women and the Criminal Justice System' (Fawcett Society 2009)

<http://www.ccrm.org.uk/images/docs/engendered_justice.pdf> accessed on 12 February 2014, 9.

¹⁴³ Home Office 'Major Review of Police Response to Domestic Violence' (Home Office 2013)

<<https://www.gov.uk/government/news/major-review-of-police-response-to-domestic-violence>> accessed 12 February 2014.

¹⁴⁴ Crown Prosecution Service, 'Policy for Prosecuting Cases of Domestic Violence' (n 17).

¹⁴⁵ Ibid 3.

domestic violence.¹⁴⁶ In fact, since 2001, every CPS area has a domestic violence coordinator, who works with other agencies in situations of domestic violence. Each CPS area also includes a Witness Care Unit, staffed by CPS and police, which provides a single point of contact and is specifically designed to provide support to witnesses.¹⁴⁷ Moreover, all CPS prosecutors and case workers have been trained on domestic violence and are recommended to introduce themselves to victims and witnesses before starting a trial (as per recommendation of the Code of Practice for Victims of Crime), thus responding to a frequent complaint from victims of lack of communication with the representative of the CPS.¹⁴⁸ There is also an acknowledgement from the CPS that victims from different ethnic communities may have added difficulties in approaching the criminal justice system, for reasons such as experiencing racism, having trouble understanding and speaking English, being economically dependent on the abuser or having an unstable immigrant status, as well as cultural and religious beliefs.¹⁴⁹

Whenever the police suspect that a criminal offence relating to domestic violence has occurred, they must refer the case to the CPS.¹⁵⁰ The CPS will then prosecute on behalf of the state (rather than the victim), which means that the CPS may proceed with a prosecution even when the victim decides to withdraw her support.¹⁵¹ In order to address the withdrawal of complaints, the CPS is encouraged to prosecute cases of domestic violence even if the victim withdraws her complaint; however, in what seems to be a very delicate balance of interests,

¹⁴⁶ Ibid 5.

¹⁴⁷ Ibid 8.

¹⁴⁸ Ibid 40, 45; Cook et al. (n 74) 83.

¹⁴⁹ Crown Prosecution Service 'Policy for Prosecuting Cases of Domestic Violence' ibid 6.

¹⁵⁰ Ibid 13.

¹⁵¹ Ibid 13.

the victim's safety should also feature prominently amongst the factors in the CPS' decision to prosecute.¹⁵²

In order to decide whether to prosecute, the CPS follows the Code for Crown Prosecutors.¹⁵³ According to this code, in most cases, for a prosecution to go ahead, it must satisfy the Full Code Test, which has two stages, the public interest stage and the evidential stage.¹⁵⁴ This means that the CPS needs to be satisfied that i) there is a public interest in this prosecution, or in a different way, that there are no factors that lead to this prosecution not being in the public interest (factors to take into account to determine the existence of public interest include the seriousness of the offence and whether children live in the house),¹⁵⁵ and ii) the evidence gathered is enough for there to be a realistic prospect of conviction.¹⁵⁶ Whenever there is insufficient evidence to apply the Full Code test, but the person detained is considered unsuitable for bail and there are prospects of obtaining further evidence relevant to the case, a decision to charge may be reached using the Threshold Test. The Threshold Test consists of i) the prosecutor having at least a reasonable suspicion that the person detained committed the offence, considering the evidence available, and that this evidence could be presented in a court of law if the case were tried; and ii) the prosecutor being satisfied that by proceeding with the investigation further evidence will be found, in reasonable time, that would support a conviction.

¹⁵² Ibid 5.

¹⁵³ Crown Prosecution Service 'Code for Crown Prosecutors' (Crown Prosecutions Service 2010) <<http://www.cps.gov.uk/publications/docs/code2010english.pdf>> accessed 12 May 2010.

¹⁵⁴ Ibid 7.

¹⁵⁵ Ibid 26.

¹⁵⁶ Ibid 7.

Because there is no offence of domestic violence as such in English law, the charges will reflect the incidents that took place, the seriousness of the offence, the existence of premeditation and the injuries suffered by the victim. In order to deal with this situation in a more efficient and standardised way, the CPS and the police have agreed charging standards for offences against the person.¹⁵⁷ There is also an awareness that civil proceedings may be occurring in tandem with criminal ones, and that sharing information may be essential for appropriate decisions to be reached. The CPS is also aware that the violation of a non-molestation order is now a criminal offence but that the victim may choose not to go to the police but to pursue a civil action for contempt of court instead.¹⁵⁸ Should the CPS decide not to prosecute, the victim will be informed by letter, which also includes information on support services. There is an acknowledgement that the potential offender will have access to this letter but there is no alternative suggested in the CPS guidance.¹⁵⁹ Moreover, if the victim has difficulty understanding English, she would have difficulty understanding the CPS' decision.

Should the victim withdraw her support for the prosecution, the CPS needs to take into account the victim's safety and the reasons for the withdrawal. The procedure following the withdrawal will be supervised by a prosecutor experienced in domestic violence and will entail the aid of the police in determining the reasons behind the victim's decision and taking a written statement from the victim.¹⁶⁰

¹⁵⁷ Crown Prosecution Service 'Offences Against the Person, Incorporating the Charging Standard' (Crown Prosecution Service 2009) <http://www.cps.gov.uk/legal/l_to_o/offences_against_the_person/> accessed 13 May 2010; Crown Prosecution Service, 'Policy for Prosecuting Cases of Domestic Violence' (n 17) 32.

¹⁵⁸ Crown Prosecution Service, 'Policy for Prosecuting Cases of Domestic Violence' *ibid* 35.

¹⁵⁹ *Ibid* 14.

¹⁶⁰ *Ibid* 20.

Insisting upon the prosecution of an offender may however not be in the victim's best interest. Reasons for withdrawing complaints range from fear of retaliation to financial or emotional distress caused by the imprisonment of the offender, but also the sense that the procedure will not have a deterrent effect on the abuser or result in an effective protection of the victim.¹⁶¹ Moreover, a withdrawal of a complaint may be due to the fact that the victim's goal, for example of making the abuser change his behaviour, has been achieved;¹⁶² this discussion will be reprised in chapter four of this dissertation.

The victim may be asked to come to court and testify against her wishes, but this decision will only be made when all the foreseeable consequences of such action, namely for the victim's safety, have been taken into account.¹⁶³ The compellability of the victim to give evidence is a contentious issue. Edwards describes the two extreme positions regarding this matter either as a way of the state imposing its power over individuals' private lives or a way of improving responses to domestic violence by ending an archaic idea that the state should not intervene in family life.¹⁶⁴ Compelling a victim to testify relieves her of the decision of whether to testify against her abuser or not. There is however concern that hostile witnesses are not welcome by the police or the CPS, and that compelling a witness to testify against her wishes will only cause her to experience further stress. Edwards summarises her position by saying that by compelling the witness to testify, the state is sending out an important message, that domestic violence is not an

¹⁶¹ Herring (n 6) 297; Harne and Radford (n 9) 131.

¹⁶² David Ford, 'Prosecution as a Victim Power Resource: A Note on Empowering Women in Violent Conjugal Relationships' (1991) 25 2 *Law and Society Review* 313, 318, 331.

¹⁶³ Crown Prosecution Service, 'Policy for Prosecuting Cases of Domestic Violence' (n 17) 24.

¹⁶⁴ Edwards (n 6) 213.

unimportant matter and that the prosecution of the offender should be pursued as in any other crime; however, the success of such a measure will depend very much on whether the police and CPS take action or not.¹⁶⁵ In fact, research has found that the CPS discontinues many prosecutions when the victim withdraws her complaint.¹⁶⁶

Some authors see mandatory prosecution and witness compellability as aggressive prosecution practices which result in yet another form of violence being imposed upon victims of domestic violence.¹⁶⁷ Ford considers mandatory prosecution to be in fact a transfer of control over the victim's life from the abuser to the prosecutor, leaving the victim with no control of the situation.¹⁶⁸ Although there seems to be an increase in the number of convictions in areas where a no-drop policy is adopted, this can be explained by careful screening of cases by prosecutors before accepting to prosecute a case rather than a genuine overall acceptance of the policy that all domestic violence cases should be prosecuted.¹⁶⁹ Moreover, there is little evidence that adopting mandatory prosecution in itself serves as a deterrent for offenders and therefore protects potential victims of domestic violence.¹⁷⁰ What such a practice does is to reshape the relationship between victims, offenders and the criminal justice system. If before more hard-line policies towards domestic violence were adopted there was little concern about prosecuting domestic

¹⁶⁵ Ibid 217.

¹⁶⁶ Burton (n 1) 297.

¹⁶⁷ Madden Dempsey also recognises this dimension to mandatory prosecution, despite ultimately defending its use: Madden Dempsey, *Prosecuting Domestic Violence: A Philosophical Analysis* (Oxford 2009) 208.

¹⁶⁸ David Ford, 'Coercing Victim Participation in Domestic Violence Prosecutions' (2003) 18 *Journal of Interpersonal Violence* 669, 672.

¹⁶⁹ Ibid 674.

¹⁷⁰ Ibid 678.

violence, now there is an emphasis on gathering evidence and making sure that the cases that are prosecuted result favourably for the prosecution, which does not necessarily mean for victims, who may not see prosecution as an adequate solution for their problem, for example if they are economically dependent upon the offender. The potentially damaging effect of such policies is illustrated in Guzick's research in the USA on the impact of mandatory prosecution of domestic violence on abusers, where guilty pleas were relentlessly sought and non-contact orders used to achieve these when plea bargaining.¹⁷¹

The CPS publishes an annual report on Violence Against Women and Girls, the most recent relating to the years 2012-2013.¹⁷² This report includes information on offenders, victims and the prosecution of crimes related to domestic violence, amongst other offences. In terms of prosecution of incidents of domestic violence, there was a 1% decrease in charges in 2012-13 when compared 2011-12.¹⁷³ The rate of convictions remained relatively stable at 74.3 per cent, compared with 73.3 per cent in 2011-12.¹⁷⁴ A closer look at the reasons behind unsuccessful prosecutions, specifically in terms of victim retraction, non-attendance and lack of support for the prosecution reveals a less positive picture. Ninety two per cent of convictions are due to guilty pleas. Despite an emphasis on securing different forms of evidence and a strong relationship with the police in delineating a strategy for the prosecution, 37 per cent of failed prosecutions are due to the

¹⁷¹ Keith Guzick, 'The Forces of Conviction: The Power and Practice of Mandatory Prosecution upon Misdemeanour Domestic Battery' (2007) 32 *Law and Social Inquiry* 41, 43, 50.

¹⁷² Crown Prosecution Service 'Violence Against Women and Girls Crime Report 2012-2013' (Crown Prosecution Service 2012) <http://www.cps.gov.uk/publications/docs/cps_vawg_report_2013.pdf> accessed 4 September 2013.

¹⁷³ *Ibid* 13.

¹⁷⁴ *Ibid*.

victim retracting evidence or failing to attend court, a four per cent increase compared with the previous year.¹⁷⁵ Although policy emphasises that the prosecution of offenders should not be dependent on women's support for the prosecution, this is still a difficult area for the CPS, as making an application for hearsay evidence under sections 114 and 116 of the Criminal Justice Act 2003 or summoning the victim are deemed poor alternatives, either because courts are reluctant to grant permission for hearsay evidence or because summonses are deemed extreme measures that can only be used as a last resort, with an effort needing to be made to ensure that these do not impact negatively on victims and their children.¹⁷⁶

Housing

Obtaining an occupation order can be a difficult process, and often victims have to find alternative accommodation, even if only temporarily in order to escape domestic violence. According to the Department for Communities and Local Government, in 2006 domestic violence accounted for around 13,000 cases of homeless.¹⁷⁷

¹⁷⁵ Crown Prosecution Service 'Violence Against Women and Girls Crime Report 2011-2012' (Crown Prosecution Service 2011) 19 <http://www.cps.gov.uk/publications/docs/cps_vawg_report_2012.pdf> accessed 4 September 2013; *ibid* 23.

¹⁷⁶ Crown Prosecution Service 'Violence Against Women and Girls Crime Report 2010-2011' (Crown Prosecution Service 2010) 17 <http://www.cps.gov.uk/publications/docs/CPS_VAW_report_2011.pdf> accessed 4 September 2013; *ibid* 24.

¹⁷⁷ Department for Communities and Local Government 'New Support for Domestic Violence Victims – Preventing Homelessness' (Department for Communities and Local Government 2006) <<http://www.communities.gov.uk/news/corporate/newsupportdomestic>> accessed 2 July 2009.

Refuges are meant to provide a temporary solution in terms of alternative accommodation for victims of domestic violence, and many victims will have to rely on local authorities for long-term accommodation. However, long-term accommodation is often not easy to find and the waiting lists for re-housing are increasing, thus aggravating a shortage of short-term accommodation in refuges.¹⁷⁸ Research found that the direct management of refuges by housing associations was putting at risk the work of volunteers in empowering women, and decreasing the quality of the service provided by only focusing on the needs of women and children, without an integrated approach to the complexities of domestic violence.¹⁷⁹

Sanctuary Schemes, in which victims remain in their homes (for example, after being granted an occupation order) and safety measures are adopted, are an alternative to other forms of long-term accommodation.¹⁸⁰ However, this may be used as a low-cost alternative to providing adequate long-term accommodation, especially when it consists only of some changes being made to increase the safety of the victim, such as changing the locks and installing safety lights.¹⁸¹ In fact, the Government in its guidance for local authorities regarding the setting up of Sanctuary Schemes highlights the reduced costs of such measures when compared

¹⁷⁸ House of Commons Home Affairs Committee 'Domestic Violence, Forced Marriage and "Honour"-Based Violence' (n 106) 82-84.

¹⁷⁹ Nicola Harwin, 'New Opportunities, Old Challenges? A Perspective from Women's Aid' (n 63) 38.

¹⁸⁰ Department for Communities and Local Government 'Options for Setting up a Sanctuary Scheme' (Department for Communities and Local Government 2006)
<<http://www.communities.gov.uk/documents/housing/pdf/154295.pdf>> accessed 15 February 2010.

¹⁸¹ House of Commons Home Affairs Committee, 'Domestic Violence, Forced Marriage and "Honour"-Based Violence' (n 106) 74.

to temporary accommodation as one of their benefits (albeit not the primary one).¹⁸²

According to the Housing Act 1996, local authorities have a duty to provide support in cases of homelessness, when the homelessness is not considered to be the fault of the homeless person. Domestic violence falls into this category, as it is not considered one's fault to leave a home where one is at risk of violence.¹⁸³ The Homelessness Act 2002 has made some changes to the Housing Act 1996, namely in terms of housing authorities having to adopt an integrated approach to support people who become homeless.¹⁸⁴

Section 177 of the Housing Act 1996, states that if it is probable that domestic violence will occur, it is not reasonable for a person to continue to occupy her current accommodation for the purposes of determining (in)voluntary homelessness. The meaning of 'violence' in section 177 of the Housing Act was interpreted as requiring some form of physical violence in *Danesh v Kensington and Chelsea RLBC* in 2006,¹⁸⁵ and affirmed by the Court of Appeal in *Yemshaw v London Borough of Hounslow* in 2009.¹⁸⁶ On appeal however, the Supreme Court ruled that the concept of violence should be interpreted to include forms of abuse which are not physical and, directly or indirectly, may provoke the risk of harm.¹⁸⁷ This brings the interpretation of the Housing Act 1996 closer to the notion of

¹⁸² Department for Communities and Local Government (n 176) 5.

¹⁸³ Housing Act 1996 s 177.

¹⁸⁴ Home Office, *Homelessness Act 2002 Explanatory Notes* (Home Office 2002)

<http://www.opsi.gov.uk/acts/acts2002/en/ukpgaen_20020007_en_1.htm> accessed 2 July 2009.

¹⁸⁵ [2007] HLR 17 [14].

¹⁸⁶ [2009] EWCA Civ 1543.

¹⁸⁷ *Yemshaw v Hounslow LBC* [2011] UKSC 3.

domestic violence used by the Home Office and the CPS, both including in their definition of domestic violence physical, psychological and financial abuse, and stating that it is often the combination of various types of violence that has a particularly damaging effect on victims.¹⁸⁸ Access to housing resources can be extremely difficult for victims of domestic violence, and until recently, especially for those who did not suffer physical violence. Both housing authorities, through a tight housing policy, and courts, by not granting occupation orders except in extreme circumstances, as seen earlier in this chapter, make housing resources very difficult to access for these victims.

Local implementation of domestic violence policy

Although governmental policy on domestic violence sets basic targets that need to be met, the actual shape that these take when implemented and the assessment of their adequacy is done at a local level. This may lead to varying practices and levels of success in different areas. It is therefore important for the purpose of understanding Portuguese women's invocation of law in situations of domestic violence to discuss the implementation of these initiatives at a local level, and especially in areas of high density of Portuguese immigrants.

The areas analysed in this chapter were chosen because they are areas where a substantial number of Portuguese immigrants live. The areas selected for analysis

¹⁸⁸ Crown Prosecution Service, 'Policy for Prosecuting Cases of Domestic Violence' (n 17) 10; Home Office, 'Domestic Violence' <<http://www.homeoffice.gov.uk/crime/violence-against-women-girls/domestic-violence/>> accessed 14 March 2013.

are London (specifically Lambeth), Reading and Norfolk.¹⁸⁹ Despite having a high volume of Portuguese immigrants, none of these areas has a domestic violence policy that specifically mentions the Portuguese community.

The areas that will be looked at in terms of providing support for domestic violence are local domestic violence policies, information provided by local councils and police forces, multi-agency work, use of MARACs, IDVAs and SDVCs, and housing policy in relation to domestic violence.

Lambeth

The borough of Lambeth is situated in South London. It is an urban area, densely populated, which in 2007 featured in 5th place among the most deprived boroughs in London.¹⁹⁰ According to the 2011 census, Lambeth is one of the most diverse boroughs in London, with only 39 per cent of its population made up of White British individuals.¹⁹¹ After English, Portuguese is the most spoken language in the borough,¹⁹² and Lambeth has the highest proportion of individuals of Portuguese

¹⁸⁹ BBC News, 'Born Abroad, An Immigration Map of Britain' *BBC News* (15 February 2010) <http://news.bbc.co.uk/1/shared/spl/hi/uk/05/born_abroad/countries/html/portugal.stm> accessed 15 February 2010; IPPR, 'Britain's Immigrant Communities More Diverse Than Ever' *IPPR* (2005) <<http://www.ippr.org.uk/pressreleases/?id=1688>> accessed 15 February 2010; PortCities, 'London: The Portuguese Community in the Port of London' <<http://www.portcities.org.uk/london/server/show/ConNarrative.110/chapterId/2337/The-Portuguese-Community-in-the-Port-of-London.html>> accessed 15 February 2010.

¹⁹⁰ Lambeth, 'Statistics and Census Information' <<http://www.lambeth.gov.uk/Services/CouncilDemocracy/StatisticsCensusInformation/>> accessed 17 February 2010.

¹⁹¹ Lambeth, 'About Lambeth' (Lambeth 2013) <<http://www.lambeth.gov.uk/Services/AboutLambeth/>> accessed 14 March 2013.

¹⁹² *Ibid.*

origin in England.¹⁹³ Lambeth is made up of 21 wards, one of which is Stockwell, also known as 'Little Portugal'.¹⁹⁴ Another ward in Lambeth with a significant Portuguese population is North Lambeth (especially Vauxhall),¹⁹⁵ making this borough one of the most important in terms of Portuguese presence in London and the UK.

In terms of local policy to address domestic violence, the Safer Lambeth Partnership published the 'Violence Against Women and Girls Strategy 2011-14' in 2011 and the 'Lambeth Domestic Violence Strategy Plan 2009-12' in 2009. The 'Violence Against Women and Girls Strategy 2011-14' follows the Government's *Call to End Violence Against Women and Girls* closely and sets out what it calls a more 'focused' and 'integrated' approach to violence against women and girls.¹⁹⁶ It contains the borough's policy regarding domestic violence, which emphasises the need for multi-agency work, raising awareness about domestic violence, and working with the justice system in terms of making best use of offender management programmes to reduce re-offending.¹⁹⁷ Although no specific provisions are made for BME women, 58 per cent of all referrals made to a MARAC were for victims with a BME background.¹⁹⁸ In terms of information available on domestic violence, the Lambeth Council webpage provides information on violence

¹⁹³ Ibid.

¹⁹⁴ Lambeth, 'Stockwell' <<http://www.lambeth.gov.uk/Services/AboutLambeth/Stockwell.htm>> accessed 14 March 2013.

¹⁹⁵ Lambeth, 'North Lambeth Town Centre Ward Data Tables' (Lambeth 2003) 4 <<http://www.lambeth.gov.uk/NR/rdonlyres/627E8D41-6441-4855-984F-E6E9EE82F28E/0/024609.pdf>> accessed 15 February 2010; BBC News, 'Born Abroad, An Immigration Map of Britain' (n 185).

¹⁹⁶ Safer Lambeth Partnership, 'Violence Against Women and Girls Strategy 2011-14' (Safer Lambeth Partnership 2011) 3, 5 <<http://www.lambeth.gov.uk/NR/rdonlyres/6418B7FA-6520-420E-B324-082C93907132/0/ViolenceAgainstWomenAndGirlsStrategy201114.pdf>> accessed 14 March 2013.

¹⁹⁷ Ibid 21.

¹⁹⁸ Ibid 14.

against women and girls¹⁹⁹ and a list of helplines as well as the contact of the local Gaia centre which runs the Lambeth Violence Against Women and Girls hub.²⁰⁰

In terms of multi-agency work, there has been a MARAC running in Lambeth since 2007.²⁰¹ The participating agencies include the Lambeth Police community safety unit, London Probation Service and a number of voluntary or charitable organisations such as Solace Women's Aid and Gaia domestic violence centre.²⁰² Victims are referred to Lambeth MARAC on the basis of three criteria: professional judgement, being at 'visible high-risk' according to the CAADA MARAC Risk Indicator Checklist, and whenever there is a risk of the situation escalating, for example if there have been three or more incidents of domestic violence or seven or more incidents not related to domestic violence in the past 12 months.²⁰³ The MARAC meets monthly and meetings are chaired by the Detective Inspector of the Lambeth Police community safety unit and coordinated by the Lambeth Council Domestic Violence Project Officer.²⁰⁴

¹⁹⁹ Lambeth, 'What is Violence Against Women and Girls (VAWG)?'

<<http://www.lambeth.gov.uk/Services/CommunityLiving/CrimePrevention/DomesticViolence/WhatIsViolenceAgainstWomenAndGirls.htm>> accessed 14 March 2013.

²⁰⁰ Lambeth, 'Where To Go If You Need Support'

<<http://www.lambeth.gov.uk/Services/CommunityLiving/CrimePrevention/DomesticViolence/WhereToGoIfYouNeedSupport.htm>> accessed 14 March 2013.

²⁰¹ Safer Lambeth Partnership, 'The Lambeth Domestic Violence Action Plan 2009-2012' (Safer Lambeth Partnership 2010) 14

<[http://www.lambeth.gov.uk/moderngov/Published/C00000556/M00006978/A100009078/\\$07bDomesticViolenceAnnex.docA.ps.pdf](http://www.lambeth.gov.uk/moderngov/Published/C00000556/M00006978/A100009078/$07bDomesticViolenceAnnex.docA.ps.pdf)> accessed 16 February 2010.

²⁰² Lambeth, 'Lambeth Multi-Agency Risk Assessment Conference (MARAC)'

<<http://www.lambeth.gov.uk/Services/CommunityLiving/CrimePrevention/DomesticViolence/MARAC.htm>> accessed 14 March 2013.

²⁰³ Ibid.

²⁰⁴ Ibid.

All victims who come into contact with the Lambeth MARAC are allocated an IDVA.²⁰⁵ Two projects have been put in place in Lambeth for the detection and referral of victims of domestic violence to IDVAs. One of these is the MOZAIC project, whose remit includes training health professionals, such as doctors and midwives in maternity and genitourinary services to identify signs of domestic violence.²⁰⁶ The other project is called Reach, and although also based on health provision, focuses on the Accidents and Emergency department of the Guys and St Thomas NHS Foundation Trust.²⁰⁷ There is currently no SDVC in Lambeth. The closest SDVC is possibly the Croydon SDVC.²⁰⁸

Lambeth has a specific policy on housing and domestic violence called 'Lambeth Housing Domestic Violence Policy'.²⁰⁹ This consists mainly of guidelines for professionals and tenants on how to address issues such as confidentiality and priority access to housing when dealing with victims of domestic violence.²¹⁰ A very brief mention is also made of victims of domestic violence in terms of promoting independence as an alternative to residential care in Lambeth's Housing Strategy 2009-2013.²¹¹ The 'Lambeth Housing Strategy 2012-16' mentions the need to implement the strategy laid down in Safer Lambeth's

²⁰⁵ Safer Lambeth Partnership, 'The Lambeth Domestic Violence Action Plan 2009 -2012' (n 197) 14.

²⁰⁶ Ibid 18.

²⁰⁷ Ibid 19.

²⁰⁸ Crown Prosecution Service, 'Specialist Domestic Violence Courts'

<<http://www.cps.gov.uk/publications/equality/vaw/sdvc.html#a24>> accessed 3 April 2013.

²⁰⁹ Lambeth, 'Lambeth Housing Domestic Violence Policy' (Lambeth 2005)

<<http://www.lambeth.gov.uk/NR/rdonlyres/3FF5FF67-C5F9-4F49-A833-ADAC64B9B9DD/0/DVPOLLambeth.pdf>> accessed 15 February 2010.

²¹⁰ Ibid 3.

²¹¹ Lambeth, 'Lambeth's Housing Strategy 2009-2013' (Lambeth 2009) 25

<<http://www.lambeth.gov.uk/NR/rdonlyres/6F88A76C-23DA-4A1A-97A5-8228C9BF8BF6/0/HousingStrategy20092013.pdf>> accessed 15 February 2010.

'Violence Against Women and Girls (VAWG) Strategy 2011-2014' and to review and re-commission the refuge provision in the area, ensuring that specialist services are available to support victims, and continue to work on long term solutions for women who experience violence.²¹² Lambeth also embraced the Sanctuary Scheme model under the Lambeth Sanctuary Scheme.²¹³

Reading

Reading is a town located in the county of Berkshire. Reading is an urban area with a diverse multi-cultural population. The largest ethnic minority in Reading is of Pakistani origin, followed by Black Caribbean, Indian and Black African.²¹⁴ A report on the ethnic population of Reading published by Reading Supporting People 2005-2010 Commissioning Strategy, under the title 'Black, Minority and Ethnic Group Strategy', does not specifically mention the Portuguese as a significant ethnic group in Reading, however it states that Portuguese is the third of the six most requested languages for interpretation from Reading services, just after Urdu and Punjabi and ahead of Bengali and Chinese.²¹⁵ This is a clear indication that there is a substantial Portuguese-speaking community in Reading. Further

²¹² Lambeth, 'Lambeth Housing Strategy 2012-16' 14

<<http://www.lambeth.gov.uk/NR/rdonlyres/CA0422C8-E419-48C3-94CE-BD0665DAC48E/0/LambethHousingStrategy201216FINAL.pdf>> accessed 14 March 2013.

²¹³ Safer Lambeth Partnership, 'Domestic Violence, What is Domestic Violence?' <http://www.lambethfirst.org.uk/00,page,992,140,00.htm>> accessed 14 March 2013.

²¹⁴ Reading, 'Supporting People 2005-2010 Commissioning Strategy Appendix 4.21: Black, Minority and Ethnic Group Strategy' 3-4
<<http://www.reading.gov.uk/residents/HealthandSocialCare/AdultSocialCare/FindingACareOrSupportService/SupportedLiving/supporting-people-strategy-2005-2010/>> accessed 14 March 2013.

²¹⁵ Ibid 22.

evidence of a strong Portuguese community in Reading is the fact that a number of nurseries in the area are experiencing a high demand for places for Portuguese children.²¹⁶

The 'Reading Domestic Abuse Strategy 2011-14' acknowledges the Government's policy on violence against women and girls and sets up a coordinated approach to address domestic violence in the borough that focuses on the promotion of relationships free from domestic violence and targeting repeat victimisation.²¹⁷ It also focuses on domestic violence within high-risk groups, such as those whose members may experience language and cultural barriers in accessing help.²¹⁸ Following the policy established in 2008, multi-agency cooperation is considered essential for success in addressing domestic violence in Reading. Finally, a Domestic Violence Strategy Group ensures that the strategies set out in the action plans are met.²¹⁹

The Reading Borough Council has information on domestic violence available to the public. This includes a manual for practitioners and general advice for victims, as well as links to a number of victim support organisation and the Thames Valley

²¹⁶ Community Sense, 'Reading Central Area Community Infrastructure Report' (Community Sense 2008) 52

<http://www.reading.gov.uk/Documents/servingyou/planning/local_development_framework/Bac011_Central_Area_Community_Infrastructure_Study2008.pdf> accessed 18 February 2010.

²¹⁷ Safer Reading Partnership, 'Reading Domestic Abuse Strategy 2011-14' 4, 6

<<http://www.reading.gov.uk/residents/community-and-living/community-safety/domestic-abuse-and-race-crimes/domestic-abuse/reading-domestic-abuse-strategy/>> accessed 14 March 2013.

²¹⁸ Ibid 6.

²¹⁹ Ibid.

Police.²²⁰ In addition, Thames Valley Police also gives advice and support for victims of domestic violence, as well as having its own policy on domestic violence, which includes the use of a Domestic Abuse Unit to deal with domestic violence cases, and cooperation with the local MARAC and IDVA.²²¹

There is also a MARAC in Reading, which is chaired by the police.²²² Its coordination is the responsibility of the Domestic Abuse Unit of Thames Valley Police.²²³ The Domestic Abuse Strategy for Reading for 2008-2011 as well as the Reading Domestic Abuse Action Plans, revised in 2009, mention the role of IDVAs in improving communication between victims and the criminal justice system but do not go into detail about where these can be found and if they are to receive accredited training.²²⁴ The SDVC that hears cases in Reading is the Berkshire-

²²⁰ Reading Borough Council, 'Domestic Abuse and Race Crimes'

<<http://www.reading.gov.uk/residents/community-and-living/community-safety/domestic-abuse-and-race-crimes/domestic-abuse/domestic-violence-and-abuse/>> accessed 14 March 2013.

²²¹ Thames Valley Police, 'Crime Prevention, How We Deal With Domestic Violence' (Thames Valley Police 2013) <<http://www.thamesvalley.police.uk/crprev/crprev-domabu/crprev-domabu-whatdomabu/crprev-domabu-whatdomabu-howtvp.htm>> accessed 14 March 2013; Thames Valley Police, 'Domestic Abuse' 7 <<http://www.thamesvalley.police.uk/domestic-abuse-policy.pdf>> accessed 14 March 2013.

²²² Reading Borough Council, 'MARAC' <<http://www.reading.gov.uk/residents/community-and-living/community-safety/domestic-abuse-and-race-crimes/domestic-abuse/marac/>> accessed 14 March 2013.

