CHAPTER ONE: INTRODUCTION

1. **Motivations and Objectives**

As a practising criminal prosecutor, I find intimate partner abuse cases notably prevalent and the predominance of female victims striking. In fact according to Crown Prosecution Service (CPS) figures, domestic abuse accounts for nearly one in five CPS prosecutions and women are the victim in 83% of such cases.[[1]](#footnote-1) Having previously been a defence advocate, I joined the CPS in 2007 at a time when new domestic violence policy and guidance, paired with mandatory training across the service was being implemented.[[2]](#footnote-2) It marked the service’s henceforth commitment to dealing with domestic abuse ‘within a gendered framework’ and as a ‘particularly serious’ crime.[[3]](#footnote-3) Improving the conviction rate and bringing ‘more perpetrators to justice’[[4]](#footnote-4) became the organisation’s priority.

This book is inspired by my experience of that policy implementation and the subsequent delivery of the prosecution of intimate partner abuse, particularly at the point a woman withdraws her support for the criminal prosecution. On the one hand I have observed CPS policy and guidance that ostensibly sets out to serve the state’s self-consciously feminist agendas and, on the other, execution of the policy which bows to neoliberal stratagems and New Public Managerial demands.[[5]](#footnote-5)

In this book, I want to probe and excavate the narratives and discourses that underpin the CPS priority contained in both CPS policy and the daily working practices of prosecutors. Specifically, I consider domestic abuse prosecutions in the context of two key discourses located in the state treatment of violence against women; ‘feminism’ and ‘neoliberalism’. Against the backdrop of their potentially strained union, I set the vocalised concerns and exigencies of women, noting the occasions when contemporary criminal justice responses do not serve women as intended.

1. **Prosecuting Domestic Abuse at the CPS**

Victims of domestic abuse[[6]](#footnote-6) are considerably more likely to retract their support for the criminal prosecution, or fail to attend trial to give evidence, as compared to victims of other criminal offences. One in three domestic abuse prosecutions fail in this way, [[7]](#footnote-7) accounting for over 7,500 cases annually.[[8]](#footnote-8) This compares to one in ten prosecutions generally.[[9]](#footnote-9) The reasons that women request the termination of proceedings against their current or former partner are myriad and diverse. They will include both material and relational considerations that do not apply to other general offences.[[10]](#footnote-10) Prosecutors must therefore regularly confront the sensitive question of how to proceed in these circumstances.

Tasked with implementing the prosecutive power of the state, prosecutors act on behalf of the ‘public’ and not individual victims.[[11]](#footnote-11) The Code for Prosecutors (The Code) sets out the two stage test that must be met before prosecutions are pursued; the first is to consider whether there is a ‘realistic prospect of conviction’ on the available evidence - the ‘evidential test’- the second is to ask whether the public interest will be best served by bringing the prosecution - the ‘public interest test’.[[12]](#footnote-12) Where a victim of domestic abuse is supportive of criminalisation and, evidentially, there is a realistic prospect of conviction, the prosecutor’s decision to charge or proceed is straightforward; the victim’s wants align with the ‘public interest’ which almost invariably expects domestic abuse to be prosecuted. Indeed, CPS policy confirms that, ‘[i]t will be rare for the public interest not to be met’ in domestic abuse cases.[[13]](#footnote-13)

Where a victim is unsupportive, prosecutors can either accede to her request to discontinue proceedings or decide to pursue the prosecution, absent her support.[[14]](#footnote-14) ‘Victimless’ prosecutions can be achieved where a realistic prospect of conviction exists without requiring the victim to give evidence. This might be feasible if additional corroborative evidence such as police 999 calls, third party testimony, medical evidence of her injuries or police body-worn video footage is available. It might also be possible, exceptionally, to make a successful hearsay application to have the complainant’s written statement read at trial.[[15]](#footnote-15) However, the opportunity to prosecute intimate partner abuse absent the victim, relying on third party evidence, is an uphill challenge. So, alternatively, as a ‘last resort’,[[16]](#footnote-16) prosecutors may request the court to issue a summons to secure the victim’s attendance at trial against her stated wishes.[[17]](#footnote-17)

It is clear that the CPS is committed to taking domestic abuse ‘seriously’.[[18]](#footnote-18) The current approach to intimate partner abuse was triggered in 2005 by revised policy and guidelines, and mandatory service wide training which was rolled out and completed by 2008 (training which I undertook). My own anecdotal observation in practice was that the commitment to taking the offence seriously was manifesting as a tendency on the part of prosecutors to summons unsupportive victims to trial. My in-depth interviews with prosecutors, conducted in 2017, do not contradict that perception. However, the primary research in Chapter Four indicates that, following further training which was delivered by the service in 2016- 17, the preference for summons may be beginning to wane in favour of evidence-led (or victimless) prosecutions.[[19]](#footnote-19) Where the victim is no longer supportive, victimless prosecutions are arguably less controversial than summons because the victim is not coerced into physical court attendance but they are not without implications for women’s autonomy. I refer collectively to these two preferred approaches – summons and evidence-led - as the emergence of ‘tenacious prosecutions’ at the CPS.