²²³ Thames Valley Police, 'Reading Multi-Agency Risk Assessment Conferences (MARAC) Referral Form' <<http://www.reading.gov.uk/Documents/community-living/community-safety/Maracform.pdf>> accessed 24 March 2010.

²²⁴ Safer Reading Partnership, 'Domestic Abuse Strategy for Reading 2008-2011' 25 <<http://www.reading.gov.uk/Documents/community-living/community-safety/DV%20StrategyFinalV3NOACTIONPLANS.pdf>> accessed 24 March 2010; Reading Borough Council, 'Reading Domestic Abuse Strategy - Action Plans' (Reading Borough Council 2009) <<http://www.reading.gov.uk/Documents/community-living/community-safety/ACTIONPLANVERSIONRefreshNOVNONAMES.pdf>> accessed 24 March 2010.

Reading, Maidenhead, Newbury SDVC.²²⁵ Reading has set up a Sanctuary Scheme, through which victims of domestic violence and their families may choose to stay at home instead of seeking alternative temporary or permanent accommodation.²²⁶ As would be expected, there are a number of eligibility requirements for this scheme, such the prospect of the victim facing homelessness.²²⁷ Reading's policy on housing and homelessness acknowledges and takes into consideration Reading's Domestic Violence Strategy, however there is little mention specifically of domestic violence in Reading's latest Housing Strategy 2009-14.²²⁸

Norfolk

The county of Norfolk is situated in the East of England and, unlike Lambeth and Reading, it is largely a rural area. Data from the Census 2011 is being analysed at the time of writing this dissertation,²²⁹ however, different sources acknowledge that Norfolk has a large Portuguese population. Some sources put this population at around 25,000, although a review commissioned by the Norwich and Norfolk Racial Equality Council acknowledges that this is a crude estimation; the review

²²⁵ Crown Prosecution Service, 'Specialist Domestic Violence Courts' (n 204).

²²⁶ Reading Borough Council, 'Reading Sanctuary Scheme'

<<http://www.reading.gov.uk/residents/community-and-living/community-safety/domestic-abuse-and-race-crimes/domestic-abuse/reading-sanctuary-scheme/>> accessed 14 March 2013.

²²⁷ Ibid.

²²⁸ Reading Borough Council, 'Firm Foundations: Reading Borough Council Housing Strategy 2009-2014' 7, 63 <<http://www.reading.gov.uk/residents/Housing/HousingStrategiesandPlans/firm-foundations-housing-strategy-2009-2014-docume/>> accessed 14 March 2013.

²²⁹ Norfolk Insights, '2011 Census – Second Release of Statistics' (Norfolk Insights 2012)

<<http://www.norfolkinsight.org.uk/census#resources>> accessed 15 March 2013.

goes as far as calling this 'an invisible population according to official statistics'.²³⁰ According to the 'BME Communities Inclusion Project 2006', although there is a specific category of 'White-Portuguese' for identifying school pupils according to their ethnicity, very few pupils in Norfolk are identified under that category; anecdotal evidence of school staff however indicates that there are high levels of Portuguese-speaking pupils in the area.²³¹ Thetford, Dereham and Swaffham (all in the Breckland district of Norfolk) have large Portuguese communities.²³² A Portuguese newspaper fully edited in England was established in Thetford in 2006²³³ and numerous Portuguese restaurants and coffee shops can be found in Thetford as well as other areas of the county, such as King's Lynn. West Norfolk and Great Yarmouth are also seeing a rise in terms of Portuguese immigrants and businesses in the area in the last few years,²³⁴ and there is a Portuguese

²³⁰ BBC News, 'Police Warning for Football Thugs' *BBC News* (2004)

<<http://news.bbc.co.uk/1/hi/england/norfolk/3851559.stm>> accessed 20 February 2010; Ewan Kennedy, 'BME Communities Inclusion Project' (Norwich and Norfolk Racial Equality Council 2006) 16, 68 <[http://www.equalbutdifferent.org.uk/pdfs/BME%20Communities%20Inclusion%20Project%20Report%20\(web\).pdf](http://www.equalbutdifferent.org.uk/pdfs/BME%20Communities%20Inclusion%20Project%20Report%20(web).pdf)> accessed 20 February 2010; Norfolk County Council, 'Equality Strategy for Norfolk April 2008 – March 2011' 39 <http://www.norfolk.gov.uk/consumption/groups/public/documents/general_resources/ncc071795.pdf> accessed 20 February 2010.

²³¹ Kennedy *ibid* 68.

²³² BBC Norfolk, 'Thetford's History of Revolution'

<http://news.bbc.co.uk/local/norfolk/hi/people_and_places/newsid_8354000/8354776.stm> accessed 20 February 2010; Kennedy *ibid* 68; Norfolk County Council, 'Equality Strategy for Norfolk April 2008 – March 2011' (n 226) 39.

²³³ Newswire Today!, 'UK-Portuguese Newspaper Launched in Thetford Norfolk' *Newswire Today!* (2006) <<http://www.newswiretoday.com/news/10592/>> accessed 22 February 2010.

²³⁴ BBC Norfolk, 'Yarmouth's Portuguese Café Life' *BBC Norfolk* (2006)

<http://www.bbc.co.uk/norfolk/content/articles/2006/02/13/features_portuguese_cafe_life_feature.shtml> accessed 20 February 2010; Kennedy (n 226) 69.

association in Great Yarmouth.²³⁵ The Portuguese who immigrate to Norfolk usually have jobs in agricultural or food processing industries.²³⁶

In 2009, Norfolk initiated a multi-agency programme to deal with domestic violence called 'Norfolk says No to Domestic Abuse and Sexual Violence', which was re-signed by the participating institutions in 2012.²³⁷ The initiative draws together the work of various agencies in the prevention of domestic violence and support of its victims.²³⁸ Norfolk Constabulary provides information for victims of domestic violence; this includes what domestic violence is, what to do when experiencing it and what to expect from the police.²³⁹ Norfolk County Council also offers information on what is domestic violence and what help is available in the county.²⁴⁰ Norfolk adopts a 'Coordinated Community Response' to domestic violence, which includes the existence of MARACs, IDVAs and an SDVC.²⁴¹ There is currently only one SDVC in Norfolk, situated in Norwich.²⁴² The Norfolk Community Law Service is a charity that promotes access to justice in the area. A

²³⁵ Kennedy *ibid* 2.

²³⁶ *Ibid* 21.

²³⁷ Norfolk Constabulary, 'Norfolk Restates Commitment as County Says No to Domestic Abuse' <<http://www.norfolk.police.uk/safetyadvice/norfolksaysno/domesticabusecampaign.aspx>> accessed 15 March 2013.

²³⁸ Domestic Abuse and Sexual Violence Board, 'Norfolk Says No to Domestic Abuse and Sexual Violence' (Norfolk County Council 2009) <http://www.norfolk.gov.uk/consumption/groups/public/documents/general_resources/ncc073032.pdf> accessed 15 March 2013.

²³⁹ Norfolk Constabulary, 'Domestic Abuse' <<http://www.norfolk.police.uk/safetyadvice/personalsafety/domesticabuse.aspx>> accessed 15 March 2013.

²⁴⁰ *Ibid*.

²⁴¹ Norfolk County Council, 'A Guide for Norfolk Partners, Multi Agency Risk Assessment Conferences (MARAC) Operating Guide' (Norfolk County Council 2011) 3 <<http://www.norfolk.gov.uk/view/NCC093721>> accessed 15 March 2013.

²⁴² Crown Prosecution Service, 'Specialist Domestic Violence Courts' (n 204).

number of services are available through this charity, including some related to domestic violence. The charity also offers its services in a number of languages, including Portuguese.²⁴³

In terms of housing, the Norfolk Council offers information on housing for victims of domestic violence, namely in terms of refuges and institutions that may be contacted in case of emergency.²⁴⁴ There is a Norfolk Sanctuary Scheme in place for victims of domestic violence, whereby safety is enhanced in victims' homes.²⁴⁵ Norfolk Council's 'The Housing Support Strategy 2011-15' has given domestic violence victims reduced priority status due to the expansion of refuges in the area.²⁴⁶ The priorities in this plan regarding housing provision for victims of domestic violence are instead to rationalise the costs and hours of support provided and, in the future, to raise the quality of accommodation with shared facilities.²⁴⁷

²⁴³ Norfolk Community Law Service, 'Home' <<http://www.ncls.co.uk>> accessed 20 August 2013; Norfolk Community Law Service 'Domestic Abuse Advice & Advocacy Service' <<http://www.ncls.co.uk/domestic/>> accessed 20 August 2013.

²⁴⁴ Norfolk County Council, 'Housing Support Services' <http://www.norfolk.gov.uk/Adult_care/Staying_independent/Housing_support_services/index.htm> accessed 15 March 2013; Supporting People in Norfolk, 'Norfolk Supporting People: Guide to Homelessness, Homelessness Prevention and Accommodation Support by District Council Area' (Norfolk County Council 2011) <<http://www.norfolk.gov.uk/view/ncc039262>> accessed 15 March 2013; Supporting People in Norfolk, 'Norfolk Supporting People: A Guide to Housing Support Services for People Experiencing Domestic Abuse' (Norfolk County Council 2011) <<http://www.norfolk.gov.uk/view/ncc039255>> accessed 15 March 2013.

²⁴⁵ Supporting People in Norfolk, 'Norfolk Supporting People: Guide to Homelessness, Homelessness Prevention and Accommodation Support by District Council Area' *ibid*; Supporting People in Norfolk, 'Norfolk Supporting People: A Guide to Housing Support Services for People Experiencing Domestic Abuse' *ibid*.

²⁴⁶ Norfolk County Council, 'The Housing Support Strategy 2011-15' (Norfolk County Council 2010) 11 <<http://www.norfolk.gov.uk/view/ncc088651>> accessed 15 March 2013.

²⁴⁷ *Ibid* 55.

Conclusion

Current legal provisions to address domestic violence in England fall into either the area of civil or criminal law, or both. This can portray a fragmented approach to the problem that may be confusing to victims, especially those with different cultural backgrounds. The intervention of different areas of the legal system, voluntary and state organisations, is unparalleled in Portugal and may therefore prove confusing for Portuguese immigrants living in England. Moreover, obtaining an occupation order can be difficult and can leave victims without adequate housing or financial provisions. Even if an occupation order is granted, any supplemental orders imposed on the offender are not enforceable as *Nwogbe v Nwogbe* demonstrated, leaving victims with no guarantee that payments of rent or utilities will continue to be made by the respondent. Also, whilst, the breach of a non-molestation order is a criminal offence, the breach of an occupation order is not, further contributing to the victim's fragile position.

The implementation of national policy on domestic violence relies on the collaborative work of different agencies, such as SDVCs, IDVAs, MARACs, the police and the CPS. SDVCs, MARACs and IDVAs were created to better protect victims and make offenders accountable through multi-agency cooperation. These objectives have been largely met, with victims especially appreciating the support provided through advocacy services. These institutions are however not without their criticisms and it is interesting to see that although IDVAs seem to have good approval rates amongst Black and ethnic minority women, MARACs and SDVCs are criticised for needing to enhance the representation of and work with Black and ethnic minorities. Moreover, the number of existing SDVCs is currently being

reduced, which could have negative implications for victims, who may have to travel further to go to court and result in an increase in the workload of those working in these courts.

The police and the CPS are essential in enforcing the law, especially criminal law, and also in the multi-agency work developed in SDVCs and MARACs. Both the police and the CPS have tried to enhance the protection of and communication with victims. Training on domestic violence, conduct of risk assessments and participation in multi-agency work became part of the approach to domestic violence, with both the police and the CPS developing very detailed policies to ensure the protection of victims and that prosecutions may continue despite victims withdrawing their support, albeit with limited success. The police tend to take charge of MARACs and to refer most cases for discussion in multi-agency fora, which may indicate an imbalance in power in the development of multi-agency work. Also, the emphasis on providing support and information to victims and prosecuting offenders, as a measure of success, may lead the police and the CPS to find it difficult to balance what are sometimes contradictory demands as not all victims think that prosecuting the offender is the appropriate way of dealing with domestic violence.

National policy on domestic violence relies on local implementation of its guidelines and policies. The local implementation of national policy in Lambeth, Reading and Norfolk has been fairly standardised, with all focusing on prevention and the dissemination of information on domestic violence through various agencies, and also running MARACs with the collaboration of IDVAs, local police and health representatives, as well as victim and women's support organisations

and housing associations. Also standardised is the lead role that statutory organisations, and especially the police, have in the chairing and coordination of MARACs. Local housing policies tend to focus more on emergency assistance for victims of domestic violence, such as refuges, and Sanctuary schemes, rather than long-term initiatives, which may not present an adequate solution for victims hoping to escape domestic violence.

The legal and policy responses provided in England for domestic violence are not only new for Portuguese immigrants but sometimes very different from what they would expect in their home country. The extent to which they are used in practice results from a complex process that involves cultural, structural and individual factors that need to be understood. The next chapters will explore these interactions in detail in order to explain Portuguese women's use of English legal and policy responses to domestic violence.

Chapter 4: Theoretical framework

The existence in England of a number of specific legal provisions to address domestic violence does not translate into their automatic use by victims of domestic violence. This may especially be the case when victims come from a different cultural background, as is the case with Portuguese immigrants living in England. The invocation of law results from an often complex subjective process, involving law, the justice system, culture and resources. In this chapter, a framework for analysis that captures this complexity is suggested, using theories of legal consciousness, studies on the invocation of law, and research on immigrant women's responses to domestic violence.

Overview of the theoretical framework

Early studies of legal consciousness tend to concentrate on the use of law, in what can be described as an 'instrumentalist' approach to law and society. In this approach, law and society are independent from each other and the concern is usually with the effectiveness of the legal system.¹ With the development of theories of legal consciousness, such as the work of Ewick and Silbey, a 'constitutive' approach² is adopted instead. This approach studies the invocation of

¹ Austin Sarat and Thomas Kearns, 'Beyond the Great Divide: Forms of Legal Scholarship and Everyday Life' in Austin Sarat and Thomas Kearns (eds), *Law in Everyday Life* (University of Michigan Press 1995) 23; Rosie Harding, *Regulating Sexuality, Legal Consciousness in Lesbian and Gay Lives* (Routledge 2011) 18.

² Harding, *Regulating Sexuality, Legal Consciousness in Lesbian and Gay Lives* *ibid.*

law by concentrating on 'law *in society*',³ that is the law as experienced and produced in everyday life.⁴ Law is understood as one of various constraints of social life, which in turn is affected by cultural and social practices.⁵ In this context, Ewick and Silbey are particularly influential in the development of a framework for the study of how individuals understand and use the law.⁶ By de-centring law from the analysis they instead focus on cultural codes and vocabularies that individuals use to interpret everyday facts in a legal way.⁷

According to Ewick and Silbey, it is common for individuals to have different perceptions and experiences of the law and the justice system as a whole; some individuals will avoid any contact with the law, whilst others will use the law with confidence in order to achieve their goals.⁸ The fact that individuals may take on different forms of legal consciousness results from an interaction of schemas and resources that they have different access to. Schemas are cultural codes, common vocabularies and conventions to which individuals refer to make sense of the

³ Patricia Ewick and Susan Silbey, *The Common Place of Law: Stories From Everyday Life* (University of Chicago Press 1998) 35.

⁴ Ewick and Silbey, *The Common Place of Law: Stories From Everyday Life* *ibid* 20-21; Dave Cowan 'Legal Consciousness: Some Observations' (2004) 67 *6 Modern Law Review* 928, 929-930, 932; Rosie Harding, "Dogs are "Registered", People Shouldn't Be": Legal Consciousness and Lesbian and Gay Rights' (2006) 15 *Social & Legal Studies* 511, 513.

⁵ Ewick and Silbey, *The Common Place of Law: Stories From Everyday Life* *ibid* 20; Laura Beth Nielsen, 'Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment' 34 *4 Law and Society Review* 1055, 1058.

⁶ Harding, *Regulating Sexuality, Legal Consciousness in Lesbian and Gay Lives* (n 1) 19.

⁷ Cowan (n 4) 929; Kathleen Hull, 'The Cultural Power of Law and the Cultural Enactment of Legality: The Case of Same-Sex Marriage' (2003) 28 *3 American Bar Foundation Journal* 629, 630; Harding, "Dogs are "Registered", People Shouldn't Be": Legal Consciousness and Lesbian and Gay Rights' (n 4) 513; Abigail Saguy and Forrest Stuart, 'Culture and Law: Beyond a Paradigm of Cause and Effect' (2008) 619 *Annals of the American Academy of Political and Social Science* 149, 158; Harding, *Regulating Sexuality, Legal Consciousness in Lesbian and Gay Lives* *ibid* 18.

⁸ Ewick and Silbey, *The Common Place of Law: Stories From Everyday Life* (n 3) 28.

world;⁹ schemas can be taken from one setting to another to help make unfamiliar circumstances understandable,¹⁰ and so can be imported from one country to another when immigrants relocate. Resources include both material assets and human capacities; these include capital, property, political connections and even physical strength.¹¹ Schemas and resources constantly redefine each other. When invoking schemas, individuals give resources meaning. Schemas, in turn, rely on resources to be invoked and maintain their relevance. When schemas are invoked in different contexts, new meanings are potentially created and resources reinterpreted, thus explaining the existence of different forms of legal consciousness.¹² Different access to resources and schemas explains individual differences in power and agency and informs different forms of legal consciousness.¹³ Ewick and Silbey propose three general forms of legal consciousness that will be discussed in this dissertation: 'before the law', 'with the law' and 'against the law'.

Portuguese culture is the central schema in the theoretical framework developed in this chapter. Barata et al. demonstrate the impact of Portuguese culture on the relationship of Portuguese-speaking women living in Canada with the law in the context of domestic violence.¹⁴ The overwhelming majority of Barata et al.'s respondents consider domestic violence unacceptable, with almost three quarters saying that women should seek help to end it and almost one quarter advocating

⁹ Ibid 40.

¹⁰ Ibid 40-41.

¹¹ Ibid 41.

¹² Ibid.

¹³ Ibid.

¹⁴ Paula Barata et al., 'Portuguese-Speaking Women Voice Their Opinions: Using Their Words to Teach about Wife Abuse' (2005) 15 *Women's Health Issues* 134.

the use of the justice system when escaping domestic violence.¹⁵ Nevertheless, when asked what they think Portuguese-speaking women actually do when abused, 60 per cent of respondents say that they would deal with it quietly, and just over 20 per cent reply that the reaction depends on the circumstances of the situation. In fact, only a minority of respondents mention using the justice system (3 per cent), and taking steps towards independence (1 per cent), as possible responses to domestic violence.¹⁶ When asked why respondents think that Portuguese-speaking women do not act as they 'should', but prefer to endure domestic violence, the majority attribute this to the 'Portuguese-speaking culture' and 'way of thinking', consisting of tolerance for abuse, and a close family unit and privacy as highly praised values in the Portuguese community.¹⁷ There is therefore a possibility that the 'Portuguese community' (a designation widely used to group the Portuguese population living outside Portugal),¹⁸ with its inherent cultural stereotypes, influences the attitudes of Portuguese women living in England towards the legal system in a similar way that it influences Barata et al.'s respondents.

Attitudes towards the law are mediated by factors that operate at social and individual level. As abstract concepts, schemas are often operationalised by resources; if schemas provide a framework for interpretation of the world, resources are the means through which individuals may change situations and

¹⁵ Ibid 138.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Secretaria de Estado das Comunidades Portuguesas, 'Portal das Comunidades Portuguesas' <<http://www.secomunidades.pt/web/guest/PostosConsulares>> accessed 22 September 2010.

affect others.¹⁹ Resources, therefore, also need to be taken into consideration when analysing forms of legal consciousness. For Ewick and Silbey, resources include a variety of aspects, from capital or property, to physical strength.²⁰ Because this dissertation focuses on the specific experience of Portuguese immigrants in England, the resources that are explored are those identified in specialised literature on the Portuguese, immigration and domestic violence. These include, amongst others, language proficiency, education, economic independence and immigration status.

Subjective understandings of law also result from a process that includes past experiences with the justice system and service providers. Service providers, for the purpose of this study, should be understood in a wide sense, including judges, lawyers, the police and victim support groups. Indeed, socio-legal studies often draw attention to the importance of past experiences with different service providers in either reinforcing an individual's likelihood of using the justice system or deterring them from doing so. Examples of this can be found in research by Felstiner et al., Bostock et al., Genn, Burman and Chantler and Lazarus-Black, amongst others.²¹ These studies found that establishing a positive relationship

¹⁹ Ewick and Silbey, *The Common Place of Law: Stories From Everyday Life* (n 3) 41; Patricia Ewick and Susan Silbey, 'Narrating Social Structure: Stories of Resistance to Legal Authority' (2003) 108 6 *American Journal of Sociology* 1328, 1335.

²⁰ Ewick and Silbey, *The Common Place of Law: Stories From Everyday Life* *ibid* 41.

²¹ William Felstiner et al., 'The Emergence and Transformation of Disputes: Naming, Blaming, Claming...' (1980-1981) 15 3/4 *Law and Society Review* 639; Hazel Genn, *Paths to Justice: What People Do and Think About Going to Law* (Hart Publishing 1999) 71, 228; Erica Burman and Khatidja Chantler, 'Domestic Violence and Minoritisation: Legal and Policy Barriers Facing Minoritised Women Leaving Violent Relationships' (2005) 28 *International Journal of Law and Psychiatry* 59; Mindie Lazarus-Black, 'Vanishing Complainants: The Place for Violence in Family, Gender, Work, and Law' (2008) 36 1 *Caribbean Studies* 37, 38; Jan Bostock, Maureen Plumpton and Rebekah Pratt, 'Domestic Violence

with service providers (both with voluntary and non-voluntary organisations) is key to an individual's decision to use (or re-use) the justice system to address their problems. In addition, service providers (and especially the police) are most often gatekeepers to the justice system.²² This means that should a service be deemed difficult to access, for example for being too far away or expensive, individuals are less likely to use it and are therefore also less likely to engage with the justice system, than if they had accessed and established a good rapport with that service.²³ Service providers and the relationship that individuals establish with them are therefore another aspect of legal consciousness explored in this dissertation.

Criticisms of theories of legal consciousness

Theories of legal consciousness are sometimes criticised for overstating the importance of law in everyday life or, in contrast, diluting it.²⁴ In both cases, the concern is that research on legal consciousness is flawed because it sees the law operating in situations where respondents would not naturally do so, or ignores the law by associating individual decision-making exclusively with other social mechanisms. One way of avoiding this criticism is to refrain from asking

Against Women: Understanding Social Processes and Women's Experiences' (2009) 19 *Journal of Community & Applied Social Psychology* 95, 103-105.

²² Ruth Fleury-Steiner et al., 'Contextual Factors Impacting Battered Women's Intentions to Reuse the Criminal Legal System' (2006) 34 3 *Journal of Community Psychology* 337, 338.

²³ Burman and Chantler (n 21) 338.

²⁴ Cowan (n 4) 934; Harding "'Dogs are "Registered", People Shouldn't Be": Legal Consciousness and Lesbian and Gay Rights' (n 4) 515; Anna-Maria Marshall, 'Communities and Culture: Enriching Legal Consciousness and Legal Culture; *Communities and Law: Politics and Cultures of Legal Identities* by Gad Barzilai' (2006) 31 1 *Law and Social Inquiry* 229, 238; Harding, *Regulating Sexuality, Legal Consciousness in Lesbian and Gay Lives* (n 1) 24.

respondents direct questions about the law and legality, and letting them give an account of their experiences in their own words instead. Subjective experiences are then analysed as they emerge from the respondents' discourses.²⁵ This is the approach adopted by most recent research on legal consciousness, including Ewick and Silbey's, and also in this dissertation.

Theories of legal consciousness are sometimes also criticised for being overly descriptive.²⁶ A number of studies have however demonstrated that the study of legal consciousness can be critical and analytical. Ewick and Silbey's work is an example of this when discussing resistance as the behaviour adopted by respondents 'against the law' to address their problems and the different forms that this may take.

Further criticism levelled against theories of legal consciousness questions the use of the term 'consciousness'. Theorists propose different definitions of consciousness, depending on the aim of their research. This can be interpreted as evidence of lack of consistency in the understanding of this concept. However, as Harding concludes, the strength of theories of legal consciousness is precisely that they offer the possibility of accessing different perspectives on law and legality.²⁷ The lack of consistency in the definition of consciousness is therefore not problematic, but merely the result of the use of theories of legal consciousness in studies with different aims and exploring different groups.²⁸ Consciousness in this

²⁵ Harding, *Regulating Sexuality, Legal Consciousness in Lesbian and Gay Lives* ibid 25.

²⁶ Harding "Dogs are "Registered", People Shouldn't Be': Legal Consciousness and Lesbian and Gay Rights' (n 4) 517.

²⁷ Harding, *Regulating Sexuality, Legal Consciousness in Lesbian and Gay Lives* (n 1) 26.

²⁸ Harding, *Regulating Sexuality, Legal Consciousness in Lesbian and Gay Lives* ibid.

dissertation refers to respondents' understanding and use (or non-use) of the mechanisms available in England to address domestic violence.

Finally, theories of legal consciousness are sometimes criticised for ignoring the importance of structural factors, such as race, gender and class, in the formation of legality.²⁹ There are however studies that try to address this criticism. An example of this is Nielsen's research on the regulation of street harassment. Nielsen's respondents agree that offensive public speech should not be regulated by law; however, the reasons for this vary by race and gender. Although a first reading of results might show a large consensus in Nielsen's respondents' legal stance, a careful analysis of structural factors reveals the existence of different underlying forms of legal consciousness, white women and black men and women being more likely than white men to interpret racist and sexist comments as personal as well as social problems.³⁰ This dissertation focuses on gender and ethnicity, as this is a logical consequence of studying immigrant women of Portuguese background. To aid the identification and analysis of further structural factors that may influence the views of respondents in this research, literature on the experiences of different immigrant groups in various geographical areas (for example, Latinas or South Asian women in North America and the UK) is also used. Structural factors, such as ethnicity, gender and class will therefore be analysed when discussing cultural aspects and individual resources that influence women's invocation of law.

It is clear from the discussion so far that legal consciousness and the invocation of law result from a dynamic and complex intersection of legal and cultural factors,

²⁹ Harding 'Dogs are "Registered", People Shouldn't Be': Legal Consciousness and Lesbian and Gay Rights' (n 4) 515.

³⁰ Nielsen (n 5) 1085, 1088.

individual resources and interaction with service providers. Each of these factors will be explored in more detail in this chapter.

Construction of legality and forms of legal consciousness

Genn published the results of a large-scale study in 1999 on the invocation of law in England and Wales when individuals experience 'justiciable problems'.³¹ Because Genn only explored responses to civil legal problems, her findings may not be completely generalisable to situations in which the criminal justice system may also be called upon, such as domestic violence. However, there are aspects that can be extrapolated from Genn's work that will be used here. Genn used a criterion to determine which 'justiciable problems' should be discussed in more detail as part of the study, which she called the 'triviality threshold'.

The triviality threshold represents the point beyond which individuals feel that a certain matter is sufficiently significant to do something about, even if this means taking an informal approach to the problem rather than using the justice system.³² The notion of the triviality threshold is important for the research conducted as part of this dissertation as it represents a first step towards the invocation of law. Genn distinguishes situations where, even though the matter is considered significant, respondents do not take any action because they feel that the problem is not serious enough, from those in which no action is taken for other reasons.³³ Respondents report very few problems as trivial, and Genn suggests that triviality

³¹ Genn (n 21) 5.

³² Ibid 36.

³³ Ibid.

is related to the type of problem faced. As such, problems related to relationships and family matters are less likely to be considered trivial than those related to injuries and work related incidents.³⁴ It is however not clear in Genn's study what is the reasoning behind respondents' decisions, for example, regarding what makes a family problem trivial or not, other than reflecting a certain anxiety and sense of helplessness derived from the potential consequences of such problems.³⁵ Pleasence et al. conducted follow up studies to Genn's original research that include greater focus on domestic violence. These studies reveal that domestic violence is one of the categories of problems about which the least number of respondents choose to do nothing.³⁶ However, apart from some specific problem-types, Pleasence et al. also do not investigate motives for invoking the law.

Understanding individuals' decisions whether or not to invoke the justice system to address problems of domestic violence is clearly more complex than the initial question of seriousness. Ewick and Silbey suggest three forms of legal consciousness that actors may adopt to make sense of legal phenomena: 'before the law', 'with the law' and 'against the law'. These forms of legal consciousness are not mutually exclusive and it is common for individuals to adopt more than one of them, both throughout their lifetime and when assessing a single situation.³⁷

³⁴ Ibid 36, 38.

³⁵ Ibid 49.

³⁶ Pascoe Pleasence, Nigel Balmer, Ash Patel, Andrew Cleary, Tom Huskinson and Toby Cotton, *Civil Justice in England and Wales: Report of Wave 1 of the English and Welsh Civil and Social Justice Panel Survey* (Legal Services Research Centre and Ipsos MORI 2011) 43

<<http://www.justice.gov.uk/downloads/publications/research-and-analysis/lsrc/2011/civil-justice-wave1-report.pdf>> accessed 28 January 2013.

³⁷ Ewick and Silbey, *The Common Place of Law: Stories From Everyday Life* (n 3) 45; Susan Olson and Christina Batjer, 'Competing Narratives in a Judicial Retention Election: Feminism Versus Judicial Independence' (1999) 33 *1 Law and Society Review* 123, 155.

Individuals, therefore, may evoke different forms of legal consciousness whenever they create legality, that is, whenever they interpret facts associated with an incident in legal terms.³⁸ Ewick and Silbey suggest that some individuals configure the law as a distant object that can only be used to deal with matters of a very serious nature. This is the case of individuals who embrace the form of legal consciousness 'before the law'. Actors who experience this form of legality do not expect to encounter law in daily life; in fact, such an encounter is seen as a disruption of daily life. According to this perspective, the law is an object, powerful, distant and well guarded, dealing only with 'important' matters. Here, the law is something that exists in itself, outside human interaction, with an ontology and authority outside social reality and operating through institutions such as the police or courts.³⁹ The law derives its power and gravitas from this precise existence outside space and time, in a process which Ewick and Silbey call the 'reification of the law'.⁴⁰

Individuals who adopt a stance 'before the law' consider only issues of a public or collective nature appropriate to be dealt with by the justice system (as opposed to private or individual needs).⁴¹ Individuals who share this form of legal consciousness are therefore reluctant to 'bother' the police, unless the matter is one that affects the community as a whole. Not resorting to the police can even be seen as a sign of moral strength in a world that relies too much on law to achieve personal gain.⁴² Examples of this form of legal consciousness can be found in the

³⁸ Ewick and Silbey, *The Common Place of Law: Stories From Everyday Life* ibid 45; Hull (n 7) 630.

³⁹ Ewick and Silbey, *The Common Place of Law: Stories From Everyday Life* ibid 80.

⁴⁰ Ibid 77.

⁴¹ Ibid 84-85.

⁴² Ibid 85.

work of Felson and Paré and Bumiller. According to Felson and Paré, the most common reason for victims of domestic violence not to report an offence is because they interpret the event as 'too minor'.⁴³ Bumiller also found, when researching the use of anti-discrimination laws, that rather than resorting to the law, some victims prefer to reconfigure the events in a way that makes them justified and therefore not warranting the intervention of the justice system.⁴⁴ Although factors such as lack of resources also have an impact on the decision not to take any action, the primary reason for Bumiller's respondents' inaction is the fact that respondents 'legitimized their own defeat',⁴⁵ that is, they rationalise the problem and eventually either consider it as trivial, to be expected, or even blame themselves for it.⁴⁶ The perception of domestic violence as an event that does not justify legal intervention is also visible at a wider social level, as the now infamous comment of the Metropolitan Police Commissioner who described it as 'rubbish' work in 1984, demonstrates.⁴⁷

Ewick and Silbey propose two further forms of legal consciousness, one that sees in the justice system an opportunity to assert rights and achieve goals ('with the law') and another that sees the justice system as a necessary tool, to be used only when no alternatives are available ('against the law'). In the form of legal consciousness 'with the law', individuals perceive themselves as consumers; the law is seen as a commodity, much as any other, and individuals have the right to

⁴³ Richard Felson and Paul-Philippe Paré, 'The Reporting of Domestic Violence and Sexual Assault by Nonstrangers to the Police' (2005) 67 3 *Journal of Marriage and Family* 597, 601.

⁴⁴ Kristin Bumiller, 'Victims in The Shadow of the Law: A Critique of the Model of Legal Protection' (1987) 12 3 *Signs: Journal of Women in Culture and Society* 421, 426.

⁴⁵ *Ibid* 435.

⁴⁶ *Ibid* 426.

⁴⁷ Marisa Silvestry and Chris Crowther-Dowey, *Gender & Crime* (Sage 2008) 88.

use it to pursue their interests in the 'arena' of legality.⁴⁸ Far from being transcendent and all-powerful, as was the case in the form of legal consciousness 'before the law', here laws are seen as contingent and changeable, open to challenge and manipulation.⁴⁹ An example of this type of attitude towards the legal system can be found in Hull's respondents' appropriation of the ritual of marriage to address the absence of state sanctioned marriage between same-sex couples (sometimes by resorting to alternative sources of law, such as religion).⁵⁰ Hoffman's respondents also display the form of consciousness 'with the law' by adopting the formal grievance procedures as the preferred method of solving disputes in the cooperative taxicab company that they work for.⁵¹

Examples of the adoption of a form of legal consciousness 'with the law' in cases of domestic violence can be found in Ford's study on women's decision to re-use the justice system in cases of domestic violence. Ford found that some women use the threat of criminal prosecution as a bargaining tool with their abusers, for example to persuade them to attend counselling or to grant them a divorce. The threat of prosecution is deemed more useful than the actual prosecution in this dynamic with the abuser, as it gives women leverage to control the situation and remain in the relationship or to leave on better terms than if they had not threatened to prosecute. In this context, the decision not to prosecute can be seen as a rational decision, as behaviour aimed at altering the balance of power within a

⁴⁸ Ewick and Silbey, *The Common Place of Law: Stories From Everyday Life* (n 3) 143.

⁴⁹ *Ibid* 146.

⁵⁰ Hull (n 7) 655.

⁵¹ Elizabeth Hoffmann, 'Legal Consciousness and Dispute Resolution: Different Disputing Behavior at Two Similar Taxicab Companies' (2003) 28 3 *Law and Social Enquiry* 691, 710.

relationship.⁵² Other reasons to approach a prosecutor are curiosity, confirmation of the status of a victim, wanting to 'affirm a matter of principle', and the need to show the seriousness of the threat or revenge.⁵³

The third form of legal consciousness proposed by Ewick and Silbey is 'against the law'. Individuals experiencing this form of legal consciousness try to avoid the justice system, as they see it as an alien reality, volatile and dangerous, often unfair and leading to injustice.⁵⁴ Actors in this situation perceive themselves as trapped in a system that curtails their freedom, from which they try to escape.⁵⁵ Furthermore, there is the sense that, although the law can alter reality (for example, through court decisions), it lacks true impact in social relations.⁵⁶ An example of this is the feeling that the law can worsen a situation or fails to protect individuals from retaliation, a feeling that has led to the discontinuation of a number of prosecutions by the CPS due to victims of domestic violence withdrawing their complaints.⁵⁷ Similarly, of Genn's respondents who experienced problems with 'relationships and other family matters', 14 per cent did not take any action;⁵⁸ common reasons were a disbelief that something could be done to improve the situation, fear of damaging the relationship and fear of the negative

⁵² David Ford, 'Prosecution as a Victim Power Resource: A Note on Empowering Women in Violent Conjugal Relationships' (1991) 25 *2 Law and Society Review* 314, 318, 331.

⁵³ *Ibid* 320.

⁵⁴ Ewick and Silbey, *The Common Place of Law: Stories From Everyday Life* (n 3) 191-193.

⁵⁵ *Ibid* 184-186.

⁵⁶ *Ibid* 199-200.

⁵⁷ Carolyn Hoyle, *Negotiating Domestic Violence: Police, Criminal Justice And Victims* (Oxford University Press 2000) 217; Crown Prosecution Service 'Policy for Prosecuting Cases of Domestic Violence' (2009) <<http://www.cps.gov.uk/publications/docs/DomesticViolencePolicy.pdf>> accessed 15 February 2010.

⁵⁸ Genn (n 21) 47.

repercussions of taking action.⁵⁹ Confusion about legal proceedings (namely between civil and criminal proceedings), not knowing what to expect and frustration with the lack of speed of the proceedings, fear of retaliation and guilt about incarcerating the offender were also aspects found by Bennett et al. to discourage victims' engagement with the justice system.⁶⁰

According to Ewick and Silbey, when confronted with a justice system that they generally distrust, individuals attempt to resist it, or gain some control of the situation and convey their dislike of the use of the law to address problems.⁶¹ They do so by masquerading as being less competent than they are, subverting rules, subverting hierarchies, taking the time of those against whom a dispute exists (for example by taking as much time as possible to comply with requests) or appropriating space (defined in a wide sense, including physical space, written records and phone lines).⁶² Harding proposes a reconceptualisation of resistance by drawing from its dynamic relationship with power. She suggests that resistance can take three forms: 'stabilising resistance' (trying to re-balance power relations without directly challenging the law but by adopting transgressive behaviour instead, such as smoking or binge drinking), 'moderating resistance' (reducing the exercise of power by adopting public expressions of resistance, such as participating in marches and public protests) and 'fracturing resistance'

⁵⁹ Ibid 49.

⁶⁰ Lauren Bennett, Lisa Goodman and Mary Dutton, 'Systemic Obstacles to the Criminal Prosecution of a Battering Partner: A Victim Perspective' (1999) 14 *Journal of Interpersonal Violence* 767-769.

⁶¹ Ewick and Silbey, *The Common Place of Law, Stories From Everyday Life* (n 3) 216, 220.

⁶² Ewick and Silbey 'Narrating Social Structure: Stories of Resistance to Legal Authority' (n 19) 1349-1362.

(resistance that is of a revolutionary nature and requires immediate attention from those who hold power, and includes acts such as riots or violent protests).⁶³

Cultural schemas

Culture is a central aspect of numerous studies on domestic violence among immigrant populations that do not explicitly focus on legal consciousness. Despite domestic violence in immigrant populations only starting to gain sustained academic attention from 1990 onwards and the relatively small number of studies in this area compared to studies of domestic violence in non-immigrant populations, a number of studies have been published in recent years suggesting different frameworks within which the topic can be analysed.⁶⁴ These studies highlight the central impact that culture has on women's ability to escape domestic violence, and the fact that women's experience of domestic violence is exacerbated by their immigration status.⁶⁵ Different socio-cultural contexts shape the way women in different cultures understand and address domestic violence, including their use of the justice system. Even if there are common values across different societies (patriarchy being an example of this), their local implementation and

⁶³ Harding, *Regulating Sexuality, Legal Consciousness in Lesbian and Gay Lives* (n 1) 45-48.

⁶⁴ Cecilia Menjivar and Olivia Salcido, 'Immigrant Women and Domestic Violence: Common Experiences in Different Countries' (2002) 16 *6 Gender and Society* 898, 899; Natalie Sokoloff, 'Expanding the Intersectional Paradigm to Better Understand Domestic Violence in Immigrant Communities' (2008) 16 *Critical Criminology* 229, 238; Edna Erez, Madeleine Adelman and Carol Gregory, 'Intersections of Immigration and Domestic Violence: Voices of Battered Immigrant Women' (2009) 4 *Feminist Criminology* 36.

⁶⁵ Menjivar and Salcido *ibid* 901-902; Kolawole Oyediran and Uche Isiugo-Abanihe, 'Perceptions of Nigerian Women on Domestic Violence: Evidence from 2003 Nigeria Demographic and Health Survey' (2005) 9 *2 African Journal of Reproductive Health* 38, 49; Erez et al. *ibid* 49.

experience by women varies according to historical, social and cultural variables and therefore deserves to be discussed in more detail.⁶⁶

The study of culture and the invocation of law is not however without its problems. When associating women's victimisation with culture, there is a danger that culture is blamed for the violence perpetrated against women. An example of this is concluding that the reason behind women's victimisation is simply because certain cultures are more accepting of violence against women than others (what is sometimes called 'subculture of violence theory').⁶⁷ Although the normalisation of violence in certain cultures may be an important aspect to take into account, a more complex understanding of culture is needed. As the discussion in chapter two reveals, culture is dynamic and socially constructed. Violence against women may come from both within and outside women's culture and community.⁶⁸ The study of culture can be enhanced by an intersectional analysis of domestic violence that departs from 'subculture of violence' theories and proposes that immigrant women's experience of domestic violence is the result of the intersection of different factors, such as race, ethnicity, class, gender, sexual orientation and immigration legislation, each with its inherent hierarchies of power. It is the intersection of these factors that creates multiple layers of oppression and determines immigrant women's experience of domestic violence.⁶⁹ Immigrant women's experience of domestic violence is therefore complex and needs to be

⁶⁶ Menjivar and Salcido *ibid* 900.

⁶⁷ Eugene Tartakovsky and Sabina Mezhibovsky 'Female Immigrant Victims of Domestic Violence: A Comparison Between Immigrants From the Former Soviet Union in Israel and Israeli-Born Women' (2012) 27 *Journal of Family Violence* 561.

⁶⁸ Sokoloff (n 64) 234-235; Erica Burman et al., 'Culture' as a Barrier to Service Provision and Delivery: Domestic Violence Services for Minoritized Women' (2004) 24 3 *Critical Social Policy* 332, 335.

⁶⁹ Menjivar and Salcido (n 64) 899.

understood at a multivariate level. Structural factors such as gender and ethnicity are addressed by default in this research, as it focuses on Portuguese immigrants; other structural factors will be addressed throughout the analysis whenever the data permits.

It is also important to acknowledge that cultural practices may or may not be adopted by all members of a cultural group and that using ethnicity to understand culture may not wholly represent an individual's culture.⁷⁰ By focusing on Portuguese culture, generalisations may be proposed in this study that do not allow for subcultures or different forms of experiencing culture to surface from the analysis. The interviews conducted as part of this study, and analysed in chapter five, are useful to address this point, as they ask women to define Portuguese culture in their own words and to give their opinion on how it influences Portuguese women's reactions towards domestic violence. This will hopefully help to avoid any incorrect assumptions about Portuguese culture and, by extension, participants' legal consciousness.

Relationships with the immediate family are an important aspect in determining how women react to domestic violence. Barata et al. identify a number of cultural factors that influence Portuguese women's reaction to domestic violence. These include placing great importance on the family and striving to keep the family united,⁷¹ two aspects also visible in the literature on Latinas' experiences and

⁷⁰ Alice Yick and Jody Oomen-Early, 'A 16-Year Examination of Domestic Violence Among Asians and Asian Americans in the Empirical Knowledge Base: A Content Analysis' (2008) 23 *Journal of Interpersonal Violence* 1079.

⁷¹ Paula Barata et al., 'Portuguese Immigrant Women's Perspectives on Wife Abuse: A Cross-Generational Comparison' (2005) 20 *Journal of Interpersonal Violence* 1132, 1134.

reactions to domestic violence in North America. The term 'familism' is often used to describe this dynamic that places collective family needs ahead of individual needs, and especially women's needs.⁷² Although the term familism is most often associated with Latinas, it also describes behaviour that is adopted by Portuguese, as well as Chinese, Korean and South Asian women.⁷³ The existence of a close family network leads women in these cultures to resort more often to informal sources of support when experiencing domestic violence than to the formal justice system.⁷⁴ Seeking help from family members, however, is not always a viable solution, as sometimes women feel embarrassed to do so for fear of showing that they are not meeting family expectations.⁷⁵ The extended family therefore can either help women escape domestic violence by providing support (for example with childcare), or hinder an attempt to leave a violent relationship (for example, by considering domestic violence unimportant and something that the victim is expected to endure as part of a relationship).⁷⁶

The concepts of shame and honour are also important to understand women's reactions to domestic violence. They feature prominently in literature on immigrant women and domestic violence, especially in relation to women living in

⁷² Guadalupe Vidales, 'Arrested Justice: The Multifaceted Plight of Immigrant Latinas who Faced Domestic Violence' (2010) 25 *Journal of Family Violence* 536; Catherine Fuchsel, Sharon Murphy and Rebecca Dufresne, 'Domestic Violence, Culture, and Relationship Dynamics Among Immigrant Mexican Women' (2012) 27 *Affilia* 269.

⁷³ Elisabeth Midlarsky et al., 'Domestic Violence in the Chinese and South Asian Immigrant Communities' (2006) 1087 *Annals of the New York Academy of Science* 287; Barata et al., 'Portuguese Immigrant Women's Perspectives on Wife Abuse: A Cross-Generational Comparison' (n 71) 1134; Sofia Aboim, 'Clivagens e Continuidades de Género Face aos Valores da Vida Familiar' in Karin Wall and Lúgia Amâncio (eds), *Família e Género em Portugal e na Europa* (ICS 2007) 44, 67.

⁷⁴ Sokoloff (n 64) 247.

⁷⁵ Vidales (n 72) 536; Fuchsel et al. (n 72) 270.

⁷⁶ Bostock et al. (n 21) 103-104; Fleury-Steiner et al. (n 22) 339.

societies with more differentiated gender roles, where the preservation of individual and family reputation are deemed essential. Women's purity, chastity and loyalty help to ensure that paternity is secured in societies where power and property are passed through the male family line only.⁷⁷ Because men in these societies are responsible for women morally, economically, socially and legally, women's honour heavily impacts on men's own honour. As such, women's behaviour is tightly regulated. Women are expected to sacrifice themselves for the good of the family, with the added responsibility that leaving a violent relationship can have consequences not only for themselves but also their children.⁷⁸ Indeed, fear of the consequences of leaving a violent relationship on children's material wellbeing has been found to be relevant in determining women's actions in cases of domestic violence in a number of studies involving ethnic minority women with backgrounds as varied as Asia and South America.⁷⁹ In turn, male violence is deemed justifiable if used to preserve a man's honour and that of the family.⁸⁰ Literature on South Asian victims of domestic violence refers to these factors as *sharam* (shame) and *izzat* (family honour).⁸¹ Similar concepts of honour (*sharaf*)

⁷⁷ Anahid Kulwicki et al., 'Barriers in the Utilisation of Domestic Violence Services Among Arab Immigrant Women: Perceptions of Professional, Service Providers & Community Leaders' (2010) 25 *Journal of Family Violence* 729.

⁷⁸ Aisha Gill, 'Voicing the Silent Fear: South Asian Women's Experiences of Domestic Violence' (2004) 43 5 *The Howard Journal of Criminal Justice* 475, 476; Helen Wallach, Ziv Weigram and Orli Avitan, 'Attitudes Toward Domestic Violence: A Cultural Perspective' (2010) 25 *Journal of Interpersonal Violence* 1285.

⁷⁹ Carolyn Chew-Graham et al., 'South-Asian Women, Psychological Distress and Self-Harm: Lessons from Primary Care Trusts' (2002) 10 5 *Health & Social Care in the Community* 339, 341; Burman and Chantler (n 21) 69; Bostock et al. (n 21) 103; Vidales (n 72) 536; Fuchsel et al. (n 72) 269; Midlarsky et al. (n 73) 287.

⁸⁰ Gill (n 78) 476; Wallach et al. (n 78) 1285.

⁸¹ Vanda Wellock, 'Domestic Abuse: Black and Minority-Ethnic Women's Perspectives' (2008) 26 2 *Midwifery* 182; Gill Hague et al., 'Raising Silenced Voices: South Asian Women Immigrating After Marriage' (2010) 3 1 *Ethnicity and Inequalities in Health and Social Care* 25, 29; Diya Kallivayalil

and shame (*ayb*) are used in the literature to refer to the mechanisms that structure Arab family lives,⁸² and shame has also been found to prevent the disclosure of domestic violence in some Latina populations.⁸³ Amongst the latter, this experience is linked to machismo, a concept that encompasses an expectation that men are the heads of households, main providers, tough, dominant and aggressive.⁸⁴ As a result, despite living close to the community or the extended family, many women are not supported by either when they experience domestic violence.⁸⁵

Cultural practices are reinforced at community level. Chew-Graham puts forward the notion of a 'community grapevine' as the setting in which shame, honour and a high regard for privacy are best seen at work. The notion of a 'community grapevine' signifies the existence of a space where individual actions are scrutinised, and family status assessed. Because women are awarded a disproportionate role in upholding family honour, their behaviour is more heavily scrutinised than men's behaviour. As a result, the community grapevine can be used to keep women's behaviour in check.⁸⁶ Shame and preservation of family honour pressure families to be seen as 'doing well'. This can be expressed by maintaining traditional cultural values or showing that the family, including children, are doing well in terms of educational achievement and employment. The

'Narratives of Suffering of South Asian Immigrant Survivors of Domestic Violence' (2010) 16 7 *Violence Against Women* 789, 790.

⁸² Kulwicki et al. (n 76) 728.

⁸³ Ruth Belknap and Leona VanderVusse, 'Listening Sessions with Latinas: Documenting Life Contexts and Creating Connections' (2010) 27 *Public Health Nursing* 337, 338; Fuchsel et al. (n 72) 269.

⁸⁴ Erez et al. (n 64) 48; Vidales (n 72) 537; Fuchsel et al. *ibid* 269.

⁸⁵ Sokoloff (n 64) 239; Vidales *ibid* 537; Fuchsel et al. *ibid* 270.

⁸⁶ Chew-Graham et al. (n 79) 342; Erez et al. (n 64) 48.

pressure to portray an image of success to the outside world can lead women to hide domestic violence and to avoid seeking help to address it. There are however positive aspects to having such tight control mechanisms over individuals, which include the possibility of shaming abusers and offering women avenues to escape abuse.⁸⁷ If women are deemed to have been acting honourably and are abused by their husbands, they may be defended by their male relatives and even welcomed home if they decide to leave a violent relationship. Nevertheless, this solution is not always available for immigrant women who either do not have extended family in the country of destination or only the husband's family is available, which will often side with the husband instead of providing women with assistance, even if their behaviour may be irreproachable by the cultural standards of the country of origin.⁸⁸

Lack of support from community and family have been identified in a number of studies as factors that deter women from seeking help when experiencing violence.⁸⁹ Interestingly, lack of support from the community does not need to be experienced to have an impact on women's behaviour. Barata et al. suggest that, despite not adhering completely to traditional gender roles or defending a submissive role for women, Portuguese-speaking women are heavily influenced in their responses to domestic violence by the 'Portuguese culture and background'.⁹⁰ There is a sense amongst the Portuguese-speaking community that Portuguese-

⁸⁷ Sokoloff (n 64) 244; Anat Ben-Porat, 'Connecting Two Worlds: Training Social Workers to Deal With Domestic Violence Against Women in the Ethiopian Community' (2010) 40 *British Journal of Social Work* 2489.

⁸⁸ Midlarsky et al. (n 73) 292; Erez et al. (n 64) 51; Kulwicki et al. (n 76) 729.

⁸⁹ Fleury-Steiner et al. (n 22) 336; Wellock (n 81) 182.

⁹⁰ Barata et al., 'Portuguese-Speaking Women Voice their Opinions: Using Their Words to Teach about Wife Abuse' (n 14) 145.

speaking families are more traditional (and therefore less egalitarian) than North American families. There is also an inability of this group to perceive patriarchy as a common feature in different cultures and not a peculiarity of Portuguese-speakers.⁹¹ Because traditionalism and patriarchy are not understood as shared characteristics with the dominant community, Portuguese-speaking women themselves perpetuate cultural stereotypes.⁹² By expecting the community to be prejudiced, regardless of the accuracy of this expectation, and by meeting its expectations or at least not challenging them openly, Portuguese-speaking women reinforce gender and family stereotypes and, in doing so, limit the possibility of change within the community.⁹³ Burman et al.'s research confirms that both the reaction that respondents expect from the community, as well as the reaction that they actually get, are important in their decision to avoid seeking help in a situation of violence.⁹⁴

There is a further factor that may contribute to lack of engagement by immigrant women with the justice system of the receiving country, which is having the home country as a frame of reference.⁹⁵ Women who would not seek help for situations of domestic violence in their home country are less likely to do so in the country of destination. Immigrant women therefore bring their legal awareness and culture with them.⁹⁶ This has been found to be the case among South Asian immigrants

⁹¹ Ibid 136.

⁹² Ibid 135.

⁹³ Ibid 135, 141.

⁹⁴ Burman et al. (n 68) 340.

⁹⁵ Menjívar and Salcido (n 64) 898.

⁹⁶ Nielsen (n 5) 1085; Menjívar and Salcido (n 64) 903-911; Burman and Chantler (n 21) 71.

living in the UK,⁹⁷ South American immigrants living in North America⁹⁸ and also first generation Portuguese emigrants generally.⁹⁹ It is therefore important to take into consideration the historical context of the development of cultural identities when discussing domestic violence in immigrant populations. In the Portuguese case, the existence of a dictatorship for almost 50 years, with censorship, a political police and the torture of those opposing the regime, is part of the cultural background of a number of Portuguese immigrants, as discussed in chapter two. It is therefore not surprising that some Portuguese immigrants who lived under the dictatorial regime and have low levels of acculturation may be more suspicious of governmental institutions, especially those connected with law enforcement.¹⁰⁰

The home country as a frame of reference is an important factor in shaping the engagement of the individual with the justice system of the country of destination, and the assimilation of mechanisms of legality. As a result, it is sometimes proposed that integration in the wider community is key to women's self-determination, and that isolation from the wider community is an added disadvantage that immigrant women usually have to overcome when trying to escape domestic violence.¹⁰¹ However, the wider community may itself be steering women away from the remedies it provides, albeit in an indirect way.

⁹⁷ Sundari Anitha, 'No Recourse, No Support: State Policy and Practice Towards South Asian Women Facing Domestic Violence in the UK' (2010) 40 *British Journal of Social Work* 462, 472; Gill (n 78) 189.

⁹⁸ Ilze Earner, 'Double Risk: Immigrant Mothers, Domestic Violence and Public Child Welfare Services in New York City' (2010) 33 *Evaluation and Programme Planning* 292; Vidales (n 72) 539.

⁹⁹ Maria Beatriz Rocha-Trindade, 'Afirmações Identitárias em Quadro Migratório' in J Miranda and M João (eds), *Identidades Nacionais em Debate* (Celta Editora 2006) 9.

¹⁰⁰ Barata et al., 'Portuguese Immigrant Women's Perspectives on Wife Abuse: A Cross-Generational Comparison' (n 71) 1135.

¹⁰¹ Hague et al. (n 81) 29.

Exclusion from the wider community can be experienced in different ways by victims. It can be the result of the attitude of service providers, who assume that certain cultures bring with them higher rates of domestic violence and will, in essence, 'look after themselves' when it comes to dealing with it.¹⁰² Research has found that previous experiences with people or institutions in the wider community, not related to domestic violence, that are perceived as racist or sexist prevent women from seeking help for situations of domestic violence.¹⁰³ Moreover, women may be discouraged from invoking the law for fear of fuelling racism or further prejudice against their community.¹⁰⁴ Fear of sexist attitudes in the wider community, for example fear of sexual victimisation, are also mentioned by some women as a reason not to venture into the wider community.¹⁰⁵

Acculturation, or the assimilation of aspects of a different culture, helps women to develop an understanding of the remedies available for domestic violence in the country of destination. Recent immigrants and immigrants with low levels of acculturation tend to live in communities with other individuals with the same background. As the culture of the country of destination is absorbed and becomes easier to navigate, immigrant women start developing a different legal consciousness and are more likely to use the remedies offered by the justice

¹⁰² Menjivar and Salcido (n 64) 901; Burman and Chantler (n 21) 63.

¹⁰³ M Cristina Alcalde 'Migration and Class as Constraints in Battered Women's Attempts to Escape Violence in Lima, Peru' (2006) 33 6 *Latin American Perspectives* 150; Kulwicki et al. (n 76) 729; Midlarsky et al. (n 73) 285; Wallach et al. (n 78) 1291; Sokoloff (n 64) 232, 246; Burman et al. (n 68) 338.

¹⁰⁴ Chew-Graham et al. (n 79) 345; Burman and Chantler (n 21) 63; Wellock (n 81) 182.

¹⁰⁵ Chew-Graham et al. *ibid* 343.

system.¹⁰⁶ Acculturation however needs to be looked at in the context of other aspects that inform women's experience with the wider community, such as prejudice and discrimination, and not seen by itself as the key to encouraging women to use the justice system to deal with domestic violence.¹⁰⁷ Moreover, acculturation can be detrimental to women in the sense that, because women often integrate more quickly in the new culture, their husbands may fear losing power over them and retaliate by becoming abusive.¹⁰⁸

Barata et al. also suggest that the existence of 'a [Portuguese] way of thinking' is another manifestation of Portuguese-speaking women's culture in the way they address domestic violence. This particular way of thinking includes self-blame, acceptance of abusive behaviour and an unwillingness to challenge cultural norms. Self-blame results from a reconfiguration of events in which the victim takes responsibility for the abuse, and in doing so, the abuser's behaviour is seen as justified.¹⁰⁹ Self-blame however is not a characteristic of minority victims only, as it has also been found to exist among a large proportion of English victims of domestic violence.¹¹⁰ Acceptance of abusive behaviour as normal reflects a learned

¹⁰⁶ Menjivar and Salcido (n 64) 902; Ben-Porat (n 87) 2488; Mykiong Kim-Goh and Jon Baello, 'Attitudes Towards Domestic Violence in Korean and Vietnamese Immigrant Communities; Implications for Human Services' (2008) 23 *Journal of Family Violence* 653; Belknap and VanderVusse (n 83) 338.

¹⁰⁷ Yick and Oomen-Early, 'A 16-Year Examination of Domestic Violence Among Asians and Asian Americans in the Empirical Knowledge Base: A Content Analysis' (n 70) 1090.

¹⁰⁸ Menjivar and Salcido (n 64) 904; Barata et al., 'Portuguese Immigrant Women's Perspectives on Wife Abuse: A Cross-Generational Comparison' (n 71) 1134; Kim-Goh and Baello (n 106) 648; Wallach et al. (n 78) 1286.

¹⁰⁹ Gill (n 78) 472; Burman et al. (n 68) 339.

¹¹⁰ Catriona Mirlees-Black, 'Domestic Violence: Findings From a New British Crime Survey Self-Completion Questionnaire'

<<http://webarchive.nationalarchives.gov.uk/20110218135832/rds.homeoffice.gov.uk/rds/pdfs/hors191.pdf>> accessed 14 January 2013.

cultural script that is played out at individual level, albeit reinforced by the community, in which violent male behaviour is deemed normal and the abuse minimised or forgotten.¹¹¹

Finally, religious practice has been identified in a number of studies as an important cultural factor in women's attitudes towards domestic violence. The concept of Marianism, which is associated with Catholicism and has been found to influence the lives of Latina and Portuguese women, is an example of this.¹¹² The myth of Marianism promotes maternity, purity and self-sacrifice as positive traits to be incorporated in women's behaviour, in the image of the Virgin Mary. Living up to this myth may lead women to endure domestic violence to show strength and to forgive their husbands as a sign of piety.¹¹³ Also associated with Latinas' and Portuguese women's experience of Catholicism is fatalism, which encourages individuals to accept a pre-determined fate.¹¹⁴ In doing so, fatalism leads women to interpret domestic violence as part of their destiny and therefore something that they should endure. Religious beliefs that defend the family unit as a central tenet tend to discourage women from using divorce as a solution for domestic violence and so limit their possibilities of escaping domestic violence.¹¹⁵

¹¹¹ Gill (n 78) 470.

¹¹² Barata et al., 'Portuguese Immigrant Women's Perspectives on Wife Abuse: A Cross-Generational Comparison' (n 71) 1134; Alice Yick and Jody Oomen-Early, 'Using the PEN-3 Model to Plan Culturally Competent Domestic Violence Intervention and Prevention Services in Chinese American and Immigrant Communities' (2009) 109 *Health Education* 131; Vidales (n 72) 537.

¹¹³ Barata et al., 'Portuguese Immigrant Women's Perspectives on Wife Abuse: A Cross-Generational Comparison' *ibid*; Vidales *ibid* 537; Yick and Oomen-Early *ibid* 131.

¹¹⁴ Barata et al., 'Portuguese Immigrant Women's Perspectives on Wife Abuse: A Cross-Generational Comparison' *ibid* 1135; Midlarsky et al. (n 73) 286; Vidales *ibid* 537.

¹¹⁵ Kulwicki et al. (n 77) 730.

Religion, however, can also be a source of comfort and support for abused women.¹¹⁶ For example, a religious representative may be someone women feel comfortable approaching and discussing their difficulties with. Operating in a way similar to the extended family, religion can either support or hinder women when escaping domestic violence. The importance of religion in women's reactions to domestic violence has been recognised for many years, and such recognition is visible in the education of religious leaders towards supporting victims of domestic violence in some religious communities, and the publication by some Catholic bishops in the USA, Canada and New Zealand of advice to the clergy condemning the use of biblical passages to justify domestic violence.¹¹⁷ As discussed in chapter two, religion has a large role in shaping a number of Portuguese cultural practices; even if the profession of Catholic faith has been declining in Portugal, religion's cultural influence will be part of the data analysis conducted as part of this dissertation.

Resources

When trying to understand women's legal consciousness, it is important to also take into account the resources that individuals have access to. Indeed, theories of legal consciousness study the relationship between resources and schemas, that is, between cultural schemas, as frameworks for understanding the world, and resources, as the skills and tools that individuals use to enact change in the

¹¹⁶ Barata et al., 'Portuguese Immigrant Women's Perspectives on Wife Abuse: A Cross-Generational Comparison' (n 71) 1134; Ben-Porat (n 87) 2489.