‘Tenacious prosecutions’ are traceable to CPS domestic abuse policy and the CPS training emphasis, they are evidenced in my primary research and in CPS performance statistics that have reported year on year increases to the domestic abuse conviction rate between 2010- 19.[[20]](#footnote-20) If a tenacious prosecutorial approach has emerged, I am concerned in this book to answer the question *how* it has done so, specifically in the context of the violence against women movement and an era of neoliberalism. I also explore the *consequences* that arise for women from the state’s commitment to criminalisation and the CPS drive to achieve convictions in matters of intimate partner abuse. In light of these consequences, the book also contemplates how prosecutors might think about making decisions in domestic abuse cases where the victim is reluctant, in ways that might best support her ‘thrivership’ (a concept I discuss in Chapter Six).

The remainder of this introductory chapter proceeds by looking at three possible prosecutorial approaches when a woman indicates her preference for case discontinuance and draws out the consequences of each. It then outlines some of the central themes found in the literature pertaining to the state treatment of violence against women and explains why the two theoretical frames – feminism and neoliberalism – have been chosen. I reflect on the advantages and disadvantages of prioritising a criminal justice response to domestic abuse and draw out the paradoxical ‘successes’ of feminism’s cooperation with the neoliberal state. I note, on the one hand, the potential of the law to validate women’s account and the pivotal role law can play in moving women towards living abuse free, yet the union has also been signalled as ‘a betrayal of … emancipatory [feminist] roots’[[21]](#footnote-21) and as deeply flawed because ‘the law is simply not a one size fits all solution’.[[22]](#footnote-22)

1. **Prosecutorial Discretion in Domestic Abuse Cases: Three Approaches**

The first approach a prosecuting authority might take when discontinuance is requested by a victim of domestic abuse, is to accede to the request, or what has been called ‘automatic drop’.[[23]](#footnote-23) This appears to have been the CPS approach prior to 2008 when complainant retraction in the context of prosecuting domestic abuse appeared to have ‘an almost singular effect; namely, discontinuance’.[[24]](#footnote-24) Secondly, there is pursuance of the prosecution irrespective of the woman’s request or whether her personal interests are best met by that course. Nichols has called this ‘no-drop’ approach to prosecution a ‘social change’ approach because of its potential to challenge the social structures that permit violence against women.[[25]](#footnote-25) This was the approach operating in CPS practice in 2009 immediately following revised guidelines, policy and mandatory training aimed at addressing the preceding praxis of ‘automatic drop’.[[26]](#footnote-26) Or thirdly, prosecutors may weigh up factors to determine whether the woman’s safety and/ or sense of autonomy might be best met through either course. This third approach has variously been called a ‘victim-informed’,[[27]](#footnote-27) ‘survivor-defined’[[28]](#footnote-28) or ‘victim empowerment’[[29]](#footnote-29) approach. The CPS has never named the approach but current domestic abuse policy most closely advocates prosecutors emulate this ‘survivor-defined’ way (whilst the primary research in this book explores to what extent the policy plays out in working practice).

**3 (i) ‘Automatic Drop’: Discontinuing Cases on Victim Request**

The first approach, routinely acceding to a reluctant victim’s wishes and dropping the case accordingly, can be advantageous to the extent that it demonstrates that the criminal justice system is responsive. Winick, founder of the therapeutic jurisprudence movement, has argued that ‘being heard’ in this way is ‘vital to an individual’s sense of her own locus of control [and] emotional well-being’.[[30]](#footnote-30) She may withdraw from the prosecution because arrest alone achieved cessation of the immediate behaviour as intended or she may have weighed up that the costs of prosecution (breakdown of the family structure, loss of financial support, increased risk of violent retaliation) outweigh the potential benefit of prosecution outcomes (where the legal process is stressful, probation sentences might be ineffective, fines impact the family as a whole or custody would take him away from childcare or earning responsibilities). Having her wishes actioned is likely to instil a sense that the Criminal Justice System is not impersonal, impervious or even coercive, rather it is sensitive and respectful to the victim. Moreover, being victim reactive might forge a sense of trust in the victim to call on the criminal justice system in the future in the knowledge that victim preference is recognised and that her autonomy (or self-governance) is valued.[[31]](#footnote-31)

Unquestioningly acceding to the victim’s request, however, is not without notable shortcomings. If victim withdrawal is habitually assented, there is a risk of a transfer of power to the abuser. He (or his associates) may pursue violence or intimidating tactics in an effort to coerce the victim into retracting. Or he may make ‘apologetic manipulations’ which minimise his abusive behaviour and maximise the intensity of their bond to persuade the victim into retracting, knowing that her retraction will have the effect of terminating his prosecution.[[32]](#footnote-32) The risk that her stated request is not actually her preferred choice is therefore real. The automatic drop approach also engenders in police, prosecutors and other agents of the criminal justice system an impatience and cynicism about the victim’s reliability and even her credibility.