¹¹⁷ Barata et al., 'Portuguese Immigrant Women's Perspectives on Wife Abuse: A Cross-Generational Comparison' *ibid* 1135.

world.¹¹⁸ These include skills and life experiences that impact differently upon a person's ability and willingness to resort to the law to deal with problems.¹¹⁹ Also relevant is the scope of the dispute, which in turn is affected by the behaviour of the parties involved, the objectives that individuals are seeking with legal action and those they are willing to concede, and the individual's sense of entitlement to things such as freedom or quality of service.¹²⁰ Each of these aspects will contribute to the way in which the problem faced is experienced and mechanisms to address the problem, including the use of the justice system, embraced or rejected.

A factor that influences Portuguese women's (lack of) engagement with the justice system is language proficiency. Language proficiency impacts on the ability to seek help, the capacity to form a wider network of acquaintances, to understand how to deal with legal problems in the new country, and to get a job.¹²¹ Its impact is so profound that lack of language proficiency has been found by many authors to be one of the most effective hindrances to engaging with available remedies for domestic violence in the country of destination.¹²² It can make the difference between enduring abuse alone or being able to reach for a wider network of support,¹²³ and determines ease of access to and use of the police,¹²⁴ and social

¹¹⁸ Ewick and Silbey, *The Common Place of Law: Stories From Everyday Life* (n 3) 40-41; Cowan (n 4) 932.

¹¹⁹ Felstiner et al. (n 21) 639, 648.

¹²⁰ Ibid.

¹²¹ Menjívar and Salcido (n 64) 903-911.

¹²² Chew-Graham et al. (n 79) 342; Burman and Chantler (n 21) 71; Aisha Gill and Kaveri Sharma, 'Response and Responsibility' in Sarah Walsum and Thomas Spijkerboer (eds), *Women and Immigration Law: New Variations on Classical Feminist Themes* (Routledge-Cavendish 2007) 196.

¹²³ Susan Grossman and Marta Lundy, 'Domestic Violence Across Race and Ethnicity: Implications for Social Work Practice and Policy' (2007) 13 *10 Violence Against Women* 1029, 1034.

workers.¹²⁵ Even the use of interpreters can be problematic due to lack of trust in these professionals both to truly represent the point of view of the women using them and to keep matters confidential within the community¹²⁶ (a fear that is sometimes extended towards service providers, for example, a local General Practitioner).¹²⁷ Lack of good language skills has been found to be common amongst first generation Portuguese emigrants who, partly as a consequence, do not integrate well with the culture of the country of destination.¹²⁸

Economic dependence and fear of poverty are also important factors in women's willingness to report abuse.¹²⁹ Women with more material resources are more likely to leave their abusers and follow through by taking action against them via the justice system, than those with fewer means (material resources include help with children, transportation and emergency money).¹³⁰ Fleury-Steiner et al.'s study shows that legal and financial links with the abuser are negatively correlated with future use of the justice system, as women who live with the abuser at the time of the arrest and those whose abusers contribute to the household income are less likely to use the justice system.¹³¹ Economic self-sufficiency is therefore positively linked to women's choices to protect themselves from abuse and women who are not economically independent are less likely to want to prosecute the

¹²⁴ Jyoti Belur, 'Is Policing Domestic Violence Institutionally Racist? A Case Study for South Asian Women' (2008) 18 4 *Policing and Society* 426, 440.

¹²⁵ Anitha (n 97) 472.

¹²⁶ Wellock (n 81) 186; Chew-Graham et al. (n 79) 344.

¹²⁷ Burman et al. (n 68) 341; Chew-Graham et al. *ibid.*

¹²⁸ Rocha-Trindade (n 99) 9.

¹²⁹ Gill and Sharma (n 122) 190; Bennett et al. (n 60) 769.

¹³⁰ Bennett et al. *ibid* 764.

¹³¹ Fleury-Steiner et al. (n 22) 338.

abuser.¹³² Gill and Rehman also draw attention to the effect of 'cultural conservatism' on women's ability to escape domestic violence. Cultural conservatism restricts women to a reproductive role and denies them access to employment and education, thus leaving them financially dependent and lacking in skills to engage with the wider community to seek help.¹³³

Another aspect that influences women's ability to engage with different remedies for domestic violence is having low levels of formal education, which often leads to lack of awareness of their rights.¹³⁴ There is a positive relationship between lack of formal education and domestic violence victimisation; this is visible in women with low levels of formal education being more willing to accept abuse as a normal aspect of marriage.¹³⁵ Women with higher levels of education tend to be more resilient to domestic violence than those with lower levels of education, as they are more able to find resources to protect themselves from violence.¹³⁶ There are, however, circumstances in which having higher levels of formal education can work adversely against women, such as when they experience abusive behaviour from their husbands as an attempt to reinforce their authority over their wives, or when there is a generalised disbelief that they can be victims of domestic violence.¹³⁷

¹³² Ibid.

¹³³ Aisha Gill and Gushun Rehman, 'Empowerment Through Activism: Responding to Domestic Violence in the South Asian Community in London' (2004) 12 1 *Gender and Development* 75, 78.

¹³⁴ Kathryn Yount 'Resources, Family Organisation, and Domestic Violence Against Married Women in Minya, Egypt' (2005) 67 3 *Journal of Marriage and Family* 592, 593, 598; Hague et al. (n 81) 29.

¹³⁵ Yount *ibid* 592.

¹³⁶ Tartakovsky and Mezhibovsky (n 67) 568.

¹³⁷ Hague et al. (n 81) 29.

Finally, literature on immigrant women and domestic violence often highlights the legal status of the victim, as legal or illegal immigrant, as one major factor in victims' ability to engage with the justice system. This can be due to fear that any contact with state authorities will expose them to the risk of deportation, or fear of losing custody of their children.¹³⁸ Immigration status currently is not something that affects Portuguese immigrants living in the UK, who, since Portugal became a member of the European Union in 1986, are free to live and work in the UK without the need to apply for permission from the UK government.¹³⁹ It will therefore not be discussed during the data analysis presented here.

Interaction with service providers

Theories of legal consciousness draw attention to the fact that legality is the result of the interaction between individuals and groups. According to Felstiner et al., there is a dynamic between the individual who suffered an injury, those who are considered to blame for the injury and the services used that shapes the future actions of those experiencing a problem.¹⁴⁰ In this dynamic, the type and quality of services sought is of relevance in framing the object of dispute (eg, whether a person consults a lawyer or a psychotherapist, a union official or a court clerk).¹⁴¹ Perhaps unsurprisingly, Fleury-Steiner et al. found that women who experience a

¹³⁸ Menjivar and Salcido (n 64) 903-911; Chew-Graham et al. (n 79) 343; Gill and Sharma (n 122) 196, 199.

¹³⁹ Treaty establishing the European Economic Community (Treaty of Rome) article 3c and articles 48-58, Act of Accession 1985 (Spain and Portugal) Protocol 34.

¹⁴⁰ Felstiner et al. (n 21) 637.

¹⁴¹ Ibid 639-648.

positive relationship with service providers and who are happy with the outcome are more likely to use them again.¹⁴²

Past experiences with the justice system influence individual configurations of legality, as is visible in the work of Nielsen, and Olson and Bantjer.¹⁴³ Although studying legality in relation to different problems (street harassment, and feminist mobilisation of legal action, respectively), the three authors' research reveals that previous experience with the justice system, be it with police officers or judges, determines the way in which individuals conceptualise legality and relate to the justice system. Genn and Lazarus-Black also mention past experiences with the judiciary, the role of clerks and judges, as well as the image of the judiciary conveyed by the media, as important factors in their respondents' decision processes.¹⁴⁴ In addition, Genn proposes that individuals usually want to find a solution for their problems that is quick, stress-free and low cost and this is not the image that court procedures give out as being able to deliver,¹⁴⁵ which indicates that individuals' expectations of the justice system as well as their experience of it may influence their decision to use it.

As discussed in chapter three, victims may engage with a range of different services that provide help and support outside courts when responding to domestic violence, such as health services, IDVAs, solicitors, the police, local authority housing services and voluntary organisations. Different types of relationships can be established with different service providers and indeed

¹⁴² Fleury-Steiner et al. (n 22) 338.

¹⁴³ Olson and Batjer (n 37) 155; Nielsen (n 5) 1056.

¹⁴⁴ Genn (n 21) 228; Lazarus-Black (n 21) 38.

¹⁴⁵ Genn *ibid* 254.

different service providers will have different agendas and roles. As well as providing direct services, service providers can also act as gatekeepers to the justice system. In Genn's research, two out of three respondents in the overall sample tried to solve the problems they were experiencing by themselves before seeking help from advisers or giving up dealing with the problem altogether. However, individuals who sought help and advice were more likely to engage with the justice system at a later stage,¹⁴⁶ thus revealing the importance of service providers in shaping the relationship of individuals with the justice system. Bostock et al. reinforce the idea that the quality of the services available is of paramount importance for women who wish to end an abusive relationship, as it can have a strong influence on their psychological and material ability to end a situation of domestic violence.¹⁴⁷

Because the police are often victims' first point of contact with the justice system, it is important to understand the specific dynamic between victims of domestic violence and the police. Women who call the police, and who are given information about the justice system by the police, are more likely in future to re-use the legal system than those who have no contact with the police.¹⁴⁸ The ability to access housing associations and refuges is also particularly important in shaping women's reactions in a situation of domestic violence, as these can offer much needed practical support in dealing with the justice system.¹⁴⁹ Although many authors do not distinguish between types of service providers to assess their impact on victims' relationship with the justice system, this is something that is worth

¹⁴⁶ Ibid 68.

¹⁴⁷ Bostock et al. (n 21) 103-105.

¹⁴⁸ Fleury-Steiner et al. (n 22) 339.

¹⁴⁹ Bostock et al. (n 21) 103-105.

discussing in more detail. Service providers offer different quality and levels of support for women, with voluntary organisations often mentioned by victims as providing a more positive experience than non-voluntary organisations.¹⁵⁰

Ease of access to services is another important aspect of the relationship between victims and the justice system.¹⁵¹ It can be translated into, for example, whether services are easy to reach personally, by phone or other methods.¹⁵² When deciding whether to seek help, Genn's respondents looked at the type of services available, whether the advice would be of good quality and how expensive it would be before deciding to contact an advisor.¹⁵³ Specifically in relation to immigrant populations, Burman and Chantler mention the lack of adequate information on the availability of services for immigrants who recently arrived in the country as an important factor in the inability of immigrant women to seek help in situations of domestic violence.¹⁵⁴ This is compounded by resources such as the level of language proficiency, and cultural factors such as fear of bringing shame to the community and the family.¹⁵⁵

Conclusion

The framework suggested in this chapter articulates cultural schemas, resources and the interaction with service providers in an attempt to understand Portuguese women's invocation of law in relation to domestic violence. Although it relies

¹⁵⁰ Ibid; Hague et al. (n 81) 31.

¹⁵¹ Burman and Chantler (n 21) 65.

¹⁵² Genn (n 21) 81-82.

¹⁵³ Ibid.

¹⁵⁴ Burman and Chantler (n 21) 65.

¹⁵⁵ Ibid.

heavily on theories of legal consciousness, it acknowledges some of their shortcomings and tries to overcome some of the criticisms levelled against them by resorting to different approaches to the invocation of law that are specifically focused on immigrant populations, and highlighting specific individual and structural factors that impact on immigrant women's reactions to domestic violence in the country of destination.

Theories of legal consciousness are useful for analysing Portuguese women's relationship with the English justice system because they perceive the invocation of law as complex. Individuals create legality in everyday life, that is, they interpret events in a legal way, even if this does not reflect the use of official law.¹⁵⁶ Legality determines the invocation of law. This is visible when respondents in several legal consciousness studies decide to address their problems by retaining a lawyer to deal with homelessness applications,¹⁵⁷ or by mobilising in different ways against harassment.¹⁵⁸

Despite their usefulness in providing a theoretical framework for the analysis of the relationship between legality and Portuguese culture, theories of legal consciousness need themselves to be expanded upon to present a more complete view of immigrant women's interaction with the justice system. Barata et al. demonstrate the importance of culture on individuals' invocation of law when they explain that respondents see Portuguese culture and 'way of thinking' as

¹⁵⁶ Ewick and Silbey, *The Common Place of Law: Stories From Everyday Life* (n 3) 22-23, 45; Hull (n 7) 630.

¹⁵⁷ Cowan (n 4) 928, 929-930, 932; Harding "Dogs are "Registered", People Shouldn't Be": Legal Consciousness and Lesbian and Gay Rights' (n 4) 511, 545.

¹⁵⁸ Amy Blackstone et al., 'Legal Consciousness and Responses to Sexual Harassment' (2009) 43 *3 Law and Society Review* 631, 658.

determining factors in Portuguese-speaking women's inability to escape domestic violence, either because of their attitude towards the concept of domestic violence or because of the reaction that they fear from the Portuguese-speaking community.¹⁵⁹ Culture affects immigrant women in ways that have been identified in literature on immigrant women and domestic violence, such as familism, traditional gender roles, shame, family honour and privacy, particularly in determining whether they would opt for informal mechanisms to address the violence rather than (or before) resorting to the legal system.

Although the use of the law results from cultural schemas, these are only put in practice through the use of resources that are available to the individual. As such, the individual herself may have access to certain resources (such as economic independence and language proficiency) that promote or hinder her ability to engage with the justice system in escaping domestic violence. These resources are themselves closely linked to cultural schemas, in that they are informed by cultural practices and, in turn, are the mechanisms through which individuals are able to effect change in their socio-cultural environment; personal resources therefore shape individuals' legality.

Finally, in order to understand the invocation of law, theories of legal consciousness require the analysis of different sources of legality. Legality is produced through individuals' interaction with various socio-cultural factors, such as past experiences with the justice system and the ability to access service providers. Not only are service providers often the first point of contact with the

¹⁵⁹ Barata et al., 'Portuguese-Speaking Women Voice their Opinions: Using Their Words to Teach About Wife Abuse' (n 14) 134, 138.

justice system, but also if a positive relationship is established with service providers, it is more likely that individuals will continue engaging with the justice system, than if services are not used or a poor relationship is established. As a result, service providers are key in explaining individuals' invocation of law alongside culture and individual resources. Different service providers may have different impact on women's decisions to engage the justice system, with a particular role for the police, who are often victims' first point of contact with the justice system. An analysis that takes these differences into consideration is, therefore, essential for a full understanding of Portuguese women's invocation of law in situations of domestic violence.

The framework suggested in this chapter forms the basis for the analysis of the field research presented in chapter five, and will be critically reflected upon in chapter six.

Chapter 5: Interviews with Portuguese women

Despite England being one of the most popular destinations for Portuguese emigrants since the 1990s,¹ there are no studies on this population's use of the English justice system. Studies on the Portuguese community in England that have been undertaken in recent years focus on employment and health, and sometimes touch upon domestic violence;² however, no study has been made publicly available specifically on domestic violence amongst this population or on Portuguese women's relationship with the English justice system. The analysis made in this chapter begins to address this gap in knowledge. It draws from semi-structured interviews conducted with Portuguese immigrants living in England and analyses these against the theoretical framework proposed in chapter four.

The chapter starts by establishing respondents' understanding of domestic violence and appropriate responses to it. The analysis continues with a discussion

¹ Jorge Malheiros, 'Portugal 2010: O Regresso do País de Emigração?' (2010) 21 *JANUS.NET e-Journal of International Relations* 133, 137 <observare.ual.pt/janus.net/pt_vol2_n1_not3> accessed 5 February 2013.

² José Figueiroa, 'Assessment of the Health Needs of The Portuguese Speaking Community Living in North Lambeth Primary Care Group (NLPCG) Area in Lambeth' (Guy's, King's and St Thomas' School of Medicine, Lambeth, Southwark and Lewisham Authority (LSLHA) Unpublished Research Report 2000); Elsa Pinto, 'Interviews With Members of the Portuguese Community in Thetford, Norfolk' (Keystone Development Trust 2005); Francesca Valério, 'Independent Needs Analysis of the Portuguese-Speaking Community in Stockwell and the London Borough of Lambeth' (Stockwell Partnership 2007); Colin Wiles et al., 'Workers on the Move, Migrant Workers, Housing and Growth in The Eastern Region' (Keystone Development Trust 2008); Alex Collis et al., 'Workers on the Move 2, European Migrant Workers and Health in the UK: A Review of the Issues' (Keystone Development Trust 2009); Alex Collis et al., 'Workers on the Move 3, European Migrant Workers and Health in the UK: The Evidence' (Keystone Development Trust 2010).

of Portuguese women's preferred ways of dealing with domestic violence and legal consciousness. This is followed by a discussion of cultural schemas and individual resources that are the basis for women's invocation of law, according to theories of legal consciousness, as well as women's interactions with and expectations of service providers. The discussion is supplemented with factors that were identified in chapter four to affect immigrant women's ability to seek ways of addressing domestic violence. An intersectional approach to the invocation of law that incorporates structural and individual variables is therefore presented, in order to understand Portuguese women's attitudes to domestic violence and available remedies for it in England.

In considering intersectional factors, it should be noted that sexual orientation was not part of the selection process for interviewees and was not part of the interview schedule. As such, although all participants who are currently, or had been, in a relationship disclosed that this was a heterosexual relationship, this should not indicate a possible exclusion or confirmation of similar findings in lesbian relationships. Similarly, all participants who are currently, or had been, in a relationship, except one, disclosed that their partners are or were Portuguese. This may provide an idea of the cultural dynamics between Portuguese couples, however it should also not be considered as confirmation or exclusion of the same findings should their partners be of a different nationality.

Portuguese women's understanding of domestic violence

The DVCVA does not define domestic violence, although, as noted in chapter three, similar definitions have been adopted by different agencies and in case law. The

Portuguese criminal code defines domestic violence in a way that is comparable to that adopted by the Home Office,³ including physical and psychological violence against spouses or former spouses (or someone with whom they have maintained an analogous relationship), or against dependents or vulnerable individuals, regardless of gender or sexual orientation.⁴ This research does not assume, however, that respondents have knowledge of institutional or legal definitions of domestic violence, and instead relies on their perception of domestic violence, as told in their own words. Unlike studies of legal consciousness, mainly from the USA, where the definition of law is provided by the researcher and does not form part of the empirical study,⁵ here the input of the researcher was kept to a minimum by referring to domestic violence but leaving respondents to define what behaviour they associate with it. A first step in understanding Portuguese women's interaction with the justice system in England when dealing with domestic violence, therefore, is to discern what behaviour is included in the category of domestic violence and how serious they think that behaviour is.

As discussed in chapter four, individuals conduct an assessment of the seriousness of events experienced before deciding whether to resort to the justice system or not.⁶ The level of seriousness that respondents attribute to domestic violence is key to making a first distinction between forms of behaviour that fall under what

³ Home Office, 'Domestic Violence and Abuse' <<https://www.gov.uk/domestic-violence-and-abuse>> accessed 26 June 2013.

⁴ Decreto-Lei nº 400/82 de 23 Setembro, Diário da República I Série 1º Suplemento nº 221/82, artigo 152º.

⁵ Marc Hertogh, 'A "European" Conception of Legal Consciousness: Rediscovering Eugen Ehrlich' (2004) 31 *Journal of Law and Society* 457, 464.

⁶ Hazel Genn, *Paths to Justice: What People Do and Think About Going to Law* (Hart Publishing 1999) 36.

Genn calls the triviality threshold,⁷ and behaviour that is placed above this threshold. Behaviour that is placed under the triviality threshold is that which respondents will do nothing about, whilst that which is above this threshold is deemed worthy of taking action (even if this does not entail using the justice system). The configuration of this threshold depends on personal experiences of the law and is therefore subjective. An example of respondents' assessment of a form of behaviour against their triviality threshold and evidence of the dynamic nature of this process can be found in Alexandra's answer to the question of what type of behaviour she considers to be domestic violence. Alexandra says that:

A few years ago, I had no idea about it. In those days I was so controlled that I didn't understand anything. I didn't know it at the time but I was subjected to violence. It was psychological violence.

At the time of victimisation, Alexandra's configuration of events was one of normalisation. By placing the behaviour, which amounts in her current perception of events to psychological violence, under the triviality threshold, she considered it a matter not serious enough to do anything about. This situation has clearly changed and today, Alexandra configures domestic violence as a matter serious enough to be dealt by the justice system. Alexandra relates her change in stance towards domestic violence with her personal development and desire for freedom, which was met by an increase in controlling behaviour from her partner towards her. Whilst Alexandra previously did not have an idea of domestic violence that she associated with the violence that she was exposed to, her victimisation and subsequent use of the justice system lead her now to add that, 'psychological

⁷ Ibid.

violence is the most damaging form of violence as it is insidious and difficult to deal with'.

Eighteen out of the 24 respondents mention physical and psychological abuse when describing domestic violence. The six respondents who do not name either physical or psychological violence mention emotional violence and specific types of conduct (such as shouting and name calling) instead. Most respondents who mention physical and psychological violence then go on to describe in more detail what they mean by these categories of behaviour. Hitting is the most common form of physical abuse mentioned, with socially isolating the other, being cold, diminishing the other, being very jealous and bullying or controlling given as examples of psychological abuse. Verbal and emotional abuse are mentioned by a large number of respondents, with three considering psychological abuse as the most insidious and difficult to overcome. Respondents were not prompted to comment on the damaging effect of psychological or physical abuse and therefore it is not possible to know whether this is a generalised view of the group or the opinion of only three of the respondents who specifically mentioned it. There is however great awareness among the group as a whole of the existence of psychological and emotional abuse and its negative effects, which is compatible with Barata et al.'s findings in Canada, discussed in chapter four.⁸

Respondents also mention the existence of forms of patriarchal violence within the community when they consider it to be very traditional, with men holding power over women. Here, as with Barata et al., patriarchy is seen as a Portuguese

⁸ Paula Barata et al., 'Portuguese-Speaking Women Voice Their Opinions: Using Their Words to Teach about Wife Abuse' (2005) 15 *Women's Health Issues* 134, 137.

characteristic that is either non-existent or at least not as prevalent in the wider community.⁹ Where the results of this research depart from Barata et al.'s is in respondents' generalised omission of 'sexual violence'.¹⁰ This may be because respondents in this study include sexual violence within the category of physical violence or because they do not consider it as a form of abuse. Because the current research did not seek to ascertain women's perceptions of sexual violence, further research would have to be conducted to understand how it is perceived within this community and whether it impacts on Portuguese women's invocation of law in cases of domestic violence.

One respondent, Barbara, provides a more elaborate consideration of what is domestic violence by describing it as, 'behaviour that is considered abusive by those who suffered it'. Her self-confessed difficulty in defining domestic violence lies in the fact that, according to her, the same conduct can be considered abusive or not, depending on the context and the participants. She explains this by saying:

Violence would only be used in extreme circumstances anyway. The victim may perceive the action as an act of love rather than abuse, which makes it [domestic violence] very difficult to define. If the actions cause discomfort to one of the parties, then there is no excuse for it. From the moment that someone gets the police involved or services, then there must be something wrong with that conduct.

⁹ Ibid 136.

¹⁰ Ibid 137.

Regardless of conceptualising the problem differently from other respondents, Barbara places domestic violence, as an abstract concept, above the triviality threshold, as is evident from her assertion that, 'if the actions cause discomfort to one of the parties, then there is no excuse for it'. Barbara later in the interview confirms this by saying that it is acceptable to use the justice system to deal with domestic violence; she says that once the behaviour is interpreted by its recipient as abusive, then it is inexcusable, that is, it is serious enough to be dealt with by the justice system.

Another respondent, Carla, explains her view of domestic violence by describing situations in which the abuse may start, which she says are situations where relationships are strained. Factors that strain relationships and may lead to domestic violence include the existence of financial problems, immigration and having children. Carla explains this as such:

Being an immigrant greatly enhances the likelihood of dependence, especially if there are children. There is little support, you have to be home with the children always, it puts great strain on relationships and it is natural that violence ensues.

Carla's configuration of domestic violence could be interpreted as placing the behaviour under the triviality threshold. Carla seems to justify the violent behaviour in some cases and trivialise it by saying that it is the result of factors beyond the parties' control. This would be however a misinterpretation of Carla's intentions, as Carla clearly states, later in the interview, that she would use a court to deal with a situation of domestic violence. When talking about a strained

relationship, Carla draws attention not to the lack of importance of domestic violence but, on the contrary, to the added seriousness gained when it happens amongst an immigrant population, which could be more vulnerable to this type of behaviour due to stress factors that a non-immigrant population may be better equipped to deal with. This is because of a lack of a network of support that can help with, for example, taking care of young children. Carla's configuration of domestic violence highlights an important dimension for this study which will be discussed later in this chapter in terms of the impact of immigration upon respondents' reactions to domestic violence, which is the existence of a close family network.

Neither Barbara nor Carla disclosed experiencing domestic violence. Both respondents have high levels of education, are well integrated in the wider community and are not close to the Portuguese community in England. The main differences between the two respondents are their place of residence (one in London and the other in Reading) and the fact that one has children and is married and the other does not have children and is single. Both respondents, despite their more elaborate conceptions of domestic violence when compared to the rest of the group, place the behaviour above the triviality threshold.

Respondents who experienced domestic violence describe behaviour that they encountered during their victimisation when defining domestic violence. They mention forcing others to obey every whim, controlling the other's phone calls or access to a passport. Alexandra describes her experience of domestic violence as such:

My task in the relationship was to always be pretty, well groomed and willing to show up, to make his ego swell. The time came when I started growing up and wanting to do my things. His argument was always that I had everything I wanted, that I had a great life. And, looking from the outside, I did. I had everything. I had a car, I had designer clothes, I had holidays, I had everything. At the same time, I had nothing of my own.

Only one respondent, Carolina, clearly puts domestic violence under the triviality threshold and therefore configures it as behaviour not worth doing anything about. Carolina says that she would not call the police in a situation of domestic violence because the police have nothing to do with family matters and should only be called to deal with crimes. Carolina is not the only respondent to say that the police should only be called to deal with serious matters, but whilst other respondents say that the police should only be involved when the domestic violence becomes serious (for example when there is blood), she is the only one to put domestic violence as a whole in the category of a non-serious matter.

Some respondents see domestic violence as encompassing a variety of behaviour that can gradate from less to more serious. One respondent, Alice illustrates this by saying that women should end a relationship when the 'verbal violence' becomes 'too much', thus implying an evolution of behaviour between the not acceptable but less serious form of violence, and the escalation to forms of violence that lead to the end of the relationship. Alice goes on to explain this by saying: 'it [domestic violence] often starts with verbal violence. It only goes as far as physical violence if the woman allows it, if she doesn't stop it'.

Although Alice lives in London, other respondents, especially from Norfolk, adopt a similar stance in that they place the responsibility for the escalation of behaviour on the victim. Two respondents in Norfolk say that it is up to the woman to try to deal with the situation sensibly and not to provoke the man if he arrives home drunk; she should wait until he is sober to discuss it with him and if she fails to do so she can expect that violence will ensue. This confirms the claims of another respondent, Beatriz, who complains that her experience of violence is that there are sections in the community that condone alcoholism and excuse drunken behaviour, placing the onus of avoiding violence on the women who are victimised. Another respondent in Norfolk, Helena, says that in many households women work and men help around the house, but if women go to work and do not leave the house in what can be considered a good state, then it is normal that there will be problems when men arrive home in the evening. This is an important finding that clarifies women's invocation of law in circumstances where men are deemed to be acting within their male prerogative and women stepping out of their attributed roles (such as by challenging men's decisions or not performing their household tasks adequately). Whilst some respondents acknowledge patriarchal violence as a form of domestic violence, this is not the case for the whole group. There are participants who do not see violence against women that derives from male privilege as problematic and indeed blame the victim for it.

Another aspect that is mentioned often in the interviews is the importance of economic independence, or lack thereof, in experiencing domestic violence. Five respondents mention controlling the finances of the other partner as a form of domestic violence, with one equating it to psychological abuse. Economic dependence on the other partner is also mentioned by some of these respondents

as a reason why many women would not leave their abusers. Some elaborate this further by saying that the Portuguese are used to a certain level of comfort that they would not like to lose, or would not like to see their children lose, by leaving an abusive partner. Interestingly, respondents who are victims of domestic violence do not mention economic dependence as a reason to continue in an abusive relationship. All respondents who revealed suffering abuse, but one, left their abusers and were made worse off financially for it. Regardless of this outcome, they say that the money would not have been enough reason to keep them in an abusive relationship.

Most respondents in this study place domestic violence, or at least more serious forms of violence, above the triviality threshold. This is not to say that all these participants think that using the justice system is the best way to deal with domestic violence. Indeed, configuring the problem as serious enough to be dealt with by the justice system or not is merely a first step in understanding individuals' invocation of law. There are a number of other considerations, as will become evident in the following discussion, that influence respondents' legal consciousness.

Portuguese women's reactions to domestic violence

In order to understand Portuguese women's legal consciousness it is important to analyse the reactions that they deem appropriate when facing domestic violence. Barata et al.'s research is central to this analysis due to the potential similarities between both populations' reactions to domestic violence and the role of culture therein. Barata et al. studied the Portuguese-speaking community in Canada, which

includes women of different nationalities with Portuguese as their first language. The research presented in this dissertation only includes Portuguese women, although two participants hold dual nationality. Despite the differences in nationality between some of Barata et al.'s respondents and those in this study, they most likely also share numerous cultural traits which make the comparison relevant. As discussed in previous chapters, Barata et al. demonstrate that Portuguese-speaking women see the Portuguese-speaking community as patriarchal and more traditional than the wider Canadian community, and this perception of the community and culture potentially hinders their ability to seek to end situations of domestic violence.¹¹ Barata et al. also demonstrate the existence of a large gap between Portuguese-speaking women's opinions of what a woman should do in a situation of domestic violence and what they think Portuguese women actually do in these circumstances.¹² Cultural stereotypes, both within and towards the Portuguese-speaking community, the inability to see patriarchy as non-culturally specific and the fact that Portuguese-speaking women act out these cultural stereotypes when reacting to domestic violence are all important factors in explaining this discrepancy.¹³ In order to assess the existence of a similar mechanism operating in the research described in this dissertation, respondents were asked what women should do when experiencing domestic violence (question 9 of the interview schedule), as well as what they thought other Portuguese women do in situations of domestic violence (question 10 of the interview schedule). Answers to questions 9 and 10 will be analysed in the following subsections.

¹¹ Ibid 139-140.

¹² Ibid 138.

¹³ Ibid 139-140.

What women should do when experiencing domestic violence

When answering the question of what women should do in situations of domestic violence, regardless of the specific course of action chosen, respondents agree that the violence should stop. However, only two respondents openly use the expression 'stop it' in these circumstances. Two respondents say that women should try to calm the situation down before doing anything else. Fátima, for example, would be very reluctant to involve a third party, such as the police, in a situation of domestic violence. She says that she does not know what she would do if she were confronted with domestic violence, but that she would try to solve the situation informally. In fact, the desire to solve the situation informally is the most common reaction to domestic violence amongst respondents, with five adding that they would talk to a friend or a family member and would hope to end the violence this way. Reluctance to involve the police is not, however, the only reason for wanting to solve the matter informally. Isabel, for example, says that she would speak with someone, a doctor or a friend to gain some perspective on the events before deciding on a course of action and whether to involve the police or not. Seeking informal solutions for domestic violence has been found to be common in societies where familism is prevalent, that is having a tight relationship with immediate and extended family and putting the needs of the family ahead of those of the individual. The desire to solve problems informally may therefore not be a solely Portuguese cultural characteristic, but it is certainly one that impacts greatly on Portuguese women's invocation of law.¹⁴

¹⁴ Natalie Sokoloff, 'Expanding the Intersectional Paradigm to Better Understand Domestic Violence in Immigrant Communities' (2008) 16 *Critical Criminology* 229, 247.

When personal experience of domestic violence is taken into account, respondents' primary choice is to leave the abuser or to talk to a 'stranger'; a stranger is someone who they do not know but who could provide assistance, such as a police officer or a doctor. Indeed, leaving the abuser is the course of action taken by all respondents who disclosed suffering domestic violence, except one, with most preferring to end the relationship informally and only involving the justice system for situations that could not be dealt with otherwise, such as divorce. One respondent who suffered abuse did not involve the justice system because she says that it was an isolated incident, many years ago, that did not repeat itself.

Although most women interviewed consider domestic violence to be unacceptable and say that women should either stop the abuse or leave the abuser, there is room for choosing alternatives to engaging with the justice system. All women favour informal mechanisms to address violence, with discretion being considered highly important in dealing with personal situations. Despite respondents overall not condoning domestic violence, they also do not prioritise the use of the justice system in dealing with this form of violence. Most would rather first gain perspective on the situation by involving a third party, usually a friend or a family member. When this is not possible, then a stranger may be involved, either to ask for advice or to stop the violence. No respondent mentioned seeking advice from women's or victim support services as a course of action that they would consider when dealing with domestic violence.

What Portuguese women do when experiencing domestic violence

Following the strategy already described here and consistent with the findings in Barata et al.'s study, interviewees were also asked what they thought other Portuguese women would do in a situation of domestic violence (question 10). Respondents were therefore asked to speculate on the reaction that Portuguese women in general might have towards domestic violence and to draw from the knowledge of friends or cases they knew in the Portuguese community, if they so wished. This allowed women to speak more freely about possible reactions to domestic violence that occurred in the community, including those that they thought might not be deemed socially acceptable by the wider community. By asking respondents to remove themselves from the answer, this question also works well in overcoming the problem of social desirability in interviews, where respondents give an answer that they perceive to be what the interviewer is expecting from them, rather than their actual views on the subject. Implicit to this question is the possibility that the behaviour that other Portuguese women might adopt may be different from that which respondents described as the appropriate one in the preceding question, a concept that respondents generally had problems engaging with. The discrepancy between the behaviour that respondents individually see fit to adopt and that which they think the rest of the Portuguese female population living in England will adopt was discussed sometimes at length, providing an excellent opportunity to gain information on the specific impact of Portuguese culture on women's responses to domestic violence.

There is a large consensus amongst respondents that Portuguese women would either endure a violent relationship or hide it as much as possible (20 out of 24

respondents), with five respondents saying that Portuguese women would both endure and actively hide domestic violence. These findings are in line with the results from Barata et al.'s research, where respondents also say that they would put an end to a violent relationship if they experienced it themselves, but other Portuguese women would endure and hide it.¹⁵ Two respondents add that Portuguese women would endure domestic violence until it became so serious that a third party, such as neighbours or the police, would intervene. Carla answers this question by stating:

They will try to hide it. The same as in Portugal, they will hold on until the situation becomes so bad that it is no longer sustainable or the family has to intervene, for example.

Some respondents base their views on observing the behaviour of friends and neighbours who experienced violence. Catarina reaches the same conclusion as Carla and adds:

It's the influence of the Latin culture. Eventually, either because someone intervenes or a point of break has been reached, they would take steps to leave. This is not just the old generations either. I have friends who suffered domestic violence, well educated, and this does not change. Maybe there is even more shame to talk about these things publicly, as women would be more dependent economically on men and this would make leaving more

¹⁵ Barata et al., 'Portuguese-Speaking Women Voice their Opinions: Using Their Words to Teach about Wife Abuse' (n 8) 138.

difficult. Today, in most cases, the economic dependence is not there but you still have the same situation.

Catarina draws attention to the importance of culture in determining Portuguese women's reaction and states how this would lead them to endure a violent relationship and hide it, especially if there are personal factors present such as loss of social or economic status. In line with the findings of Barata et al.,¹⁶ Catarina attributes women's behaviour to 'Latin culture', which according to her differentiates Portuguese women's behaviour from that of women from other cultures. Latin culture leads Portuguese women to value privacy and to protect their family lives from outside intervention, which in turn leads them to endure and hide situations of domestic violence. Other respondents attribute this behaviour of enduring and hiding violence to pressure from the community to endure violence and accept it as part of a relationship, guilt and finding excuses for the violence suffered. Elsa develops this point by stating:

There is a lot of shame in Portugal; here [in England] people feel a lot more at ease and lose their boundaries. There is an openness of mind here that is contagious. This is a country focused on women and with empowered women.

Although Elsa concurs with Catarina and Barata et al.'s respondents when saying that there is something specific to the Portuguese culture that is related to a heightened patriarchal attitude in the Portuguese community that impacts on individual attitudes towards domestic violence, she also highlights the

¹⁶ Ibid 149.

permeability of Portuguese immigrants to the receiving country's culture and customs. Elsa is not alone in drawing attention to a change in behaviour in immigrants when arriving in England. Diana also describes situations in which Portuguese men and women change their behaviour in a way that is more reflective of mainstream English culture, in what Diana sees as both a positive and a negative influence of English culture upon Portuguese immigrants. Elsa and Diana describe this change by saying that Portuguese women go out at night to clubs much more often in England than in Portugal and do not pay as much attention to their children as they would in Portugal. In fact, greater distance in terms of family relations is a negative characteristic that a number of respondents attribute to English culture. There can therefore be active resistance to acculturation from a section of the Portuguese population that deems English customs and organisation of family life inadequate to their expectations. Another common form of behaviour that is mentioned by Elsa, Diana and other respondents is couples separating and forming more quickly than in Portugal. Respondents, both in London and in Norfolk relate this change in behaviour with the influence of English culture, whilst others relate it to receiving welfare benefits as single parents rather than as a couple.

Catarina also mentions age as a potentially important factor in Portuguese women's reaction to domestic violence, by saying that both old and young generations adopt the same behaviour of enduring and hiding it. The data does not indicate that there are strong variations in behaviour associated with participants' age. Whilst Catarina's assertion is supported by the statements of two other respondents, who say that younger generations behave in the same way as older generations, it is contradicted by three other respondents who state that hiding

and enduring domestic violence are 'things of the past'. The age of the respondents themselves in this study ranges from 23 to 65 years and all agree that the best thing to do in a situation of domestic violence would be to stop it. The main difference found is that younger respondents (in their twenties and thirties) favour talking to someone to find informal responses for the problem and older respondents (in their forties, fifties and sixties) favour leaving the abusive situation. Both younger and older respondents prefer informal responses as much as possible to stop the violence.

Finally, when asked what Portuguese women would do in a situation of domestic violence, one respondent in London says that women would retaliate with violence. She says that she has heard women in coffee shops saying that if their partners were ever violent, they would be physically violent against them too. Only one respondent (in Norfolk) says that if her partner hit her, she would hit him back. It is difficult to assess the weight of this argument, especially as it was said in a circumstance that made it difficult to discern whether she was serious or trying to avoid answering the question. It would seem that retaliation should be considered as a possible form of reaction towards domestic violence, but not one that would be prioritised by many Portuguese women.

The opinion that Portuguese women would generally endure and hide domestic violence may be interpreted as the Portuguese culture and community pushing women to hide their problems and deal with them quietly, which often amounts to doing nothing about them. However, another way of looking at this discrepancy between what women say that they would do and what they think others would do is to focus on the fact that the majority of respondents who say that the correct

course of action is to stop the violence would prefer do so informally. If we separate enduring violence from hiding it, the interpretation of the data becomes clearer. Most respondents would not endure violence, however most would also prefer to deal with violence informally, at least in the first instance. The fact that a high number of respondents would hide violence therefore does not mean that they would endure it. Hiding being a victim of domestic violence does not mean that respondents would condone violence, but merely that they would rather keep the situation out of public knowledge. As a result, there appears to be a greater degree of overlap between what respondents say that they would do and what they think others would do than was at first apparent.

Forms of legal consciousness

It is evident from participants' statements that the preferred way of dealing with domestic violence is to do so informally. The fact that respondents prefer to address domestic violence informally in the first instance does not deter them from engaging with the justice system should an informal response not be possible. In this section, respondents' views about the use of the justice system in situations of domestic violence will be assessed against Ewick and Silbey's three forms of legal consciousness: 'before the law', 'with the law' and 'against the law'.

Before the law

According to Ewick and Silbey, individuals who fall in the category 'before the law' are in awe of the justice system, perceiving it as a transcendent entity that operates through the courts and the police, but that has ontology outside social

reality.¹⁷ These individuals believe that the law should only be used to address problems that are of a public nature. They do not want to engage with the justice system and often legitimise the problems they experience.

Some respondents think that using the justice system indicates that someone is in trouble; these include Barbara, who laughingly says that she only gets involved in 'troubles' that are too small to involve the justice system, such as parking tickets. Amélia also equates using the justice system with being in 'trouble'. In replying to the question whether she had ever used a court in England (question 11), she answers:

No, I just don't like to be in trouble, as simple as that. It's not because I am scared of it, not because I'm unable to navigate through it, of course I am. Personally, I just don't like to be in trouble and that's it.

The association between the justice system and 'being in trouble' might indicate that these respondents consider law to be a distant entity, only suitable to address problems of a public nature. However, when asked whether a court would be a good way to deal with domestic violence (question 13), Barbara quickly says, 'Yes. It would be useful to show that you are taking a stand and to show that you are the one in the right'.

It is clear from Barbara's statement that she does not hold the justice system at a level of importance that is above dealing with personal matters. Barbara defends

¹⁷ Patricia Ewick and Susan Silbey, *The Common Place of Law: Stories From Everyday Life* (University of Chicago Press 1998) 80.

first and foremost an informal approach to domestic violence, however, in doing this she does not reject an instrumental approach to the problem, which is very much in line with the form of legal consciousness 'with the law'. Similarly, Amélia, when prompted about whether she would use a court to deal with a personal matter, categorically adds: 'It's not because it's too much trouble. If I'm ever in a situation in which I had to deal with it, of course I will [use a court]'.

Amélia experienced domestic violence and did not resort to a court to deal with her situation. She says that she simply left the abuser and did not want to give any details as to how this occurred. Like Barbara, Amélia gives preference to an informal response to domestic violence. Also like Barbara, Amélia does not see the justice system as too important to deal with personal matters, rather she sees it as a tool, but one that she would only use if she had to, as would be conceived by individuals adopting the form of legal consciousness 'against the law', discussed below. It may therefore be the case that instead of being 'before the law', Barbara and Amélia's conception of being in trouble stems from an inability to distinguish between civil and criminal courts. Genn found in her research that respondents often associate the justice system with criminal law and this leads them to think that if someone goes to court, it is to deal with a criminal law problem, which equated to being involved in some wrongdoing.¹⁸ Barbara and Amélia also seem to associate going to court with being involved with some form of wrongdoing but when asked specifically whether they would go to court to address a situation of domestic violence, they quickly say that they would.

¹⁸ Genn (n 6) 231.

As discussed above, some respondents see domestic violence as a continuum of violent behaviour, from that which is not serious enough to warrant the intervention of the justice system, to behaviour which is serious and for which it is legitimate to use it. Respondents in this situation can be considered to be 'before the law', as for them domestic violence may not be important enough to warrant the intervention of the justice system. If the behaviour is minor, for example what Alice calls 'verbal violence', then women should act either independently or with the help of their friends and family, but to call the police would be considered excessive. The police and courts, therefore, should not be occupied with such minor problems. Respondents who place responsibility upon the victim to prevent domestic violence are a minority (four out of 24) and can be found mainly in Norfolk.

There are respondents whose accounts reflect a more complex development of their legal consciousness. Alexandra, for example, describes her experience with the justice system saying that at first she was scared and knew nothing about court procedures, which reflects a form of legal consciousness 'before the law'. However, she left the whole case in the hands of her lawyers and found using the courts very helpful to resolve her situation. Alexandra's story demonstrates the dynamic nature of legal consciousness.¹⁹ Legal consciousness operates each time someone creates legality, that is, whenever someone interprets facts in a legal way, regardless of whether this means acknowledging formal institutions associated

¹⁹ Ewick and Silbey (n 17) 45; Susan Olson and Christina Bantjer, 'Competing Narratives in a Judicial Retention Election: Feminism Versus Judicial Independence' (1999) 33 1 *Law and Society Review* 123, 124; Amy Blackstone et al., 'Legal Consciousness and Responses to Sexual Harassment' (2009) 43 3 *Law and Society Review* 631, 633; Erik Fritsvold, 'Under the Law: Legal Consciousness and Radical Environmental Activism' (2009) 24 4 *Law & Social Inquiry* 799, 804.

with the law and their actors or not.²⁰ Legality is created through the invocation of cultural schemas and the use of resources that are available to individuals. Changes in schemas and resources elicit changes in forms of legal consciousness, which is what Alexandra is expressing. When her circumstances changed, because she became older and wanted more independence, the schemas that she had been invoking until then to justify the violence that she was subjected to (that her role was to look a certain way and to be supportive of her husband) no longer applied and she started using a new one to make sense of her situation and find ways of reacting to it.

Although respondents in this study would rather deal with domestic violence informally by talking to friends and family than use the legal system, this does not mean that all respondents are in awe of the law, but rather that there are other factors that influence their decision. There are respondents, such as Barbara and Amélia, who prefer to deal with the situation informally, that is, bypassing the legal system, but who do not feel that it is inappropriate to invoke the law because the law is only meant to deal with matters more serious than their personal problems. In fact, the same respondents would use the legal system if informal attempts to resolve the situation failed, putting them closer to the other two forms of legal consciousness discussed below, 'with the law' and 'against the law'.

²⁰ Ewick and Silbey *ibid* 22-23, 45; Kathleen Hull, 'The Cultural Power of Law and the Cultural Enactment of Legality: The Case of Same-Sex Marriage' (2003) 28 *3 American Bar Foundation Journal* 629, 630.

With the law

According to Ewick and Silbey, being 'with the law' means seeing the law as a game or as a tool to achieve a goal.²¹ In the research conducted for this dissertation, 13 out of 24 respondents adopted a position that could be configured as 'with the law'.

Respondents who fall into the form of legal consciousness 'with the law' propose using the justice system to achieve some form of retribution, legally determine their position and prevent further harm. Alice suggests going to court in situations of domestic violence to, 'give the other the impression that they can't beat you and get away with it'. Carla reasons along the same lines as Alice by stating, 'if you do something wrong, you have to pay for it'. Daniela takes the reasoning one step further and says that going to court would be 'useful to scare the abuser. It lends the case institutional weight, which makes it look to the outside like a serious matter'. Daniela talks not only about preventing further abuse but also giving the case added gravitas that enhances the prevention of future abuse. Catarina accompanies Daniela in stressing the importance of a legal recognition of the situation of domestic abuse for the protection of the victim, by saying 'yes, it's good to have legal confirmation of the position, to have formal recognition of the situation [of domestic violence by a court]'. Carla takes on a slightly different stance and, although still highlighting the importance of the legal recognition of the position of victim, she focuses on the financial side of the question by saying that it is a good idea to use a court in a situation of domestic violence to 'gain compensation for loss of earnings and damages suffered'. Carla has no legal

²¹ Ruth Fleury-Steiner et al., 'Contextual Factors Impacting Battered Women's Intentions to Re-Use the Criminal Legal System' (2006) 34 3 *Journal of Community Psychology* 329, 339.

training and did not reveal experiencing domestic violence. Nonetheless, she conceives the matter as a civil dispute where one party suffers financially for his wrongdoing and sees a very practical role for a court in this course of events, which in line with the form of legal consciousness 'with the law'.

Although using the justice system to serve one's interest is visible in many respondents' answers, it is only deemed acceptable for certain types of behaviour. In fact, alongside respondents advocating a pragmatic use of the law, there are other respondents concerned with the possible misuse of the justice system. Three respondents in London relay stories that make them wary of the justice system being abused if deployed to address domestic violence. These include the story of a young local man who was accused of domestic violence by his girlfriend and arrested, when he had not done anything wrong; the story of a woman who threatened her partner with a complaint of domestic abuse and never seeing his child again unless he did what she wanted; and children being advised in school to complain about their parents when they are punished, which can lead to complaints being made when children do not get what they want (something that is of great concern for respondents in Norfolk, with five out of seven respondents mentioning it, compared with only three out of 14 in London and Reading). These respondents reject the use of the law to promote self-interest, however not in the sense that respondents 'before the law' necessarily would. The question here is not one of self-interest but of unfair use of the justice system to achieve a goal. In this sense, their preoccupation is actually consistent with the form of legality 'with the

law' as by rejecting an unfair use of the system, they are at the same time upholding what they consider to be the acceptable 'rules of the game'.²²

All respondents mentioned in this subsection would still prioritise informal responses to domestic violence, which steers them away from the typical profile 'with the law'. None of the respondents discussed in this section, except for two, disclosed experiencing domestic violence. Beatriz, who is one of these, first avoided involving the justice system to address the situation in which she was living, but eventually went on to believe that the justice system was a useful tool and that the abuser should pay for what he had done; moreover, the legal system was essential to determine custody of children and visiting arrangements.

Against the law

The third form of legal consciousness in Ewick and Silbey's theory is designated 'against the law'. Individuals who adopt the position 'against the law' try to avoid the justice system, as they see it as volatile, dangerous and arbitrary, and fear that it will lead to further injustices.²³ As already mentioned, two respondents equate using the justice system with being in 'trouble'. They do this either by saying that they would not use a court because they do not want to be in trouble (Amélia), or that they do not get into enough trouble in their daily lives to justify using the justice system (Barbara). These respondents associate the word 'trouble' with the justice system in the sense that they see it as dealing only with a category of serious events ('trouble') that does not include their personal experiences, which

²² Ewick and Silbey (n 17) 136, 144.

²³ Ibid 190, 192.

could indicate that they adopt the form of legal consciousness 'before the law'. However, the same respondents then go on to say that they would have no problem in using the justice system if they had to. They see the justice system more as a tool (as would respondents 'with the law') that they would rather not use. Catarina summarises this idea by saying:

Yes, I would have no problem with it, other than the natural fear of going to court. No one likes going to court because it means that there is a problem of a certain gravity, and in that sense it's not something to look forward to.

For other respondents, it is not the 'trouble' associated with the justice system that they do not like, but the potentially over-punitive result that would come from using it. Diana refers to this by saying:

A lot of people use it [the justice system] as a tool to get revenge on a partner or to threaten them. It may be in response to violence or after an incident of violence that they provoked themselves.

There are two issues that concern Diana. The first is when the justice system is used and the outcome is over-punitive, and the second is when it is used without justification. Diana configures both situations as unfair and ways in which the justice system can be abused. Diana has used the justice system in England to deal with a theft. Although she was the victim and the offender was successfully prosecuted, she found the whole process 'too formal and heavy handed'. Diana is not alone in her concerns regarding the misuse of the justice system; indeed, whilst in London only a minority of women raised this issue, all of the respondents in

Norfolk mention the abuse of the system by other Portuguese as something that they disagree with, be it to address domestic violence or to manipulate the housing or benefits systems.

Respondents in this study who used courts would not elect them as a preferred way of dealing with domestic violence, but most do not find the system unfair or lacking in impact on social relations either. Only three respondents in Norfolk fear that using the justice system to address domestic violence may lead to unfair situations. This means that the women in this study who used a court adopt a stance close to being 'against the law' but that does not fit the category well. Indeed, despite the reluctance to use the justice system, all the women in this research who went to court in England, except one (five out of six), found the experience fair and reassuring.

Respondents' legal consciousness does not map neatly with the forms of legal consciousness identified by Ewick and Silbey. All respondents 'before the law', except one, are only so to the extent that they interpret incidents of domestic violence as minor and therefore not warranting the intervention of the justice system. However, if incidents are deemed to be serious, then they would not hesitate to resort to the justice system to seek protection, even though they consider domestic violence to be essentially a private matter. These women do not see the justice system as a transcendent entity. Rather, they see certain forms of violence as more important than others, and the justice system should only concern itself with the most important ones. Respondents 'with the law' also prefer to resort to informal mechanisms to address domestic violence if the option exists. Unlike Ewick and Silbey's respondents, they do not see the law as a game to be

played light-heartedly. As such, respondents 'against the law' (six out of 24) are possibly those who fit best into Ewick and Silbey's category, as they see the justice system as cumbersome and potentially generating more problems than those that it attempts to address. However, most of these respondents do not see the justice system as volatile and unfair and they do not seem to engage in forms of resistance to challenge it.

Cultural schemas

The relationship between culture and the use of law is central to the analysis of an immigrant population's relationship with the justice system of the receiving country. Ewick and Silbey explain how cultural codes shape the production of legality, and thus the invocation of law, and authors such as Barata et al. exemplify how Portuguese culture influences women's relationship with the justice system in situations of domestic violence.²⁴ Other authors suggest different cultural factors that influence the ability and willingness of immigrant women to seek help and use the justice system in situations of domestic violence.²⁵ Five cultural factors were identified in the literature as potentially influencing immigrant women's reactions to domestic violence: familism, shame and the community grapevine, integration in the local and wider communities, impact of community values and acculturation, and religion. Each of these factors will be analysed now in detail.

²⁴ Ibid 40; Barata et al., 'Portuguese-Speaking Women Voice their Opinions: Using Their Words to Teach about Wife Abuse' (n 8) 139.

²⁵ Ewick and Silbey *ibid* 85; Kristin Bumiller, 'Victims in The Shadow of the Law: A Critique of the Model of Legal Protection' (1987) 12 3 *Signs: Journal of Women in Culture and Society* 421, 435; Barata et al., 'Portuguese-Speaking Women Voice their Opinions: Using Their Words to Teach about Wife Abuse' *ibid* 139; Cecilia Menjivar and Olivia Salcido, 'Immigrant Women and Domestic Violence: Common Experiences in Different Countries' (2002) 16 *Gender & Society* 898.

Familism

Portuguese men and women, in general, place great emphasis on the role of the family, and especially the mother, on children's happiness and wellbeing. As discussed in chapter four, familism has been found to exist amongst Portuguese, Latina, South Korean and Chinese immigrants and often translates into women putting the needs of the family ahead of their own.²⁶ It is therefore not surprising that respondents in the interviews conducted for this dissertation reveal that children and family are an important factor in their decision-making process. Most respondents say that children help a couple stay together, as it is deemed best financially and emotionally for the children to be raised by both parents. However, three of the respondents who revealed having experienced domestic violence say that their children were the reason why they left the abuser or were at least a big factor in this decision. These respondents say that although it was difficult at first, as soon as they realised that either the children were in danger or were witnessing the abuse, they decided to leave their abusers.

Family life is a major factor in the decision-making process of the participants in this study. Eighteen respondents agree that family is very important for the Portuguese in general and influences their own decisions to a great extent.

²⁶ Paula Barata et al., 'Portuguese Immigrant Women's Perspectives on Wife Abuse: A Cross-Generational Comparison' (2005) 20 *Journal of Interpersonal Violence* 1132, 1134; Elisabeth Midlarsky et al., 'Domestic Violence in the Chinese and South Asian Immigrant Communities' (2006) 1087 *Annals of the New York Academy of Science* 287; Sofia Aboim, 'Clivagens e Continuidades de Género Face aos Valores da Vida Familiar' in Karin Wall and Lúcia Amâncio (eds), *Família e Género em Portugal e na Europa* (ICS 2007) 44, 67; Guadalupe Vidales, 'Arrested Justice: The Multifaceted Plight of Immigrant Latinas who Faced Domestic Violence' (2010) 25 *Journal of Family Violence* 536; Catherine Fuchsel et al., 'Domestic Violence, Culture, and Relationship Dynamics Among Immigrant Mexican Women' (2012) 27 *Affilia* 269.

Familism explains respondents' preference for informal solutions for domestic violence, as individuals will tend to use the help of family members to find solutions for their problems.²⁷ It can however help or hinder women's attempts to escape domestic violence, depending on whether the family supports taking any action to deal with the abuser or not.²⁸ Interestingly, the formalisation of family life through marriage is not deemed central for respondents in this study. Three respondents put forward the existence of high levels of inter-generational contact within families as another characteristic of the Portuguese; examples of this are the family coming together regularly during meal times and the existence of a lot of contact between children and grandparents. These respondents point out that in Portuguese families, children are included in everyday activities much more than in English families. Moreover, one respondent says that Portuguese couples socialise together rather than having separate nights out with different groups of friends, and it is usual for couples to have friends in common. Interestingly, whilst having common friends is generally perceived as a positive thing, it is also acknowledged by this respondent as a factor that may make it harder to escape domestic violence, as it reduces the number of people that you can confide in for fear of the abuser knowing your intentions.

Shame and community grapevine

Respondents were asked to describe what they thought was distinctive about Portuguese culture, both in England and in Portugal, and how this may affect the

²⁷ Sokoloff (n 14) 247.

²⁸ Jan Bostock et al., 'Domestic Violence Against Women: Understanding Social Processes and Women's Experiences' (2009) 19 *Journal of Community & Applied Social Psychology* 95, 103-104; Fleury-Steiner et al. (n 21) 339.

way Portuguese women deal with domestic violence (questions 21, 22 and 23). Respondents often have difficulty finding characteristics that describe Portuguese culture. As a way of starting their answers, a number mention that the Portuguese like to socialise around food and to watch football. These aspects are relevant as the Portuguese are often associated with a coffee culture, in the sense that having a traditional 'Portuguese-style' coffee at a local coffee shop is seen as an important ritual in the day-to-day life of many immigrants. It is common to hear respondents complain about the quality and price of food in England and there are numerous Portuguese coffee shops, restaurants and markets in the Portuguese communities studied here. The coffee shop is therefore a place where the community comes together. Indeed, most interviews for this study were conducted in coffee shops, at the suggestion of the participants.

Tentative descriptions of Portuguese culture such as those mentioned in the preceding paragraph are usually followed by either descriptions of the Portuguese community as very supportive or as not supportive at all. Solidarity and warmth are often described as Portuguese traits and put forward as characteristics that distinguish the Portuguese from the English, who are often deemed cold and introverted. Examples of Portuguese solidarity that respondents give centre around providing financial support to strangers in times of difficulty, such as finding money to send a body to Portugal when the costs cannot be met by the family of the deceased. However, when it comes to dealing with personal or family matters, the reverse seems to occur and the community is not deemed to be supportive, but quite the opposite. Amélia describes the community as such in relation to domestic violence:

The community doesn't help. It aggravates one's chances of leaving a violent relationship. If you want to leave a relationship, you have to leave the community. There are cases where the extended family might help but it may also work against escaping.

The view that the community is not supportive to women escaping domestic violence is corroborated by Beatriz's story, already described above. Beatriz feels that she needed to leave the local Portuguese community in order to be able to start a new life away from her partner and his family.

Respondents also describe the Portuguese community as judgemental, pessimistic, gossiping, very competitive, with individuals constantly comparing themselves to others and living off appearances, disorganised and very suspicious. Indeed, seven respondents mention living off appearances as a characteristic of the Portuguese community, which represents a significant minority, especially as respondents were not introduced to the topic by the interviewer. The notion that you have to project a certain image to the rest of the community could be related to a deep sense of shame, should it be discovered that your personal life does not meet the desired standards that are set by the community as a whole. Shame is mentioned by five respondents as having a great impact on the way Portuguese immigrants arrange their lives in England, and is deemed central to the way Portuguese women would react to and hide situations of domestic violence. In fact, as discussed above, one of the most common answers that respondents give to the question what would Portuguese women do in situations of domestic violence is to hide it; shame and the need to project a certain image to the community and family explain this.

The importance of reputation for the individual and the community is mentioned by some respondents, but not to the extent that, for example, *sharam* or *izzat* are associated with some populations from South Asia.²⁹ There is a sense in the Portuguese community that you have to show that you are doing well, to your neighbours, family and friends in England and in Portugal. Respondents however do not mention specifically family honour. The projection of being 'well off' and successful seems to be much more related to individual success than to that of the family as a whole. That is not to say that some actions might not attract shame to those who are closest to you, but this does not feature much in the respondents' discourse. For example, when Barbara says that her mother did not divorce her father because she did not want the label of divorcee, no mention is made of the shame that it would bring to the family as a whole; however, when Elsa and Joana say that they decided not to call the police because they did not want the fathers of their children to be in prison, there is a much greater sense of needing to preserve the family status and protecting their children from shame. Joana is however the only respondent who explicitly mentions the importance of reputation and the need to preserve the family name as deterrents to addressing situations of domestic violence.

Gossiping is mentioned by a number of respondents as a concern in the Portuguese community in England; as Isabel puts it, 'It's like living in a big Portuguese village

²⁹ Vanda Wellock, 'Domestic Abuse: Black and Minority-Ethnic Women's Perspectives' (2008) 26 2 *Midwifery* 181, 182; Gill Hague et al., 'Raising Silenced Voices: South Asian Women Immigrating After Marriage' (2010) 3 1 *Ethnicity and Inequalities in Health and Social Care* 25, 29; Diya Kallivayalil, 'Narratives of Suffering of South Asian Immigrant Survivors of Domestic Violence' (2010) 16 7 *Violence Against Women* 789, 790.

here [London]; everybody knows everybody else's lives'. Fear of gossiping fits well with what Chew-Graham calls the 'community grapevine', which, for example, fuels competition amongst South Asian families and pressure to show that they are doing well financially and that their children are excelling in school.³⁰ A number of respondents who are involved with the Portuguese community comment how Portuguese children are underachieving, which seems to indicate that children are not being pressured by their parents to do well in school for the sake of the image of the family before the community. Respondents attribute this to the fact that individuals do not value education, many of them lacking formal education themselves. Interestingly, both English and Portuguese men who were contacted about disseminating information about this study and publicising the call for participants grossly overestimated the willingness of Portuguese women to be interviewed. There may be a gender discrepancy in the level of shame associated with talking about matters of a personal nature that confirms the idea that the community grapevine serves primarily to control women's behaviour.³¹ The concept of community grapevine may be useful to explain the way in which women's behaviour is kept in check, such as not calling the police to address situations of violence that are considered normal, or encouraging tolerance for men's alcohol abuse.

³⁰ Carolyn Chew-Graham et al., 'South-Asian Women, Psychological Distress and Self-Harm: Lessons From Primary Care Trusts' (2002) 10 *5 Health & Social Care in the Community* 339, 342.

³¹ Salma Choudry, 'Pakistani Women's Experience of Domestic Violence in Great Britain' (Home Office Research and Statistics Directorate Research Findings no. 43 1996) 2; Chew-Graham et al. *ibid.*

Impact of community values and acculturation

Nine respondents in this study consider the Portuguese community to be very traditional and more 'machista' than the wider community. Machismo is associated with well defined gender roles in societies in which men assume a dominant role in different aspects of life; they are most often the decision-makers and heads of households, who adopt a tough and even violent demeanour, if necessary, to show their power and protect their honour and that of their families.³² Only one respondent, Carla, considers English society to be more 'machista' than the Portuguese one; this is because she finds that there are more social stereotypes and expectations placed upon the domestic role of women in England than in Portugal. Carla expresses this by saying:

The Portuguese are less "machistas" than in here [England]. It is unthinkable in Portugal that a woman has to stop working to have children. Portuguese men may be perceived as "machistas" but they respect women's opinions more. The relationship is healthier between men and women, they socialise together [in Portugal]. It is normal for someone to have male and female friends. They socialise as a couple, not go out each with a separate group of friends. (...) Girls here [in England] are discouraged to study science. Women's professions are also less valued here. (...) There is an obsession with having boyfriends here that leads them to accept things that Portuguese women would not accept.

³² Edna Erez et al., 'Intersections of Immigration and Domestic Violence: Voices of Battered Immigrant Women' (2009) 4 *Feminist Criminology* 32, 48; Vidales (n 26) 537; Fuchsel et al. (n 26) 269.

Carla is unhappy with the domestic role that she had to adopt once she gave birth, as she could not afford to carry on working and paying for childcare, something that she deeply resents. The close relationship between motherhood and employment for Portuguese women was discussed in chapter two. Portuguese women rate amongst those in Europe who more often work both paid and unpaid jobs, especially when compared with English women.³³ Carla sees working in paid employment as essential for her happiness and independence, and a way in which women, by not being completely financially dependent on men, can more easily escape situations of abuse. Of the women in this study who have children (18 out of 24), 11 work in paid employment. A higher proportion of women work amongst the respondents in London than amongst those in Norfolk. This data may, however, be skewed by the fact that a high proportion of respondents in Norfolk were recruited through a support service for immigrants which is more likely to be visited by unemployed individuals than the institutions which assisted in London to recruit participants for the research.

Despite Carla's perception of the patriarchal nature of English society, there is a generalised belief amongst respondents that women are more independent and heard in England than in Portugal, with some respondents going as far as to say that women have more rights in England than in Portugal. Respondents also feel that the fact that the Portuguese local community is more traditional than the wider community impacts on the way that Portuguese women perceive domestic violence and are able to deal with it. As became evident from the discussion presented above, women interviewed for this study feel that other Portuguese

³³ Maria das Dores Guerreiro and Helena Carvalho, 'O Stress na Relação Trabalho-Família: Uma Análise Comparativa' in Karin Wall and Lúcia Amâncio (eds), *Família e Género em Portugal e na Europa* (ICS 2007) 136.

women would hide or do nothing in relation to domestic violence, largely because of the influence of Portuguese culture. Regardless of the Portuguese community being more or less patriarchal than English society, and the fact that it is not true that women have more rights in England than in Portugal, this perception could influence the way in which Portuguese women deal with domestic violence, namely whether they would use the justice system or not. If Portuguese women expect that because the community is traditional, it will not support them leaving an abusive relationship or calling the police to deal with an incident of domestic violence, then it is not unreasonable to think that they would be less inclined to adopt any of these courses of action without careful consideration of the implications that this would have for them. Evidence of the patriarchal nature of the Portuguese community can be found in the way that some respondents in Norfolk accept a certain degree of domestic violence as normal and say, for example, that if the husband arrives home drunk, then it is up to the wife to make sure that he is not violent towards her, or that it is normal for men to drink and that often the violence happens because women provoke it. In London, the patriarchal influence on acceptable behaviour is less prominent in respondents' opinions. Nevertheless, this is visible when some respondents mention how Portuguese women do not take care of children as they should, but do not comment on the same lack of childrearing responsibilities in relation to men.

Three respondents explicitly say that the reason why they find the Portuguese community traditional is because Portuguese immigrants bring with them traditional values from Portugal. Two of these respondents add that the adoption of traditional forms of behaviour is more visible in those immigrants coming from rural or insular areas in Portugal. An example of this is Beatriz's story, whose

former partner comes from Madeira, a Portuguese archipelago with some political autonomy from mainland Portugal. Beatriz says that her former partner's alcoholism is considered normal behaviour in the community he comes from, and the fact that his violence was often fuelled by alcohol made it excusable in the eyes of the community. Beatriz says that when she considered calling the police the first time, she felt that 'He would be the victim and go to prison and she would be the bad guy for sending him there'. Beatriz eventually had to leave the traditional community in which she lived to be able to start a new life without interference from others, including her former partner and his family.

There are concerns of alcohol abuse in the Portuguese community in Lambeth and Norfolk. It is believed that in certain parts of the traditional Portuguese community in Lambeth, and especially amongst older generations, alcohol abuse amongst males is normalised. It is uncommon for either men or their spouses to seek help in cases of alcoholism and the problem often goes unaddressed.³⁴ In Norfolk, findings from a recent study by the Keystone Development Trust do not show worrying levels of alcoholism amongst the participants.³⁵ However, these findings relate to focus groups that were conducted with Portuguese and other immigrants and may not be fully representative of the Portuguese population living in the area. In the research conducted as part of this dissertation, without being prompted, two of the participants from Norfolk mentioned alcoholism when discussing domestic violence. Both respondents are in the higher age groups (55 to 64 and 65 and above), which is also consistent with the findings in London related to the habits of

³⁴ Valério (n 2) 11.

³⁵ Collis et al., 'Workers on the Move 3, European Migrant Workers and Health in the UK: The Evidence' (n 2) 67.

alcohol consumption amongst an older generation within the Portuguese community.³⁶

Some respondents take a different approach to the influence of Portuguese culture on Portuguese immigrants and choose to highlight the impact that English culture has on Portuguese immigrants' behaviour. Elsa illustrates this by saying:

The community is only closed when it's convenient to be closed. There is still a lot of prejudice in the Portuguese community, which is brought from Portugal but when they come here, people change. There are a lot of couples who come over married and then divorce here; this is because women get a lot more support here. They [Portuguese immigrants] are less concerned with causing a scandal here. The mentality in England is different. There is a lot of shame in Portugal; here people feel a lot more at ease and lose their boundaries. There is an openness here that is contagious.

The change in behaviour, which is brought about by the influence of English culture upon Portuguese immigrants, according to some respondents, leads Portuguese women not to be embarrassed to use the police or a court to deal with a situation of domestic violence. This assimilation of the culture of the country of destination supports the process of acculturation that is described in the literature that addresses domestic violence amongst immigrant populations. Immigrant women may be especially open to acculturation as sometimes it is easier for them to find a job in the country of destination and therefore come into contact with the

³⁶ Valério (n 2) 11.

wider community. Acculturation leads to a development of their legal consciousness that accommodates remedies found in the country of destination.³⁷ It is also more likely for younger generations of immigrants, especially those who are brought up in the country of destination, to adopt the customs of this country and to adopt different forms of legal consciousness from their older counterparts, partly for this reason.³⁸ A generalised assimilation of the culture of the country of destination is therefore not certain, especially amongst first generation immigrants, who are reluctant to adopt the customs of the country of destination.³⁹

Domestic violence received social and legal attention in Portugal much more recently than in England. As discussed in chapter two, only towards the 1980s did issues such as abortion or domestic violence start to gain more intense political attention. It is perhaps therefore not surprising that individuals born before a more overt approach against domestic violence was taken by the Portuguese state will not expect it to be dealt with openly or effectively by the justice system. The overall perception of respondents in this study is that the Portuguese justice system is slow and does not take domestic violence seriously. A respondent who until recently worked with courts and law enforcement agencies in Portugal complains that the justice system often is not able to help victims of domestic

³⁷ Menjivar and Salcido (n 25) 902; Mykiong Kim-Goh and Jon Baello, 'Attitudes Towards Domestic Violence in Korean and Vietnamese Immigrant Communities; Implications for Human Services' (2008) 23 *Journal of Family Violence* 653; Anet Ben-Porat, 'Connecting Two Worlds: Training Social Workers to Deal with Domestic Violence Against Women in the Ethiopian Community' (2010) 40 *British Journal of Social Work* 2485, 2488; Ruth Belknap and Leona VanderVusse, 'Listening Sessions with Latinas: Documenting Life Contexts and Creating Connections' (2010) 27 *Public Health Nursing* 337, 338.

³⁸ Leisy Abrego, 'Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims-Making for First- and 1.5- Generation Immigrants' (2011) 45 2 *Law and Society Review* 337, 347, 354.

³⁹ Maria Beatriz Rocha-Trindade, 'Afirmações Identitárias em Quadro Migratório' in J Miranda and M João (eds), *Identidades Nacionais em Debate* (Celta Editora 2006) 9.

violence. Other respondents refer to domestic violence in Portugal by saying that in Portugal, in situations of domestic violence 'women were expected to be stoic' (Carla) and/or that the perception in the Portuguese community is that 'you have to lie in the bed you made for yourself' (Joana), that is, if you decided to marry someone, you have to bear the consequences of this choice. Other respondents describe the situation where people know that domestic violence is happening but no one in the community intervenes, and if they did, they would be themselves reprimanded or shunned by the victim, the abuser and their respective families. As discussed in chapter four, having the mechanisms available in the home country as the frame of reference to deal with their problems often leads to women being unable or unwilling to use the mechanisms of the country of destination to address domestic violence, whenever these are not similar.⁴⁰ It should therefore not be surprising that Portuguese immigrants adopt the same behaviour in England that they would adopt in Portugal.

Religion

Despite the long historical association between the Portuguese state and the Catholic Church, only three respondents, two from London and one from Reading, mention religion when describing Portuguese culture. In chapter two, the influence of the Catholic Church on the Portuguese state, organisation of family life, acceptance of divorce and abortion is described as one of repression and traditionalism. It is possible that either, as in many other secular societies, the role of religion ceased to have a central role in individuals' lives or that the respondents

⁴⁰ Menjívar and Salcido (n 25) 898; Erica Burman and Khatidja Chantler, 'Domestic Violence and Minoritisation: Legal and Policy Barriers Facing Minoritised Women Leaving Violent Relationships' (2005) 28 *International Journal of Law and Psychiatry* 59, 71.

to this study simply do not see religion as informing the way that they would react to domestic violence.

Religion did not feature explicitly on the interview schedule. Respondents were therefore not prompted to talk about it in a specific section of the interview. Regardless, some of them mentioned it when discussing either Portuguese culture or what Portuguese women would do in a situation of domestic violence. Mariana mentions religion to say that it is present in everyday life but that it has little impact on people's private lives. Religious holidays are celebrated in the community as a way of keeping the family united and providing an excuse for seeing each other, rather than for their religious content. Mariana goes on to say that children are brought up with Christian values but that this does not have a strong impact in terms of the organisation of family life. She adds that the situation may be different for immigrants coming from rural areas, where religion has a greater impact on daily life than for those coming from urban areas.

Amélia takes a different view from Mariana on the impact of religion on Portuguese attitudes towards domestic violence. According to Amélia, who is actively involved with the Portuguese immigrant community in London, religion helps to keep the community very traditional when it comes to gender relations and has a strong negative impact on women's reactions to domestic violence. Amélia says, 'They [Portuguese immigrants] bring with them an old fashioned mentality, very much influenced by the old Catholic Church, in which it is shameful to talk about being a victim of domestic violence'.

Taking yet another stance regarding the impact of religion on the Portuguese community, a third respondent says that religion explains Portuguese solidarity. Solidarity with those in need is a trait that is very present in the community according to Laura, and can be seen in actions such as collecting money to help send the body of a deceased person to be buried in Portugal or providing shelter and food for other immigrants in need. Laura adds that religion makes the Portuguese a more positive people than the English.

The Catholic Church has a long history of opposition to divorce in Portugal, the repercussions of which can be seen in the relatively recent legalisation of civil divorce in Portugal, as discussed in chapter two. Of the respondents who mention the importance of divorce for the Portuguese community (six respondents), five consider it to be well accepted within the community. Only Barbara says that there may still be a stigma attached to divorce and comments how her mother had never divorced her father as she did not want the label of 'divorcee'. A number of respondents describe how certain Portuguese immigrants live separated whilst in England but pretend to be a couple when they go to Portugal, for the sake of their families. Some respondents say that this is done to better secure financial aid from the state, especially if they have dependents.

For the majority of respondents, religion has little impact on the organisation of family life and gender relations. This does not mean a complete absence of religious affiliation but rather a distinction between aspects of religion that influence one's spiritual and moral conduct and those that impact on the organisation of family life, with the latter being disregarded on numerous occasions. The potentially different attitude between those coming from rural

areas and those coming from urban areas mentioned by Mariana is something that cannot be confirmed directly by the data collected in this study as participants were not asked where in Portugal they come from, and thus remains to be further explored.

Integration in local and wider communities

Integration in the wider community is sometimes put forward as an indicator of women's ability to better escape domestic violence.⁴¹ In order to assess levels of integration into the wider community, participants in this study were asked about how much contact they have with members of the wider English community (questions 4 and 5). A broad concept of 'English community' is used in the interviews, as some respondents do not regularly socialise with or have contact with any English people, but have regular contact with individuals from other communities, such as Italians, Turkish or Romanians. Contact with a variety of cultures is useful to distinguish respondents who live exclusively within the Portuguese community from those who do not.

The level of contact that respondents have with the Portuguese community varies between those who live in the local Portuguese community and those who, whilst not living in an area with a high density of Portuguese, visit Portuguese shops and events regularly. Of the 24 respondents who participated in this study, 16 describe themselves as having contact with the wider community, with eight of these saying that the contact is on a regular basis, for example through work or friends. This

⁴¹ Ilze Earner, 'Double Risk: Immigrant Mothers, Domestic Violence and Public Child Welfare Services in New York City' (2010) 33 *Evaluation and Programme Planning* 288, 292; Vidales (n 26) 539.

means that there is a significant minority (8 respondents) who are not engaging with the wider community and may therefore be less able to access available remedies for domestic violence. Indeed, respondents who have little contact with the wider community say that it is either for lack of interest or lack of language skills, which poses an added difficulty in using the English justice system.

Twenty three respondents say that they have contact with the Portuguese community in England, with seven of these respondents saying that they have little or sporadic contact with the Portuguese community, be it by occasionally going to Portuguese shops or through organisations that bring Portuguese immigrants together. This is either because they live in areas that are not densely populated by Portuguese, or because they do not seek the company of other Portuguese in England. Two respondents say they sometimes go to Portuguese shops to buy Portuguese products but that they do not feel compelled to engage with the Portuguese community in England on a regular basis. Another respondent says that the Portuguese community is very varied and that generalisations of any kind, including as to what is the local Portuguese community, are difficult to make. Three other respondents draw attention to the fact that there are two very distinct groups within the Portuguese community in England, one consisting of unskilled workers with low levels of education, which is usually described as the traditional Portuguese community, and another consisting of highly educated individuals who come to England to study further or to take up high paid jobs; the two communities do not usually mix. This description of the community echoes the information found in official data and research on Portuguese emigration to England⁴² and

⁴² Malheiros (n 1) 137.

other countries.⁴³ Diversity within the community therefore needs to be taken into account when attempting an analysis of the Portuguese community in England. A large proportion of respondents who are deeply involved with the Portuguese immigrant community are also involved with the wider community, which makes conclusions on the impact of the Portuguese community on women's ability to engage with options available in the wider community difficult.

Respondents were not asked about the extent of integration of other Portuguese immigrants in the wider community. Nevertheless, five respondents when discussing the distinctiveness of the Portuguese community (questions 21 and 22) say that the Portuguese in general do not integrate well with the wider community (regardless of the respondents' own integration). The reason given by these respondents for this inability to integrate into the wider community lies in the fact that a number of Portuguese immigrants make little effort to learn English or simply to try new things. In fact, various respondents mention the existence of Portuguese immigrants in England who, despite being in this country for many years (between 20 and 30) cannot speak English other than to go to a shop to buy basic goods.

Respondents feel that exclusion from wider society contributes to a more traditional community and the inability to do better for oneself, financially and culturally. The nine respondents who rated their English as 'average' or 'poor' have been living in England for an average of five years, with two living in this country for one month and seven between three and twelve years. It is not amongst the most recent immigrants that the lower levels of English can be found which may

⁴³ Rocha-Trindade (n 39) 9.

indicate that integration into the Portuguese community and exclusion from the wider community are impacting on the levels of English of Portuguese immigrants in a negative way. Immigrants who are deemed to be making little effort to integrate into the wider community are perceived to be so influenced by Portuguese culture and community that they do not make an effort to learn English or are embarrassed to do so at their age. These immigrants are often targets for exploitation by family members or other members of the community who charge what are deemed by the respondents to be extortionate prices to translate papers, help fill in forms and accompany them when they have to visit a doctor. For example, Beatriz, who has been living in England for eight years, tells her experience of this:

The first year I was here, I didn't speak a word of English. I was embarrassed and wouldn't try it. My brother was already here, spoke the language and I relied on him. My mother speaks some English but never goes anywhere without me. One day I had to do a smear at the hospital; my brother refused to come with me and so I had to go by myself. It was the first time I tried to speak English with someone. I worked in a Portuguese shop and saw Portuguese people all the time. My English was very basic at the time. It's not just old people either, people my age [25-34] have the same ideas; they don't think that they should learn the language.

There are, however, respondents who see Portuguese immigrants differently; three respondents say that the Portuguese, mainly at an individual level, are able to integrate into a different community very well, are fast learners and adapt well to new circumstances. Two further respondents point out that the community is

very big, with all types of people within it. One elaborates on this idea by saying that there are 10 million Portuguese in Portugal and that she does not have much in common with a lot of them; as such, she assumes that there are those who integrate well into the wider community, those who integrate well into the Portuguese community, those who integrate well with both communities and those who do not integrate well in either. This point leads back to the existence of at least two different communities within the Portuguese population. Indeed, two respondents describe the Portuguese community by saying that there are mainly two large groups of immigrants, those who come to England with high levels of education to study further and often end up working here, and the unskilled workers with low levels of education, who group in what Amélia calls 'Portuguese community ghettos' and form what is usually considered to be the traditional community. These accounts potentially reflect the different waves of Portuguese immigrants that England has received over the years, discussed in chapter two, consisting mainly of unskilled workers until more recently when a number of highly educated immigrants have also started to come to this country.

Other structural factors intersecting with culture

As discussed in chapter four, one of the criticisms levelled against theories of legal consciousness is that they sometimes ignore the importance of structural factors, such as race, gender and class, in their theoretical explanations of legal consciousness.⁴⁴ The research presented in this dissertation addresses gender and ethnicity by default, as it focuses on Portuguese immigrants. Indeed, the main

⁴⁴ Rosie Harding 'Dogs are "Registered", People Shouldn't Be': Legal Consciousness and Lesbian and Gay Rights' (2006) 15 *Social & Legal Studies* 511, 515.

objective of the research is to understand the extent to which gender and ethnicity influence Portuguese women's invocation of law in cases of domestic violence.

The analysis of class needs to take into consideration the fact that class divisions that exist in Portugal may not correlate with class divisions in England. Nevertheless, a basic tripartite division between lower, middle and upper class may be used. Respondents with the lowest levels of education, who are employed in low paid jobs or unemployed and therefore would be considered lower class, live mostly in Norfolk or London. These respondents tend to be 'before the law' or 'against the law'. Respondents with the highest levels of education and professional or academic jobs, and therefore would be considered middle class, live in London and Reading. These respondents tend to be 'with the law' or 'before the law'. There are however respondents whose class is more difficult to determine. For example, Alexandra's lifestyle before separating from her husband and currently, indicates that she is from the middle to upper-middle class: she did not work whilst married and lived on her husband's income and she currently owns her own business; her education is below a BA, however. Also Amélia, whose level of education is also below a BA, who is self-employed as a writer and also works for a non-profit international organisation, seems to belong to the middle class, despite the lower level of education than expected for this social position.

Race was not addressed in this research because it was not found to have significant importance in respondents' invocation of law. Moreover, all respondents but one are white, and no great variation was found in respondents' invocation of law that could be attributed to race. The only view that the non-white respondent has that singles her out from the rest of the sample is the fact that she

attributes greater weight to family honour, saying that she did not complain about her husband's abuse to protect family reputation and name. She however attributes this to 'African and Portuguese culture', rather than to race.

Resources

Respondents were asked a number of questions to ascertain their length of stay in England, their command of English, their age, education and marital status, whether they have any children or other family in England and whether they are the main providers for their households. The answers to these questions help to understand individual characteristics and resources that may influence how Portuguese women use mechanisms available to address domestic violence in England. Individuals use resources to which they have access to interpret situations against a legal framework and decide whether to take action or not. Individual resources therefore work closely with cultural influences, or schemas, to determine individuals' legality and consequent invocation of law.⁴⁵

Respondents were asked to rate their level of English, as 'very good', 'good', 'average' or 'poor' (question 24). The majority of respondents consider that they have a 'very good' or 'good' command of English. Eleven respondents rate their level of English as 'proficient' or 'very good', four as 'good', and eight as 'average' or 'poor'; only one respondent says that she does not speak English. Language proficiency is considered one of the biggest hindrances for immigrants to access

⁴⁵ Ewick and Silbey (n 17) 41.

services, secure work and engage with the wider community.⁴⁶ For these reasons, it may have a dramatic effect on immigrant women's ability to escape domestic violence.⁴⁷ Women with poor language skills often rely on family members or translators to access services, which sometimes is an inadequate way of supporting these women. Poor command of English has been identified as a problem amongst the Portuguese adult population by professionals working in different services in Lambeth, which is sometimes compounded by lack of literacy and numeracy skills in Portuguese.⁴⁸ However, the focus on service providers may skew the image of the Portuguese population in this area, as the professionals who participated in the study may have been in contact with the section of the Portuguese immigrant population that is most vulnerable.

The research conducted for this dissertation, although consisting of a small number of participants, confirms to some extent the lack of English skills in the Portuguese population in England, as nine out of 24 respondents lack strong English skills. If the four interviewees contacted through PARSUK, who have the highest level of education of the group, are excluded from the sample, the number of respondents with language skills ranging from average to poor or none rises to nine out of 20 and so closer to half of the sample. There are no particular discrepancies between the population in London and in Norfolk in terms of command of English. It would seem that the Portuguese population is nearly evenly divided between those with good or very good command of English and

⁴⁶ Burman and Chantler (n 40) 71; Aisha Gill and Kaveri Sharma, 'Response and Responsibility' in Sarah Walsum and Thomas Spijkerboer (eds), *Women and Immigration Law: New Variations on Classical Feminist Themes* (Routledge-Cavendish 2007) 196; Chew-Graham et al. (n 30) 342.

⁴⁷ Menjivar and Salcido (n 25) 903-911.

⁴⁸ Valério (n 2) 7.

those with average to poor command. This division may reflect the skills and education that immigrants bring with them from Portugal and the level of integration in the Portuguese and wider English communities, as discussed above.

Respondents' level of education is divided between those with a level of education below a BA or equivalent (15 respondents), and those with a BA or equivalent, or higher degree (nine respondents). There is a large discrepancy between London and Reading on the one hand, and Norfolk on the other, regarding the level of education of respondents, as all respondents with a BA or equivalent or a higher degree but one are in London and Reading. The difference in levels of education in these areas is partly because all respondents from PARSUK are from London or Reading. If these respondents are taken out of the analysis, the levels of education in London are still higher than those in Norfolk (four in London with a BA or equivalent or higher degree, against one in Norfolk). Moreover, the two respondents from Reading have amongst the highest levels of education and command of English in the sample, which may not be representative of the rest of the population in that area.

Lower levels of education often make women more vulnerable to domestic violence. This can be due to lack of awareness of their rights or a greater likelihood of accepting domestic violence as a normal part of a relationship.⁴⁹ This was reflected to some extent in respondents' perceptions of domestic violence, as respondents in London and Norfolk who blame victims for their abuse are amongst those with lower levels of education. Acceptance of violence and blaming

⁴⁹ Kathryn Yount, 'Resources, Family Organisation, and Domestic Violence Against Married Women in Minya, Egypt' (2005) 67 3 *Journal of Marriage and Family* 579, 592-593, 598; Hague et al. (n 29) 29.

victims may not therefore be a Portuguese cultural trait, but related instead to the level of education of respondents. Because there are a substantial number of women with low levels of education in the community, this may impact not only on these women's invocation of law but also other women's ability to escape domestic violence due to the pressure that their perception of what are adequate responses to domestic violence as a community may exert on other women.

In terms of marital status, 16 respondents are in a long-term relationship, 10 living with a partner without formalising the relationship and six married. All those who are victims of domestic violence were married when the abuse occurred and are now either single (two), with a new partner (three) or with the same partner (one). Only two of the 24 respondents do not have any family in England. The majority of respondents have children, a partner and/or extended family living in England. Some respondents were followed by their relatives or partners to England, others came to join family members who were already in England. The existence of a close family network has been identified as a characteristic of the Portuguese population.⁵⁰ Although close familial relationships may work to help or hinder women in escaping violence,⁵¹ only one respondent, Carla, mentions the role of the extended family in dealing with domestic violence. According to Carla, the lack of an extended family in England puts added pressure on the couple's relationship and may explain some situations of violence. She also says that because couples are 'alone' in England, they are more dependent upon each other and so will tend to stay together in situations that they would not accept in Portugal. The idea that couples' isolation in England leads them to stay together

⁵⁰ Barata et al., 'Portuguese Immigrant Women's Perspectives on Wife Abuse: A Cross-Generational Comparison' (n 26) 1134.

⁵¹ Bostock et al. (n 28) 103-104; Fleury-Steiner et al. (n 21) 339.

more often than in Portugal is also mentioned by another respondent but contradicted by seven others who claim that couples form and separate more easily in England than they would in Portugal. It has been found that close ties with the family lead women to give precedence to informal ways of dealing with domestic violence,⁵² something that has been confirmed in the research conducted as part of this dissertation.

Of the 24 respondents, five do not have children; all others have one, two or three children. The majority of women who have children gave birth to them in England (12 out of 19). The existence of children has been identified as one of the reasons that women may hide domestic violence or try to deal with it quietly. This can be due to fear of hindering the children's future prospects, for example of a good marriage, or loss of material wellbeing.⁵³ Respondents in this study mention children both as a reason to continue in an abusive relationship and as a reason to leave. Elsa and Joana, for example, decided to leave their partners but not to press charges because they did not want their children to have fathers who had been in prison. Beatriz decided to press charges against her abuser when she saw that the abuse was having a negative effect on her children. Children hold a central role in most respondents' decision-making process. This may be because the majority of respondents are mothers but even those who do not have children, such as Barbara, mention the importance of children in keeping the family unit together.

⁵² Sokoloff (n 14) 247.

⁵³ Aisha Gill, 'Voicing the Silent Fear: South Asian Women's Experiences of Domestic Violence' (2004) 43 *The Howard Journal of Criminal Justice* 475, 476. Helen Wallach et al., 'Attitudes Toward Domestic Violence: A Cultural Perspective' (2010) 25 *Journal of Interpersonal Violence* 1284, 1285; Burman and Chantler (n 40) 69; Bostock et al. (n 28) 103; Chew-Graham et al. (n 30) 341; Vidales (n 26) 536; Fuchsel et al. (n 26) 269; Midlarsky et al. (n 26) 287.

Economic dependence has been found to hinder women's ability to use the justice system in situations of domestic violence⁵⁴ and should therefore be taken into account when considering Portuguese women's invocation of law. Eight respondents are the main providers of their households; this corresponds to the respondents who are single or divorced; the other respondents share the provision equally with their partners. The sharing of the household provision reflects the general evidence, discussed in chapter two, that Portuguese men and women strongly believe that both men and women should contribute towards the household finances.⁵⁵ Portuguese women are amongst those who most combine paid and unpaid work in Europe⁵⁶ and this is also something that respondents accepted as natural. Indeed, Carla feels strongly that it is important for women's independence that they are able to engage in paid work and feels that the fact that she had to stop working to take care of her child whilst in England is something she resents having to do and that would not be expected of her in Portugal. Other studies suggest that women with more material resources, including money, but also help with children and transport, are more likely to use the justice system than those with fewer means.⁵⁷ Some respondents mention economic independence as an important factor for women's ability to escape domestic violence. Catarina associates the fear of losing economic status with Portuguese culture. She says that Portuguese women would be reluctant to put themselves in a more difficult economic situation by leaving an abusive partner, because they are accustomed to their socio-economic status. This is however contradicted by

⁵⁴ Fleury-Steiner et al. (n 21) 338.

⁵⁵ Aboim (n 26) 44.

⁵⁶ Maria das Dores Guerreiro and Helena Carvalho, 'O Stress na Relação Trabalho-Família: Uma Análise Comparativa' in Karin Wall and Lúcia Amâncio (eds), *Família e Género em Portugal e na Europa* (ICS 2007) 136.

⁵⁷ Bennett et al. (n 60) 764.

Amélia and Alexandra who were left worse off financially when they left their abusers but for whom the loss of economic status had little weight in their decision to do so.

Interaction with service providers

A large part of what defines women's use of the justice system is the relationship that they establish with service providers. If this relationship is a positive one, then it is more likely that women will proceed with the use of courts in dealing with domestic violence, than if a negative or no relationship is established.⁵⁸ Participants in this research were asked a number of questions on the use and perception of services (questions 14 to 20). The concept of service provider was left deliberately vague in the interview schedule. 'Service provider' includes any organisation that provides support to victims of domestic violence, such as refuges and victim support groups, or support with aspects that are not only for victims of domestic violence but may be useful in these circumstances, such as housing associations. The only service considered separately in the interviews was the police. This is because the relationship established with the police can be of a very different nature from that established with other service providers,⁵⁹ and the separation ensured that respondents included both types of organisations in their answers. In fact, the interview data shows that respondents do make a clear distinction between the police, voluntary support services and other types of service providers, both in terms of which ones they would use and which they think other Portuguese women would use.

⁵⁸ William Felstiner et al. 'The Emergence and Transformation of Disputes: Naming, Blaming, Claming...' (1980-1981) 15 3/4 *Law and Society Review* 631, 639-648; Fleury-Steiner et al. (n 21) 338.

⁵⁹ Fleury-Steiner et al. *ibid.*

Police

The police are generally well regarded by all respondents in London and Reading. In London, respondents who revealed having had any contact with the police in the past, both in situations of domestic violence and other situations, are impressed by police officers' politeness and the level of support offered. There is a sense amongst these respondents that the police forces in England are better trained to deal with the public than the police forces in Portugal. Elsa expresses this by saying:

The police helped me change my life (...) The police officer in charge of my case took my case to heart and took very good care of me.(...) The courts gave him [the offender] probation, a fine and community service. I was constantly kept updated. Even today, when visiting the police station, they recognise me and ask me how I am coping.

There are, however, respondents in London who would not use the police to deal with their problems. One such respondent finds the police 'lacking in common sense'. She adds that 'they follow the law and regulations but don't seem too much in touch with reality'. This respondent is Diana, who was involved with the justice system as a result of a theft of her property by an acquaintance, and found the consequences to be too harsh for the offender. Only one other respondent in London says that she would not use the police to deal with domestic violence. This is Fátima who displays great reluctance to engage with the police at any level because she would then have to 'live with the consequences' while living in the community. Fátima was generally elusive with her answers during the interview

and therefore it is not clear whether her answers in relation to the police result from a previous negative interaction with them or not. All other respondents say that they would use the police in a situation of domestic violence, mainly to stop immediate violence.

There is a marked contrast between the view that respondents in London have of the police and that held by respondents in Norfolk. Helena expresses a common view of the police in Norfolk when she says that they need 'to improve in some aspects' or even that 'they don't do anything'. Respondents in Norfolk see the police as interfering and unhelpful; they say that the police pay too much attention to minor aspects, such as whether a car window is cracked or not, but when it comes to important matters, such as robbery or anti-social behaviour, they are useless. Helena explains this by saying, 'If it is to deal with a small matter, they are all there. If it is to deal with something important, they are nowhere to be seen'.

Importantly, three of the seven respondents in Norfolk think that dealing with domestic violence using the police will most likely lead to an excessive response. According to these respondents, the police should only be called to act in serious matters, when there is physical violence and danger to life. Although respondents in Norfolk generally do not see the police in a good light, when prompted to say whether they would call the police or not to deal with a personal matter, they all say that they would, except one who associates the role of the police with matters of a public nature only.

When asked whether respondents would like to see Portuguese police officers or civilians collaborating with the police in England, the response was mixed. In

London and Reading, respondents consider the police in England generally better than the police in Portugal in terms of politeness and effectiveness; one respondent in London states that she had used the police in England to deal with domestic violence but would not have liked to speak to a Portuguese police officer. Lack of sensitivity for situations of domestic violence and the possibility of gossiping are pointed out by respondents in London as two reasons for not wanting to engage with Portuguese police officers in England. In contrast, all respondents in Norfolk appreciate having a Portuguese speaker in the local police force, as it makes it easier to communicate with the service. The police officer that they refer to is actually a Police Community Support Officer (PCSO) who has been distinguished for her work with the Portuguese community in Thetford.⁶⁰ Levels of English proficiency were higher in general for London and Reading than for Norfolk, which may explain this discrepancy to some extent.

When asked whether other Portuguese women would use the police, 10 out of 17 respondents say that they would. Some respondents say that Portuguese women would use the police in England especially to stop immediate violence, whilst others say that they would do so unreservedly, adding that shame was something of the past and that today women would not be embarrassed to go to the police to deal with domestic violence. However, six respondents contradict this by saying that Portuguese women would not use the police out of shame or lack of adequate language skills. One respondent in Norfolk says that the Portuguese population in the area would not use the police in most cases because there are high levels of alcoholism and gambling addiction in the local Portuguese community which has

⁶⁰ Norfolk Constabulary, 'PCSO Wins Charity Award' (Norfolk Constabulary 2012)

<<http://www.norfolk.police.uk/newsandevents/newsstories/2012/march/pcsowinscharityaward.aspx>>
accessed 20 August 2013.

led to a high proportion of men having been cautioned for drunk and disorderly behaviour or banned from betting shops. This in turn leads women to avoid calling the police for fear of the repercussions upon their husbands, namely of them being arrested. Only one respondent was interviewed in this particular area of Norfolk and therefore it is difficult to assess to what extent her comments are indeed representative of the whole local Portuguese community or only the section of this community with which she is most closely involved.

Other services

All but two respondents are aware of the existence of support services for victims of domestic violence. They are, however, not aware of any specific details, only that they exist, as they have seen adverts on television or public transport. In London, the levels of appreciation for support services drop, when compared to those of the police. This has to do with a perception that support services do not have much to offer individuals. Respondents in London see them as 'lacking in teeth' and a place where one would find someone to talk to, but who would not solve any problems. These respondents do not see much use for support services and they would rather go to the police or to a family member to address domestic violence. Alexandra describes her decision not to resort to support services as such:

I talked to my GP and she really helped (...) I went to a lawyer, an English lawyer, and they took care of it (...) I didn't want to use support services; I was afraid that if I saw someone [from a victim support group], I would lose my drive. I wanted to fight the situation and not settle down.

Although Alexandra used service providers without reservations, in the form of a GP, lawyers and the police, she deliberately chose not to use victim support services. Alexandra feared being cast into the category of helpless victim, much like respondents in Bumiller's study who did not complain about discrimination because they rejected the label of victim.⁶¹ In order not to lose momentum and to be able to leave the abuser, Alexandra decided instead to start legal proceedings against him and to enlist the help of lawyers for this. From her account of the situation, she was granted an occupation order and it is also likely that either a restraining order or a non-molestation order was issued against her abuser, as she says that he is 'not allowed to contact her'. Alexandra says in her interview that she did not plan to approach her GP about the violence that she was experiencing at the time; she merely felt close enough to her GP to eventually talk to her about it when she was visiting her for a different matter. Alexandra's experience draws attention to the importance of making health professionals aware and supportive of victims of domestic violence. The NHS has already published guidance on domestic violence for health professionals to address this matter⁶² and governments have made efforts to bring health professionals into the multi-agency prevention and detection mechanisms for domestic violence, as discussed in chapter three.

⁶¹ Bumiller (n 25) 426.

⁶² NHS, 'Responding to Violence Against Women and Children – The Role of the NHS' (NHS 2010) <http://www.health.org.uk/media_manager/public/75/external-publications/Responding-to-violence-against-women-and-children-the-role-of-the-NHS.pdf> accessed 6 February 2013; NHS Direct, 'NHS Direct Domestic Violence Policy' (NHS Direct 2012) <<http://www.nhsdirect.nhs.uk/About/FreedomOfInformation/FOIPublicationScheme/~media/Files/FreedomOfInformationDocuments/OurPoliciesAndProcedures/20120918-DomesticViolencePolicy.ashx>> accessed 6 February 2013; NHS, 'Domestic Violence London, a Resource for Health Professionals' (NHS 2013) <<http://www.domesticviolencelondon.nhs.uk>> accessed 6 February 2013.

A number of services and provisions that are part of the multi-agency approach to domestic violence in England are analysed in chapter three. These include SDVCs, IDVAs, MARACs, refuges and Sanctuary Schemes. Most respondents do not mention these agencies and services, and demonstrate only a generic awareness of the existence of support services, as already mentioned. The three respondents who experienced domestic violence and used the justice system to address their situation are all in London. These are Alexandra, who deliberately chose not to use support services, Beatriz, who went to court to decide the custody of her children, and Elsa, who possibly has the greatest level of involvement with different support services in the group.

Elsa was abused by her husband while they were married and for two months after the dissolution of the marriage. Her husband was found to be trying to poison her and when she first suspected this, she contacted the police. Although she does not refer to it in legal terms, a restraining order was most likely issued against her abuser under the PHA. Elsa probably also benefited from a Sanctuary Scheme when she decided to leave the abuser, as she says that two police officers and Victim Support helped her change the locks in her house. Although Elsa's situation was resolved in court, she never went to court herself. The CPS prosecuted her case and she says that she was kept updated and felt supported throughout the whole process. Elsa did not want to go to court because she did not want to have to relive the abuse. She agreed reluctantly to be a witness but she was never called to testify, possibly because the abuser pleaded guilty. It is possible that an IDVA was also involved in Elsa's case, although when she mentions being kept updated about the progress of her case, she tends to credit the police with this.

Like Alexandra, Elsa is happy with the outcome of her case (her abuser was given a fine and community service) and with the support that she received from the services that she was engaged with. Indeed, all respondents who had been to court to deal with domestic violence in England were satisfied with the outcome and found the procedure fair. These experiences to some extent contradict Pleasence et al.'s findings on the use of civil courts in England and Wales in which respondents with previous contact with civil courts were (marginally) more likely to see the justice system as important in asserting their rights, but less likely to expect a fair hearing at court.⁶³ Beatriz's case was still being tried at the time of the interview. She says that the process is all handled between lawyers and that she has little input into it.

Limited access to services due to lack of language skills has been identified as problematic in the Portuguese community.⁶⁴ The Keystone Development Trust published research on migrant populations in Norfolk revealing that, although levels of registration with a GP are high in the local Portuguese community, usage of the service is low and that the availability of translators is inadequate.⁶⁵ Lack of language skills was also identified as a problem in the ability of the Portuguese community to access housing services in Lambeth.⁶⁶ Language proficiency impacting on women's access to services in general is particularly relevant, as

⁶³ Pascoe Pleasence et al., *Civil Justice in England and Wales: Report of Wave 1 of the English and Welsh Civil and Social Justice Panel Survey* (Legal Services Research Centre and Ipsos MORI 2011) 55
<<http://www.justice.gov.uk/downloads/publications/research-and-analysis/lsrc/2011/civil-justice-wave1-report.pdf>> accessed 4 February 2013.

⁶⁴ Figueiroa (n 2) 33.

⁶⁵ Collis et al., 'Workers on the Move 3, European Migrant Workers and Health in the UK: The Evidence' (n 2) 62.

⁶⁶ Valério (n 2) 6.

support services for domestic violence are hardly mentioned by respondents in this study, which indicates that it is more likely that the police or GPs are contacted by Portuguese victims of domestic violence.

One respondent, who was a social worker in Portugal, comments that in her experience, support services in Portugal are not respected, especially by men. She used to talk to men and women about domestic violence when she visited rural areas of Portugal in the course of her work, and found that men would not engage with her or would treat her with little respect because she was a social worker. It is possible that there is simply a lack of cultural awareness of the role of support services in Portugal that is imported by immigrants when they move to England, which leads respondents to perceive support services as having little impact in helping to solve problems. One respondent living in Reading not only has the perception that support services are inefficient, she fears that involving them may make matters worse for victims of domestic violence. Carla talks about the bad reputation associated with refuges that would deter anyone from using them; she goes on to illustrate this by mentioning situations where victims of domestic violence and their children have to share accommodation with women with drug addictions, and comments how 'this hardly makes leaving a viable solution'. Interestingly, during the time spent at META⁶⁷ drop-in centre in Thetford, it was clear by the number of users and their comments on the service that Portuguese immigrants in the area see the advice provided there as useful. There is therefore scope for Portuguese women to access support services if these are perceived as providing practical responses for domestic violence.

⁶⁷ META (Mobile Europeans Taking Action) consists of a range of services provided by Keystone Development Trust for migrant European workers.

Difficulty in understanding how services are set up and how to navigate them is another problem raised by two other respondents in London, who say that they had to do some independent research to know how the system works, and that they understand if others less skilled in researching information would have difficulties with this. Only three respondents in London and five in Norfolk have actually ever used support services in England; the issues for which assistance was sought vary between domestic violence, child support and other forms of state welfare. Respondents are generally happy with the service received, even though some have complaints about the time it takes to have some matters resolved, such as the time spent on waiting lists to get a house through a housing association.

When asked whether it would be useful to have support services in Portuguese or to have Portuguese staff in the existing support services, 19 respondents consider having services in Portuguese or staffed by Portuguese-speakers would be useful. Seven respondents say that more information in Portuguese would be useful for the community. However, five respondents say that there is already a lot of information in Portuguese out there and if people do not use the services, it is because they do not want to. According to these respondents, what is necessary is not more information in Portuguese but an effort from Portuguese immigrants to learn English and integrate better into the larger community. Some respondents add that the Portuguese know very well how to use services when it is advantageous for them, such as setting up ways to receive financial support from the state. The perception of a high number of Portuguese in the community on state benefits is a recurring topic in the interviews conducted. Respondents were not prompted to discuss this matter but brought it up whenever asked whether the Portuguese would use support services in England, to say that a number already

do so in the form of income support and therefore should have no problem using other support services if necessary. Eight respondents, whose work includes providing support to the Portuguese communities in London and Norfolk, say that it is very difficult to get the Portuguese to attend any information sessions or free English courses, or to do volunteer work. Indeed, lack of engagement with local initiatives designed for the Portuguese community is pointed out by two of these respondents as indicative of the lack of willingness of the Portuguese to integrate with the wider community. Some respondents draw attention to the fact that the lack of language skills and the inability to integrate in the wider community means that a lot of women are dependent on relatives or members of the community whom they pay, for example, to fill in forms, something that had already been identified as a problem in a study on the Portuguese community in Stockwell.⁶⁸ Some Portuguese who do not integrate well into the wider community as a result do not encourage their children to integrate either. This is particularly visible in Alexandra and Amélia's complaints that one reason for the community's isolation is its own inability to experiment with new things and engage with people from outside the community.

The desire to solve problems independently shown by respondents in this study is in line with the attitudes of Genn's respondents when dealing with non-familial matters, in which a large number of individuals attempt to solve problems without resorting to the help of professionals or support services.⁶⁹ Similarly in line with Genn's findings, respondents in this study who used support services did go on to

⁶⁸ Valério (n 2) 6.

⁶⁹ Genn (n 6) 68.

use the justice system.⁷⁰ However, voluntary organisations such as victim support groups do not feature more positively in respondents' perceptions than non-voluntary organisations in the research presented here, which contradicts existing literature on the subject.⁷¹ One factor that may explain this discrepancy with existing literature is the low proportion of participants in the current study who used any support services. When comparing only respondents who used the police with respondents who used other support services, the levels of satisfaction are equally high for both. It is in the perception of the usefulness of the police and support services that a gap emerges, with the police rating higher than support services as a service that Portuguese women would use, especially in London. The main reason for the discrepancy in levels of acceptance of the police and other service providers lies in the perception that the police can offer a quality of service that support services cannot match. This is important, as Fleury-Steiner et al.'s study demonstrates that victims who engage with the police are more likely to proceed with using the justice system than victims who do not engage with the police.⁷² It is also important to note that the perception of the usefulness of the police in Norfolk is much lower than in London, with one respondent in this area, Sara, saying that the police service has 'a lot of room for improvement'.

No respondent mentioned the cost of using services. The only respondent who used a lawyer paid by herself when dealing with domestic violence made no comments on how the expense weighed on her decision to take action, other than saying that when she left the abuser she suffered a significant financial loss. In terms of other services accessed, one respondent in London mentions being on a

⁷⁰ Ibid.

⁷¹ Bostock et al. (n 28) 103-105; Hague et al. (n 29) 31.

⁷² Fleury-Steiner et al. (n 21) 338.

waiting list of the local housing association and waiting for a house for some years, a concern that was echoed by a respondent in Norfolk; both say that the staff are friendly and helpful but that the service is too slow.

Some respondents, both in London and in Norfolk, say that Portuguese immigrants sometimes fear using services of any kind. Beatriz explains this by saying that some immigrants are not taking full advantage of state support because they think that if they give more information to social services, they run the risk of losing their current benefits. She adds that if someone calls the police because of domestic violence, they think that they run the risk of losing custody of the children themselves and this dissuades them from taking action. Lack of knowledge of how the system works therefore also seems to deter some Portuguese women from engaging with it.

Conclusion

The application of the theoretical framework proposed in chapter four to the interviews conducted demonstrates the complex process involved in Portuguese women's invocation of law. By focusing on the analysis of culture, resources and the interaction with service providers, the framework reveals the interaction of numerous factors that determine how Portuguese women perceive domestic violence and how they assess existing options to address it in England.

Portuguese women's preferred reactions to domestic violence are all of an informal nature, which means, generally, talking to friends and family or simply leaving the abuser. Should informal reactions to domestic violence not succeed,

then Portuguese women tend to adopt the forms of legal consciousness 'with the law' or 'against the law'. There are respondents who display the form of legal consciousness 'before the law' but this is usually for types of domestic violence that they consider less relevant, and not for domestic violence as a whole.

In order to understand the explanations for the adoption of each form of legal consciousness, cultural and individual aspects identified in chapter four as having particular impact on immigrant women were assessed against the data gathered from the interviews. Familism, or the existence of very close familial ties, can be elicited from respondents' answers. Almost all respondents characterise being close to one's family as a Portuguese characteristic. This may explain respondents' preference for informal ways of addressing domestic violence, and reflects similar findings in literature on family life among Latinas in North America.⁷³ There are, however, few references to family honour in respondents' statements. As discussed in chapter four, the impact of family honour entails women holding a greater role in maintaining the honour of the family and as such having their behaviour heavily scrutinised.⁷⁴ Family honour also impacts on women's behaviour in that loss of honour affects children's future wellbeing.⁷⁵ Despite children's wellbeing featuring prominently in Portuguese women's decision-making, only two respondents openly mention the importance of making sure that children are not affected by the behaviour of their parents. It would seem that, with some exceptions, Portuguese women are concerned with children's wellbeing more than with an abstract concept of family honour. Portuguese women are concerned with family honour only to the extent that it impacts negatively upon

⁷³ Vidales (n 26) 536; Fuchsel et al. (n 26) 269.

⁷⁴ Chew-Graham et al. (n 30) 341; Burman and Chantler (n 40) 69; Bostock et al. (n 28) 103.

⁷⁵ Chew-Graham et al. *ibid*; Burman and Chantler *ibid*; Bostock et al. *ibid*.

their children, as was the case of four of the five respondents who disclosed suffering abuse.

The concept of shame is important in this context as a driver for women to hide abuse but not necessarily for accepting it as normal. Whilst some respondents mention the existence of pressure from the community for women to accept violent behaviour as normal, most respondents instead mention a generalised sense of shame as the reason behind the apparent inaction of Portuguese women towards domestic violence. The way to reconcile a strong desire to protect one's privacy and the rejection of violence seems to be through the adoption of informal responses to the problem. The Portuguese community is often described in an unflattering way when it comes to addressing matters of a personal nature. Respondents describe the community as judgemental and its members as living off appearances. This has an obvious impact on women's attitudes towards domestic violence and explains why respondents think that other members of the community would deal with it quietly. In this setting, shame and fear of gossiping may be preventing women from disclosing domestic violence, but not from taking action altogether.

Reactions to domestic violence are, however, not the same for the community as a whole. Whilst certain aspects such as familism and the importance of children in women's decision-making cut across the whole group, acculturation and lack of engagement with the traditional community play a less clear part in Portuguese women's reactions to domestic violence. Respondents say that a large proportion of Portuguese immigrants change their behaviour when they come to England and, as a result, are not worried about leaving a partner should there be any violence. It

is difficult to understand how widespread this change in behaviour is, however. Looking at the levels of integration of respondents both in the local Portuguese communities and the wider community, it would seem that there are nearly as many deeply involved in the Portuguese community as there are involved with the wider community. This may correspond to a difference between immigrants who came to England with lower education and looking for unskilled work and those who came to England with better language skills, who tend not to live in areas that are densely populated by other Portuguese immigrants. The difficulty in finding a homogenous Portuguese community may also reflect class differences between women. Indeed, the research confirms that the Portuguese immigrant population in England is varied and includes immigrants with high levels of education, and a good command of English, a number with PhDs, and research positions in English universities. These immigrants tend to be 'with the law' or 'against the law'. There are also immigrants with average or poor language skills who take up mainly unskilled work and who tend to be 'before the law'. Respondents with the highest levels of education concentrate in London and Reading, although the samples from Reading and Norfolk are much smaller. The majority of respondents were confident in their command of the language, although there is a significant minority with poor language skills that should not be ignored when trying to understand Portuguese women's invocation of law. Interestingly, whilst economic reasons were mentioned as a reason for not leaving the abuser, this was often related to losing social status within the community and something that the respondents who mentioned it had difficulty generalising to the wider community, but instead described as a Portuguese characteristic.

Respondents distinguish between different types of services, especially between the police and victim support services. This may be due to a lack of understanding of how services work rather than previous experiences of these services. Many respondents criticise the lack of practical impact of resorting to a voluntary organisation, for example, but those who actually used this type of services found them useful, except for some complaints that do not seem to be culturally specific, such as having to wait for too long for a house provided by a housing association. The police in London are seen as more trustworthy and effective than the Portuguese police forces. However, in Norfolk, respondents show a generalised distrust of the police and consider them to be of little use to solve the problems they experience. Whilst in Norfolk, respondents welcome the existence of Portuguese police officers, this is not the case in London. This may be because respondents in Norfolk have overall lower command of English than those in London and having a Portuguese-speaker helps to access this service. However, poor past experiences with the police in Norfolk steer respondents away from this service.

The next chapter provides a critical analysis of how culture, resources and interaction with service providers influence Portuguese women's forms of legal consciousness, and how an understanding of these influences can be useful for providing support to Portuguese women experiencing domestic violence in England.

Chapter 6: Conclusion - reflections on the data analysis and theoretical framework

This dissertation explored Portuguese women's invocation of English law in situations of domestic violence. It did so by integrating theories of legal consciousness and literature on immigrant women and domestic violence into a framework which was used to analyse data gathered from interviews with Portuguese women living in England. The present chapter critically reflects on both the framework used and the analysis made. The chapter then proceeds to make recommendations regarding Portuguese women's engagement with available options to address domestic violence in England.

Reflections on the theoretical framework

Portuguese women experience specific cultural, structural and individual circumstances that affect their invocation of law in situations of domestic violence. Some of these circumstances result from their status as immigrants, and therefore are common to other immigrant populations, and some are specifically associated with Portuguese culture. Although Ewick and Silbey's articulation of schemas and resources is useful to uncover respondents' invocation of law and has been used extensively throughout this dissertation, their categories of legal consciousness fail to account for some aspects of respondents' relationship with the options available in England to address domestic violence. However, the reasons behind the adoption of each form of legal consciousness become clear if the specific

circumstances that affect Portuguese women are taken into account when analysing each form of legal consciousness.

A straightforward use of Ewick and Silbey's categories of legal consciousness might indicate that respondents 'before the law' are in awe of the justice system, believing that it should only be used in cases of a public nature. However, this would be an over-simplification of respondents' legal consciousness. Some respondents 'before the law' see domestic violence as behaviour that varies between that which women should have been able to avoid and behaviour that is serious enough to involve the justice system. These respondents are not rejecting the use of the justice system because they are in awe of the law, rather, they distinguish between levels of seriousness of violence. Violence that could have been prevented by women should be accepted. This is not because violence is deemed trivial in itself but because women failed to employ the preemptive mechanisms that they are expected to use to deflect violence. Violence that could not have been prevented is deemed more serious and should be addressed primarily informally but if this fails, then the use of the justice system is justified.

Thirteen out of 24 respondents can be considered to be 'with the law' when describing the way in which they would address domestic violence. This is a larger than expected proportion when compared with Ewick and Silbey's respondents. Ewick and Silbey propose that individuals who are socially disadvantaged, for example women and ethnic minorities, tend to be 'against the law'.¹ Most respondents in the research, however, would use the justice system in a very

¹ Patricia Ewick and Susan Silbey, *The Common Place of Law: Stories From Everyday Life* (University of Chicago Press 1998) 234-235.

pragmatic way, to assert rights, claim compensation, or simply to send a message to the abuser. They nevertheless see the law more as an instrument to achieve a goal than as a game, which distinguishes them from Ewick and Silbey's respondents 'with the law'.² The justice system brings an institutional gravitas to the situation of abuse that respondents welcome and there is great concern when the system is 'played' solely in someone's self-interest. Finally, despite holding a pragmatic and generally positive view of the justice system, respondents 'with the law' would still give precedence to informal mechanisms to address domestic violence.

Like all other respondents, those who are 'against the law' also prefer to use informal mechanisms to deal with domestic violence and see the use of the justice system as a last resort solution. Respondents 'against the law', however, avoid the justice system because they fear that it may lead to more problems than the ones that it is trying to address. It is not that respondents see the justice system as necessarily arbitrary, as Ewick and Silbey suggest,³ but rather they see it as too cumbersome and over-punitive. If pressed, they would use the justice system, but they would do so reluctantly and with a high degree of suspicion.

The preference for informality displayed by respondents 'against the law' can be interpreted as a form of resistance in which individuals address the ineffectiveness of the justice system by using alternative means to address domestic violence.⁴ This includes leaving the abuser and the community, or engaging the help of family and friends for support when escaping violence. It is not likely however that

² Ibid 132-135.

³ Ibid 189-191.

⁴ Ibid 201.

respondents would engage in the tactics of resistance described by Ewick and Silbey and discussed in chapter four (subverting rules or taking as much time as possible to comply with requests).⁵ Rather than engaging in a conscious resistance to the justice system, respondents take on a more nuanced approach in which they seek to redress an imbalance in power caused by their victimisation by engaging in behaviour that they see as more effective and less damaging to their wellbeing. Harding's conceptualisation of resistance in the form of 'stabilising resistance' is therefore more useful to explain respondents' behaviour, as it accounts for subtler forms of action which can include a simple avoidance of the justice system.

There are cultural aspects that have a stronger impact on women's invocation of law than others. The cultural aspect that is most important to explain Portuguese women's invocation of law is familism. Familism explains why all respondents prefer informal approaches to domestic violence, regardless of the form of legal consciousness they adopt. It enables respondents to conceive resorting to their families for support in situations of violence, rather than to the justice system. In addition, if children are involved, then women tend to shape their decisions in the way that will give precedence to the children's wellbeing. Shame and community pressure have also a strong but more complex role in women's invocation of law. They can lead women to hide their abuse from others and to feel that they have to leave the community in order to escape domestic violence. This is especially the case in areas where the community is more traditional and where levels of acculturation are lower. Examples of this are areas in London and Norfolk where women are blamed for the violence that they endure. However, respondents also

⁵ Patricia Ewick and Susan Silbey, 'Narrating Social Structure: Stories of Resistance to Legal Authority' (2003) 108 *American Journal of Sociology* 1328, 1349-1362.

emphasise that a number of Portuguese change their behaviour when they come to England as a result of acculturation and no longer feel the pressure of shame and the community informing their decisions. Women 'before the law' are likely to be well integrated into the traditional Portuguese community and have little contact with the wider community, which makes the influence of shame and community grapevine stronger. These women may feel greater pressure to accept their victimisation in situations when they are expected to have been able to prevent it. Respondents 'against the law' are also often involved with the traditional Portuguese community, but the influence of the community in terms of shame and inculcation of traditional values is balanced by higher levels of acculturation.

Lack of integration into the wider community is a good indicator of respondents' lower English skills and of greater influence of Portuguese culture and community in their invocation of law, including familism and shame. It is however important to acknowledge that a high proportion of respondents have contact with both communities and that the Portuguese community has been changing in terms of levels of education and income of its members, especially since the 1990s, making this a much more diversified community. Community values associated with machismo and traditionalism have stronger influence in the legal consciousness of respondents 'before the law'. Respondents 'against the law' are less prone to this influence due to the impact of greater levels of acculturation, higher English language skills and levels of education. Respondents 'with the law' are the least influenced by Portuguese cultural characteristics, with the exception of familism. They are usually less integrated into the Portuguese traditional community, have better command of English and higher educational levels.

There are other cultural aspects that may influence respondents' legal consciousness that should be further researched. These are religion, political affiliation and region of origin in Portugal. Religion is mentioned by a small minority of respondents and only in the sense that it negatively affects women's ability to escape domestic violence by one. It would have been useful to include a specific question on religion in the interview schedule to clarify whether the absence of discussion surrounding religion reflects the lack of importance of religion on family life, or whether this was an oversight on participants' side.

In terms of political affiliation, it is evident when conversing with some of the respondents who are more involved in the Portuguese community and in reading local newspapers and other news and opinion outlets⁶ that there are strong divisions within the community, both in London and in Norfolk and even between London and Norfolk, that are of a political nature and sometimes reflect political partisan divisions that exist in Portugal. Cooper demonstrates that political affiliation shapes individuals' legal consciousness,⁷ and although political divisions may not have a strong influence in Portuguese women's invocation of law, in the same way that religion also does not seem to have a strong influence in their decision-making when reacting to domestic violence, the impact of political divisions within the community is nevertheless worth exploring. This is especially the case when attempting to devise ways of approaching the community; for example, from the point of view of service providers, establishing contacts with

⁶ Namely 'Hora H', the PALOPNews.com, the 'As notícias' in Norfolk and the 'A Folhinha de Stockwell – Newsletter'.

⁷ Davina Cooper, 'Local Government: Legal Consciousness in the Shadow of Juridification' (1995) 22 4 *Journal of Law and Society* 506.

members of the community with strong political affiliations risks alienating other sections of a community that is difficult to access.⁸

Finally, there are potential differences between immigrants coming from rural and urban areas in Portugal and between those coming from mainland Portugal and those coming from the archipelagos of the Azores and Madeira. These differences include the level of religious practice, tolerance of patriarchal forms of behaviour and of alcoholism, levels of education and language proficiency. The interview schedule did not include questions on participants' region of origin within Portugal. As such, conclusions on whether the region of origin impacts on perceptions of domestic violence and invocation of law cannot be reliably made.

As for other structural aspects that intersect with culture in the formation of legality, class is underexplored in this research, in part due to difficulties of classification and in part due to a decision not to ask directly about interviewees' class position. The operationalisation of the concept of class is notoriously difficult and sociologists often disagree on what class is.⁹ Analysing class in the current study is more difficult because it is not clear that social classes in Portugal translate into the same social classes in England. Moreover, a growing number of sociologists have been questioning the usefulness of the concept of class due to changes in society such as globalisation, wider access to property ownership, increase in consumer power and the end of traditional industries such as coal

⁸ Elsa Pinto, 'Interviews With Members of the Portuguese Community in Thetford, Norfolk' (Keystone Development Trust 2005) 3; Francesca Valério, 'Independent Needs Analysis of the Portuguese-Speaking Community in Stockwell and the London Borough of Lambeth' (Stockwell Partnership 2007) 5.

⁹ Ian Marsh and Mike Keating, *Making Sense of Society* (Pearson Education 2006) 224, 226.

mining in England.¹⁰ A recent study recognises new classes in the British class system, such as 'new affluent workers' or the 'precariat', reflecting the need to adopt a broader and more complex definition of class that contrasts with a more traditional class division that associates class almost exclusively with wealth and occupation.¹¹

Participants were reluctant to discuss their class and generally felt unable to answer or found the question irrelevant. Subjective perceptions of class in Portugal have been revealed to be misleading, with individuals often saying that they belong to a class that they aspire to, rather than a class that their education or level of income would indicate.¹² Because a snowballing method was used and fearing a low uptake of further respondents, since the community is difficult to access, direct questions on class were skipped after the first few interviews. A decision was made to concentrate instead on respondents' level of education, language proficiency, employment, age, length of stay in England and integration into the wider community.

If class may nevertheless be inferred from level of education, employment and income, it is notable that respondents assumed to belong to a lower class tend to adopt the form of legal consciousness 'before the law', with a tendency to blame

¹⁰ David Newman, *Sociology, Exploring the Architecture of Everyday Life* (Pine Forge Press 2002) 281; Marsh and Keating *ibid*; Anthony Giddens, *Sociology* (Polity Press 2009) 448.

¹¹ BBC Science, Knowledge and Learning, 'The Great British Class Survey – Results' *BBC Science, Knowledge and Learning* (3 April 2013) <<http://www.bbc.co.uk/science/0/21970879>> accessed 8 April 2013.

¹² Elísio Estanque, 'Class and Social Inequalities in Portugal: From Class Structure to Working Class Practices on the Shop Floor' (Centro de Estudos Sociais, Faculdade de Economia da Universidade de Coimbra 2004) 4.

the victim for her victimisation, whilst respondents assumed to belong to middle and upper middle classes, tend to be 'with' or 'against the law'. It would have been useful to have recruited more participants from lower and upper classes to understand whether the forms of legal consciousness identified relate to education or more broadly to class, especially in the case of respondents 'with the law' who comprise all of those with the highest levels of education. Class is therefore an area that remains to be studied and that is potentially of importance for a fuller understanding of Portuguese women's invocation of law.

The individual resources identified as impacting the most on Portuguese women's invocation of law in situations of domestic violence are language proficiency, formal education and economic independence. There is a clear relationship between respondents' levels of education and language proficiency. This relationship explains the discrepancy of respondents' command of the language, regardless of how long they have been in England. Most respondents who rate their English as very good or proficient have the highest levels of education and those with poor command of the language have the lowest levels of educational attainment. Participants' age is more strongly associated with their command of English than their length of stay in the country.

Research has found that women with lower levels of education tend to be less aware of their rights in relation to domestic violence and less able to challenge abusive behaviour.¹³ The data confirms these findings, with participants who

¹³ Gill Hague et al., 'Raising Silenced Voices: South Asian Women Immigrating After Marriage' (2010) 31 *Ethnicity and Inequalities in Health and Social Care* 25, 29; Kathryn Yount, 'Resources, Family Organisation, and Domestic Violence Against Married Women in Minya, Egypt' (2005) 67 3 *Journal of Marriage and Family* 579, 592-593, 598.

blame victims for domestic abuse for failing to pre-empt abusive behaviour derived from male privilege all having lower levels of education than those who do not. Participants with lower levels of education tend to adopt the form of legal consciousness 'before the law', at least in the first instance, whilst participants with higher levels of education tend to be 'with the law'. Participants 'against the law' have mixed levels of education.

In terms of the impact of economic dependency on women's legal consciousness, it has been found in literature to hinder women's possibilities to escape a violent relationship, and that women with more economic means and greater financial independence from their abusers are more likely to use the justice system.¹⁴ It may also explain why respondents who are 'with the law' are amongst those with higher income levels. Conversely, due to low levels of education and lack of language proficiency, it is likely that a significant number of women are employed within the traditional Portuguese community and/or in low paid jobs, which most likely has a negative effect on women's ability to escape violence and use the justice system.

Although Ewick and Silbey's work is useful to understand the invocation of law, each form of legal consciousness that they propose needs to be interpreted as a broad framework against which specific circumstances that affect individuals and groups can be taken into account. When the population studied is not native, the

¹⁴ Lauren Bennett et al., 'Systemic Obstacles to the Criminal Prosecution of a Battering Partner: A Victim Perspective' (1999) 14 *Journal of Interpersonal Violence* 769; Ruth Fleury-Steiner et al., 'Contextual Factors Impacting Battered Women's Intentions to Re-Use the Criminal Legal System' (2006) 34 *Journal of Community Psychology* 336, 338; Aisha Gill and Kaveri Sharma, 'Response and Responsibility' in Sarah Walsum and Thomas Spijkerboer (eds), *Women and Immigration Law: New Variations on Classical Feminist Themes* (Routledge-Cavendish 2007) 190.

culture of the country of origin should be given special consideration in the analysis of the invocation of law. The importance of culture in immigrant women's invocation of law has been identified in literature and discussed at length in chapter four, and has been found to shape respondents' legal consciousness to a large extent. Portuguese culture was therefore taken into account in this dissertation not only as a structural factor, but also because it interacts with and shapes the use of individual resources, expectations and perceptions of service providers and other structural factors. Portuguese culture assumes a centrality for this study that, although still within Ewick and Silbey's theoretical framework, gains further salience in relation to an immigrant population.

Another dimension that theories of legal consciousness should take into account when used to understand women's invocation of law in situations of domestic violence is women's expectations of and interactions with service providers. Although the relationship that immigrant women have with service providers can be partly explained by reference to cultural practices, a more detailed study of this relationship reveals how this interaction is shaped most often from perceptions of the value of services, rather actual experience with them. An analysis that relies solely on the articulation of schemas and resources in a more generic sense therefore risks missing a layer of complexity in immigrant women's legal consciousness that is essential to understanding their invocation of law.

Reflections on the data analysis

In chapter three, a number of agencies and legal provisions that address domestic violence are analysed in detail, such as MARACs, IDVAs, occupation and non-

molestation orders. These are however absent from most respondents' perception of the mechanisms available to address domestic violence in England. Only the three respondents who used the justice system to address domestic violence mentioned some of these agencies and provisions. The fact that most respondents do not mention these agencies and provisions possibly indicates lack of knowledge of their existence. To some extent, this is not surprising, as respondents were not expected to have good knowledge of the English justice system. However, respondents who engaged with the justice system to address domestic violence mention mainly agencies that would be recognisable in the Portuguese justice system, such as the police, the CPS and courts, rather than the fuller multi-agency provision that exists in England.

There is however evidence of the use of a multi-agency approach to address domestic violence. Alexandra's GP gave her advice on escaping domestic violence, and Elsa mentions Victim Support providing her with assistance, and possibly a Sanctuary Scheme being used. There is also evidence that an occupation order was granted in Alexandra's case (and possibly also in Elsa's) and of either non-molestation orders or restraining orders being issued. Although these mechanisms are clearly being used to address domestic violence, they are not part of respondents' legal consciousness, and even respondents with experience of the English justice system highlight the work of lawyers and of the police as essential in helping them escape violence and not that of other agencies, such as women's support groups.

There is a major distinction in respondents' perceptions of the police and other service providers. Instead of singling out the police as a unique type of service,

respondents actually single out voluntary organisations and victim support services as services that they would not use. Voluntary organisations and victim support services are deemed poor alternatives to the police, doctors and lawyers when dealing with domestic violence. Rather than presenting a form of support, they are even seen as a potential hindrance to women's attempts to escape domestic violence, be it because of the association with being a victim and the shame associated with this situation, or fear of losing the confidence to take more forceful action. The police are therefore not only the first port of call but often perceived as the only effective port of call for Portuguese women. As a consequence, Portuguese women will only access help for domestic violence when they want the violence to stop and they have resorted to informal support unsuccessfully. It is unlikely that they will access support services merely for advice on domestic violence, unless the perception that they have of the usefulness of this advice changes.

The perception that respondents have of service providers in England results from the understanding that they have of service providers in Portugal and the existence of alternative forms of escaping violence. This means that although Portuguese women might not be engaging with service providers in the first stages of escaping violence, they may be actively engaging with alternative forms of support, for example provided by a close family network. This may particularly be the case when trying to find emergency accommodation, as the perception of refuges is very negative among the Portuguese community (a different matter is accessing housing associations for long-term accommodation, which respondents seem more familiar with). Engagement with service providers therefore should not be used as a measure of success in supporting Portuguese women escaping

domestic violence. Allowance should be made for the engagement with informal mechanisms to address domestic violence instead and a distinction between the different services taken into account.

In Portugal, domestic violence is a crime, and therefore the legal provisions that deal with it are found mainly on the criminal and criminal procedural codes. Collaboration between agencies such as the police and social services is promoted, but this is done in a much more centralised way than in England. The existence of civil provisions to address domestic violence, such as occupation or non-molestation orders, will therefore not resonate with Portuguese women's legality. The existence of SDVCs and a more fluid approach to domestic violence that incorporates both civil and criminal law may therefore be a valuable resource for Portuguese women escaping domestic violence, as it minimises the impact of having to deal with different courts and legal procedures. The existence of IDVAs should also be a valuable resource for Portuguese women escaping domestic violence. This is especially the case for women 'against the law' who have been found to prefer to leave matters in the hands of lawyers and the police, rather than having a more detailed knowledge of how the system works. Someone who provides assistance to these women and guides them through the process will be valued. Women 'with the law' will also value the assistance of an IDVA but will take on a more active role and will be more willing to understand what mechanisms there are at their disposal for engaging with the justice system and to use them, regardless of the assistance of an IDVA.

The recommendations proposed in the next section address some of the findings from the reflection on the data analysis conducted here.

Recommendations

Governmental policy on violence against women emphasises the prevention of domestic violence and the importance of multi-agency collaboration for the protection of victims of domestic violence.¹⁵ As discussed in chapter three, local authorities implement Governmental policy in a very standardised way, with Lambeth, Reading and Norfolk all including the dissemination of information and multi-agency work with SDVCs, MARACs and IDVAs as part of their policies to address domestic violence. The recommendations made in this section address both the prevention of domestic violence and protection of its victims through multi-agency work in order to try and make both better suited to reach Portuguese women living in England.

1. Engagement with service providers should not be considered the only measure of success.

Portuguese women prefer informal responses for domestic violence to formal ones. This partly stems from shame and pressure from the community, but also from the existence of a supportive extended family or friends, to whom women prefer to go to solve personal problems. Lack of engagement with service providers may therefore not be an indication that domestic violence goes unresolved, but rather that it is resolved informally, for example, by leaving the abuser. Informal approaches to domestic violence that minimise disruption of the family unit will, therefore, be valued; these may include helping women take

¹⁵ Home Office, *Call to End Violence Against Women and Girls* 3

<<http://www.homeoffice.gov.uk/publications/crime/call-end-violence-women-girls/vawg-paper?view=Binary>> accessed 21 March 2013.

practical steps towards leaving the abuser, or promoting ways for the abuser to change his behaviour, rather than focusing solely on punishment.

There are, however, women for whom the extended family does not provide a safe escape from violence, or who do not have extended family in England. For these women, it is important to find alternative means of support, while still respecting their preference for discretion and informality.

2. Information on domestic violence and associated behaviour.

More information in Portuguese and for the Portuguese population seems to be an obvious solution to assist in the prevention of domestic violence in this community. Respondents say, however, that there is plenty of information on domestic violence available already but that Portuguese women choose to ignore it. The Portuguese community is varied and includes women with different levels of English skills and education and different perceptions of domestic violence. Information therefore needs to be tailored to the recipient if it is to be effective.

Although there is a generalised awareness of what domestic violence is, there is also a tendency, especially amongst Portuguese immigrants with lower levels of education and command of English, to see domestic violence as a continuum, from behaviour that is not sufficiently serious, to that which is deemed sufficiently serious to use the justice system. Also, male behaviour that occurs in a state of drunkenness or that is considered avoidable by women tends to be excused or even normalised. For this section of the community, which can be found mainly in Norfolk and partly in London, a sustained effort needs to be made to change perceptions of domestic violence and male alcoholism as normal behaviour. This

would empower victims to stay in the community and close to their network of support when dealing with domestic violence, rather than feeling that they have to leave the community to do so. Due to poor language skills of this section of the population, the information should be in Portuguese.

The challenge lies in how to access this population in order to convey information on domestic violence and alcoholism, especially since it is unlikely that they will access initiatives geared towards the community in general.

3. Directed information.

There is currently in Lambeth a community centre dedicated to the Portuguese-speaking population, called Centro Comunitário Português de Apoio à Comunidade Lusófona, that provides information, courses, and different forms of support to the community. This centre should be used to disseminate information on domestic violence, but this will still have limited effect. Respondents who work closely with the Portuguese community say that it is difficult to recruit individuals to attend events, even if they are free. It is therefore unlikely that a large section of the community will attend public events that are set up specifically to address domestic violence or violence against women, or even more generally to help the Portuguese community. The use of leaflets may also be ineffective as these may either go unnoticed, or individuals may be embarrassed to pick them up or fear that someone will see them doing so.

Given the high level of preference for informal mechanisms to address domestic violence and the important role that shame plays in the community, discretion is key for accessing this population when dealing with matters that are considered of

a private nature, such as domestic violence. For example, in addition to having leaflets available in waiting rooms and offices to be picked up by clients, giving leaflets in person to patients when they visit doctors or nurses, or to clients when they visit housing or benefit services may also be useful. While displaying great suspicion of unpaid services in general, the Portuguese are likely to see lawyers and the police as reliable services that they will listen to and so these should be used to disseminate information amongst the community. The importance of doctors identifying signs of domestic violence and providing support to victims has been identified by the NHS,¹⁶ and an effort has been made by local authorities to integrate domestic violence services within health services as is the case of the MOZAIC project at Guy's and St Thomas' Hospital in Lambeth. The same approach should be taken by different services that provide support to the community, such as employment centres or housing associations, especially in areas where there are large numbers of Portuguese immigrants. Recommendation four further explores the need to convey directed information to the Portuguese population by focusing on the use of services that are not specifically related to domestic violence.

It is likely that a proportion of Portuguese immigrants have low English skills, and especially those who are older may have low literacy skills both in English and in Portuguese. In these cases, verbal information in Portuguese on domestic violence

¹⁶ NHS, 'Responding to Violence Against Women and Children – The Role of the NHS' (NHS 2010) <http://www.health.org.uk/media_manager/public/75/external-publications/Responding-to-violence-against-women-and-children-the-role-of-the-NHS.pdf> accessed 6 February 2013; NHS Direct, 'NHS Direct Domestic Violence Policy' (NHS Direct 2012) <http://www.nhsdirect.nhs.uk/About/FreedomOfInformation/FOIPublicationScheme/~/_/media/Files/FreedomOfInformationDocuments/OurPoliciesAndProcedures/20120918-DomesticViolencePolicy.ashx> accessed 6 February 2013; NHS, 'Domestic Violence London, A Resource for Health Professionals' (NHS 2013) <<http://www.domesticviolencelondon.nhs.uk>> accessed 6 February 2013.

should ideally accompany any written information that is provided. This would require employing translators or Portuguese-speaking staff who could convey the information. The use of translators is discussed further under recommendation seven, below.

4. Use of information outlets not related to domestic violence.

The use of a variety of services to disseminate information on domestic violence can be very useful. This has been the case for at least one respondent, who says that she became acquainted with the existence of the domestic violence support services that she used through a poster at her children's school when she went to pick them up one day.

Social events within the community are more likely to be attended by the local community than those of an educational or informative nature. There are a number of Portuguese coffee shops, restaurants and community associations in Lambeth, Reading and areas of Norfolk that mobilise the local community to attend social events, often related to the celebration of Portuguese festivities and holidays. Recently, the celebrations of 'Portugal Day' in Lambeth drew thousands of Portuguese to Kennington Park.¹⁷ Various respondents drew attention to the fact that the community usually likes to gather around food and football to socialise. Posters in coffee shops could therefore provide an opportunity to reach the Portuguese population. An effort to include local Portuguese associations that organise such events and Portuguese-language media outlets in disseminating information on domestic violence should therefore provide positive results. There

¹⁷ Portugalinkuk, 'Portugal Day Will Benefit Community Center and Associations' *Portugalinkuk* (29 April 2013) <<http://www.portugalinuk.com/index.php/events/item/portugal-day-will-benefit-community-center-and-associations>> accessed 17 June 2013.

are local directories that list these institutions and these are usually highly visible in areas of large concentration of Portuguese immigrants, such as South Lambeth Road in London or Thetford in Norfolk. Sponsorship of community events that includes disseminating information on domestic violence, or making the dissemination of information a condition of approval for the organisation of events from local authorities are ways in which information could be conveyed to a larger Portuguese population.

5. Non-gender specific approach.

A number of respondents pre-empted the answer to the question of what they consider to be domestic violence by saying that men can also be victims of domestic violence. This indicates that there is a possibility that information that is gender-neutral will be better received than that which focuses on women, at least in the first instance. As discussed at length in chapter two, Portugal does not have a strong feminist tradition and it is unlikely that Portuguese women consider domestic violence to be a problem of violence against women. Legal and political responses to domestic violence in Portugal are relatively recent when compared to England and most discussions on women's rights tend to focus on public health and safety rather than gender. Because immigrants tend to refer back to the legal system of the country of origin to address their problems,¹⁸ it is likely that Portuguese women in England will prefer to discuss domestic violence as a problem of public safety rather than a gender problem.

¹⁸ Cecilia Menjivar and Olivia Salcido, 'Immigrant Women and Domestic Violence: Common Experiences in Different Countries' (2002) 16 *6 Gender and Society* 898.

6. Clear information on the role of service providers.

Service providers are not generally seen as an option when seeking to address domestic violence by Portuguese women. A change of perception of the usefulness of support services is needed and information on how the system works should be provided. This is important across the population and not just for respondents with lower education and command of English. Clear information on the role of a variety of service providers, such as IDVAs and women's support groups, and especially that they offer more than counselling, should be provided. If the role of the providers in the community is clear and deemed useful, they are used; an example of this is the case of META in Norfolk, which provides information and support for migrant workers.

There is some anxiety within the community in relation to the impact that using services might have on the income support received and the custody of children. Information on these matters is, therefore, also important to ensure that the most vulnerable victims feel confident to approach service providers. Moreover, immigrants may feel discriminated against by local services, as is the case with a number of respondents interviewed in Norfolk in relation to the police. Services such as this one should start developing more culturally sensitive approaches to encourage more users to come forward.

IDVAs, police and the CPS will most likely be the most important points of contact between women and the justice system. The police in London are generally well rated but the police in Norfolk need to improve their relationship with the local community. Employing more Portuguese-speakers may be a useful way of addressing this situation, as a high number of respondents mentioned the

existence of a Portuguese PCSO in the area in a positive way, and reported the negative incidents that they experienced as resulting from interactions with English staff.

The CPS will probably be held in high regard, as part of the formal machinery of justice that is highly regarded by Portuguese women in general. A number of respondents, especially those 'with the law', welcome the use of the justice system to address domestic violence, when informal actions fail. This may be a result of the fact that in Portugal domestic violence is a crime and therefore a formalistic approach determined by the use of courts and other actors in the justice system is expected. IDVAs do not exist in Portugal, and they may be perceived as a poor substitute for a lawyer and their role in the process confusing. Information on how IDVAs can provide a useful service for victims that they would not get from a lawyer should therefore also be provided.

In terms of housing provision, until recently Portuguese women looking to escape domestic violence would expect that they would have to leave their homes and would not be aware of civil law responses to domestic violence. The Portuguese criminal code currently provides that the abuser may be prevented from contacting the victim, including being removed from her home as an accessory punishment for the crime committed.¹⁹ Not only is this a recent development in Portuguese law, it is also only applicable in the context of a criminal case. Occupation orders, therefore, would not be part of Portuguese women's notions of prevention of domestic violence, and therefore information on these would be

¹⁹ Decreto-Lei nº 400/82 de 23 Setembro, Diário da República I Série 1º Suplemento nº 221/82, artigo 152º/5.

useful. Refuges would most likely have a low uptake among Portuguese women due to a negative perception of the conditions that they offer. Information not only on how refuges work but also on long-term housing options for domestic violence and sanctuary schemes would also be useful in order for women to start engaging with services and considering leaving their abusers.

7. Employing Portuguese-speaking staff and using translators.

Employing Portuguese-speaking staff at all levels of service provision would be a good way to reach Portuguese women. However, this is most likely impracticable and so Portuguese-speaking staff would be particularly useful at the points of access to key services such as surgeries and police stations. These staff could inform women of the services available to them in Portuguese, and possibly act as translators themselves.

The use of Portuguese-speaking staff has proved successful in providing assistance to the Portuguese community in Norfolk. However, fear of lack of discretion in services that employ Portuguese-speakers is a reason that respondents in London do not want to engage with them, even though it would help if they were able to express themselves in their native tongue. In these cases, employing a Portuguese-speaker who does not live within the traditional community would decrease service users' fear of gossiping within the community.

The use of translators can be considered as an alternative to employing Portuguese-speaking staff. Here too, fear of lack of discretion would be a concern and so employing staff who do not live within the local community might prove more successful. The need for translation services is clear, as many Portuguese ask

family members or pay individuals in the community to translate for them when they access services. The availability of translation services would have to be made known to potential users and for this, written information in Portuguese, clearly visible at the services used is recommended, if Portuguese staff to convey this verbally are not available.

8. Explanation of multi-agency processes and the justice system.

Just over half of respondents in this study display a form of legal consciousness 'with the law', which means that they are happy to use the justice system to achieve a goal. Provided enough information is given on the structure and proceedings where the situation will be 'played out', these women should feel comfortable using the system. MARACs and SDVCs have no parallel in the Portuguese justice system but this should not in itself be problematic. Women's involvement in these is mostly indirect, through a representative or as a witness, in which cases although court proceedings would differ from those in Portugal, the fact that they occur in a formal court setting should provide some reassurance.

Women displaying the forms of legal consciousness 'before' and 'against the law' would be more difficult to engage, however. Those who are 'before the law' often think that the problems that they are experiencing are not serious enough to involve the justice system; they need reassurance that using the courts is an appropriate option for their situation and that they are not abusing the system in doing so. Women who are 'against the law' will be reluctant to engage with the justice system as they will fear that it will produce harsher consequences for them and their abusers than the benefit that it will provide. These women need to clearly understand the consequences for them and their abusers of involving the

justice system in order to make an informed decision as to whether or not it is worth resorting to it.

Conclusion

The framework used in this dissertation works well to reveal the interaction of culture, resources and services in Portuguese women's legal consciousness and their invocation of law in situations of domestic violence. Ewick and Silbey's forms of legal consciousness are useful to explain Portuguese women's invocation of law in situations of domestic violence but need to take into account cultural specificities. As such, although there is a group of respondents that can be described as 'before the law' their behaviour is the result of a distinction between more and less serious forms of violence rather than just perceiving the justice system as too important to deal with matters of a private nature. Respondents 'with the law' use the justice system as a tool to achieve a result but do not adopt a light-hearted approach that is akin to playing a game. Respondents 'against the law' display reasoning similar to Ewick and Silbey's respondents but the resistance that they adopt is subtler and with a focus on resolving problems quickly and with few negative consequences, rather than on challenging the system.

Ewick and Silbey's three forms of legal consciousness only truly explain Portuguese women's invocation of law when cultural and individual aspects are explored, as well as women's experience and expectations of service providers. For example, the cultural aspect of familism helps to explain the reason why, regardless of the form of legal consciousness adopted, all respondents would prefer to address domestic violence informally. This is further explained by a

perception of the Portuguese community as traditional and prejudiced that leads women to hide their abuse and adopt a discreet posture when trying to escape it. Also, experiences with service providers in Portugal and a negative perception of voluntary organisations and victim support services may explain the reluctance to engage with service providers to address domestic violence in England. Finally, resources such as levels of education or language proficiency help to explain the engagement with the wider community and different attitudes towards domestic violence and the invocation of law. Respondents with lower levels of education and language proficiency tend to fall into the category 'before the law', and those with the highest levels of education and language proficiency (Masters and PhD) adopt the form of legal consciousness 'with the law'. Respondents who are 'against the law' show mixed levels of education and language proficiency.

The analysis confirms that the Portuguese community is varied and any approaches should take this diversity into account. Although there is a significant proportion of the population with low levels of education and command of English, there is also a significant proportion of the population with high levels of education and employed in highly paid jobs or running their own businesses. Furthermore, it is likely that the fabric of the Portuguese community is changing as this dissertation is being written due to the recent influx of educated professionals being recruited to work in a variety of places. Class should also be taken into account, with respondents assumed to belong to the lower class adopting the form of legal consciousness 'before the law' and those assumed to belong to middle and upper classes adopting the forms of legal consciousness 'with the law' and 'against the law'.

Where the research may fall short due to the small number of participants, it makes up with the depth of information gained, which exposes a multi-layered construction of legal consciousness. Religion, differences between rural and urban populations, the influence of politics in community relations and class are areas that deserve more attention and will no doubt help to further understand not only individual invocation of law but the dynamics of the community as a whole.

It is also important to understand that Portuguese women are most likely to prefer informal ways of addressing domestic violence, and therefore low levels of engagement with service providers do not necessarily mean that problematic situations are not successfully resolved. Portuguese women value privacy, and this needs to be factored into any approach that is made to address domestic violence. Services perceived to empower women and provide practical, specific advice for their situations will be more valued than those perceived as providing more passive forms of support, such as counselling. The police are seen as a useful tool in dealing with domestic violence in situations of immediate danger, but involving the rest of the justice system may be deemed as too intrusive and inappropriate, depending on the individual's legal consciousness.

The Portuguese community is generally very shy and guarded to external intervention. It takes a long time to penetrate the community and it would have been very difficult to get the same depth of information were I not Portuguese myself. Establishing a relationship of trust with Portuguese immigrants may be difficult but is essential for the development of effective policies to reach this community. An example of successful implementation of a service that supports Portuguese immigrants in England can be found in Norfolk, where the META

services are heavily used by the local Portuguese community. These are staffed by two Portuguese-speakers, two days a week and deal with a variety of aspects that help immigrants integrate into the local community.

Setting up domestic violence services within other services would possibly see a better uptake from the Portuguese community than a dedicated service that would be more difficult to access discreetly. Despite Ewick and Silbey concluding that those most vulnerable in society are more likely to be 'against the law',²⁰ which they associate with women and ethnic minorities, most respondents in this study are actually 'with the law' (13 out of 24). This reflects the complexity of the Portuguese community in England and the fact that, although immigration can be an added barrier for women when accessing help in situations of domestic violence, a blanket approach that does not take into account the differences within this population highlighted in this dissertation risks alienating large sections of the Portuguese immigrant population in England.

²⁰ Ewick and Silbey, *The Common Place of Law: Stories From Everyday Life* (n 1) 235.

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Appendix 1: Consent Form

Portuguese women, domestic violence and the UK legal system

Thank you for agreeing to be interviewed as part of this research project.

My name is Sofia Graça, and I will be conducting this interview as part of my doctoral research. I am a PhD student with the Kent Law School at the University of Kent (Kent Law School, University of Kent, Canterbury, Kent, CT2 7NX), and you can reach me by phone at 01227 767831 or by email at asg25@kent.ac.uk. My supervisor is Professor Rosemary Hunter. If you have any concerns about this research you can contact her by phone at 01227 824901, by email at R.C.Hunter@kent.ac.uk or letter at the address given above.

This research project will provide an in depth understanding of Portuguese women's relationship with the UK justice system when dealing with situations of domestic violence. There is lack of information on the Portuguese community's engagement with the UK legal system as a whole, and in dealing with domestic violence, a gap in knowledge which this research will address.

Your participation in this research is voluntary and you are free to stop the interview whenever you like by indicating this to the interviewer. Interviews will be recorded with your permission only. You may also stop your collaboration with this research after the interview has finished by contacting me at the phone or email addresses given above.

The findings from this research will be used as part of my PhD thesis and may be presented in conferences or published in academic journals. The interview recordings will remain strictly confidential and will only be accessed by the researcher. The findings of the research will not identify the participants; short extracts of the interview may be used, in which case a pseudonym and whatever other necessary methods will be used to ensure you cannot be identified by anyone reading the material.

- *I understand that the research proposed here consists of an interview. I understand that my participation is entirely voluntary and that I may withdraw my participation at any time and without giving a reason.*
- *I understand that all information given by me will remain confidential. The data will be viewed by the researcher only and strictly for research purposes. I understand that I will not be personally identified in this research and that safeguards will be put in place to ensure the confidentiality of the information that I provide.*
- *I confirm that I have read and understood the research described here and that I have retained a copy of this form. All questions have been answered to my satisfaction. I freely give my consent to participate in an interview.*
- *I agree/do not agree to have the interview recorded in electronic format. (Please delete as appropriate).*
- *I would/would not like to receive a summary of the research findings. (Please delete as appropriate). Please send it to me at the following address:*

Name:

Signature:

Date:

Appendix 2: Interview Schedule

Introduction

Thank you for agreeing to this interview. My name is Sofia Graça and I am PhD student at the University of Kent. I am conducting this interview as part of my doctoral research into Portuguese women's experience with and use of the UK legal system in situations of domestic violence.

General questions to establish a rapport with the respondent and gain background data

1. How long have you been in the UK for?
2. How do you like living in the UK?
3. Do you have any family here?
4. How much contact do you have with the local Portuguese community?
5. How much contact do you have with the local English community?
6. Are you currently in paid employment?

If yes:

- 6.1 Do you enjoy your work?
7. Do you feel that you have integrated into British society?

Questions related to domestic violence

8. Thinking about domestic violence, what type of behavior would you consider to be 'domestic violence'?
9. What do you think women should do in a situation of domestic violence?
10. What do you think would be Portuguese women's attitude towards domestic violence? (why?)

Questions related to the use of the UK legal system in general and in relation to domestic violence

11. Since you've been in the UK, have you ever used a court of law?

If yes:

- 11.1 How many times?
- 11.2 In what circumstances?
 - 11.2.1 Did you take part in civil or criminal proceedings (or both)?

- 11.3 How did you find the experience?
- 11.4 Would you go to court again?
- 11.5 Did you think the court process was fair? (why?)
- 11.6 Did you think the outcome of the case was fair? (why?)

If no:

- 11.7 Would you ever consider using a court of law to deal with your problems?
- 11.8 What type of problems would you use it for?
- 11.9 Would you use it for family matters?
 - 11.9.1 (If yes) What kind?

If not used at all or never used for domestic violence:

12. Did you know that courts of law can be used to deal with matters of domestic violence?

13. Do you think going to a court of law is/would be a helpful way to deal with situations of domestic violence?

Questions related to service providers

14. Are you aware of the existence of services to support women in dealing with domestic violence?

If yes:

- 14.1 Which ones?
- 14.2 How did you find out about these services?
- 14.3 Have you ever used these services?

If yes:

- 14.3.1 What was your experience of using these services?
- 14.3.2 Would you use them again?

If not used:

14.3.3 Why not?

If not aware:

14.4 Do you think Portuguese women would benefit from more information about the services available?

14.5 What would be the best way to provide information to Portuguese women?

15. Would you say that existing services are adequate to support Portuguese women suffering domestic violence?

If no:

15.1 What would you like to see improved?

16. Are you aware of the role of the police in supporting victims of domestic violence?

16.1 How did you find out about it?

17. Do you think Portuguese women living in the UK would go to the police when dealing with a situation of domestic violence? (Why?)

18. Have you ever come in contact with the police in the UK?

If yes:

18.1 In what circumstances?

18.2 What was your experience of dealing with the police?

19. Would you use the police [again] in a situation of domestic violence? (Why?)

20. Is there anything you think the police could do differently to improve their services to women experiencing domestic violence?

Questions related to the Portuguese culture and community

21. Do you think there is a distinctive Portuguese culture

- in general?

- in the Portuguese community in the UK?

22. What is distinctive about it? (if necessary probe gender roles, importance of family, importance of children, attitudes to divorce, attitudes to domestic violence)

23. Do you think the Portuguese community has an influence on the way Portuguese women deal with domestic violence? (in what way?)

Questions related to individual characteristics

24. How would you rate your level of English? Very good, good, average, poor

25. What is your age group? 18-24; 25-34; 35-44; 45-54; 55-64; 65 and above

26. What is your level of education?

27. Are you currently single? Married? Separated? Divorced? Cohabiting

28. What is your relationship with the abuser? (*for women who experienced domestic violence*)

28.1 Did the abuse occur during or after your relationship with the abuser (or both)?

29. Do you have children? (How many)

30. What would you consider to be your class?

31. What is your main occupation?

32. Are you the main provider for your household?

33. What income bracket would you put yourself in? under £10 000, between £10 000 and £25 000, between £25 000 and £50 000, over £50 000

Thank you again for agreeing to this interview and participating in this research.