**3 (ii) ‘No-Drop’ Prosecution: Refusal to Discontinue Cases on Request**

Advocates of no-drop prosecutions cite that the approach averts the potential for the transfer of power to the perpetrator, ensuring that the burden of whether or not to prosecute is taken out of the victim’s (and indirectly the perpetrator’s) hands.[[33]](#footnote-33) No-drop prosecutions which remove, or largely remove, the prosecutor’s exercise of discretion to discontinue the case also recognise that, often, victims cannot be relied upon to bring offenders to account; retracting or failing to attend court because they wrongly minimise or blame themselves. The psychological consequences of a coercively controlling relationship can contribute to a woman’s loss of self-confidence, self-esteem and a failure to believe in her own capacity for agency to bring about change in what Lenore Walker has called ‘learned helplessness’.[[34]](#footnote-34) The effects of gaslighting (where a perpetrator's behaviours might include lying about events or the victim’s abilities, manipulating the victim’s decision-making and choices and minimising or denying his own abusive behaviours) can undermine a victim’s perception, judgement or even memory. As a consequence, victims can be reluctant to cooperate with a prosecution because they ‘fail to see that criminal intervention can assist in the shared goal of getting their abuser to stop the violence’.[[35]](#footnote-35) *Requiring* criminal intervention through a no-drop approach ensures that any benefit that the victim might receive from the criminal process is facilitated.

However, if the state wishes to help keep women safe, no-drop prosecutions can contradict the effort. Inflexibly pursuing the prosecution has disadvantages. First, in the absence of protections such as safe housing or the defendant’s remand into custody, the victim is at (increased) risk of violence whilst being involved in proceedings.[[36]](#footnote-36) This is because of the potential for retaliatory abuse. Especially in the context of a survivor asserting themselves by invoking the law, a perpetrator may attack as a means of trying to reassert control in the relationship.[[37]](#footnote-37) Second, if the victim’s situation and stated wishes are ignored it can cause victims to lose confidence in criminal justice agents’ ability to act in their best interests, instilling in them reluctance to call police in an emergency in the future.[[38]](#footnote-38) Third, no-drop prosecutions can have the effect of overlooking women’s agency, leaving them with a reduced sense of personal control over their lives, confirming messages that a perpetrator may have instilled throughout the relationship about her self-efficacy. The approach runs the risk of replacing perpetrator coercion with state coercion.

**3 (iii) Survivor-defined Approach: Balancing Interests**

The third strategy, the ‘survivor-defined’ approach, endeavours to combine the advantages of the other two approaches. It therefore recognises that whilst a woman’s decision may not be entirely free because it is formed in coerced circumstances, the decision might still be entirely considered. For that reason, a woman’s wishes ought not to be immediately discounted as arising from perpetrator manipulations on the one hand or ‘learned helplessness’ on the other. The decision may be formed by someone acting with astute awareness or wisely in the circumstances bearing in mind personal, material or safety factors, particularly if she intends to maintain the relationship. The victim’s request and reasons should therefore, ordinarily, form part of the prosecutor’s determination, bearing in mind the autonomy enhancing potential of effecting them.

As the ‘survivor-defined’ approach encourages prosecutors to make their decision being cognisant of women’s individual situations and needs, this may also require prosecutors to proceed with the case despite a woman’s stated wishes. The approach encourages prosecutors to obtain as full information about the situation as possible – from risk assessments, Independent Domestic Violence Advocates engaged with the victim in the community and by insisting that the police take comprehensive retraction statements from the victim to explore her reluctance. Where the danger posed by the perpetrator presents a high risk of further harm to the victim, the potential of a remand into custody or a rehabilitative sentencing outcome might merit ongoing prosecution. If the decision is taken out of the victim’s hands, the possibility that the perpetrator will pursue retaliatory violence is reduced, though not extinguished. A ‘survivor-centred’ approach ought to trigger open communication between the victim and prosecuting authority to explain the decision being made on her behalf and why. This open communication might also include signposting her to other agencies that can support her. A ‘survivor-defined’ approach can yield positive outcomes for victims, such as higher satisfaction with the justice system, greater physical and emotional well-being and a willingness to use the justice system in the future.[[39]](#footnote-39)

This third way or ‘victim-informed’ approach, which takes each offence on a case by case basis (once a presumption to prosecute has been made), is what the CPS ostensibly adopts in its policy and guidelines.[[40]](#footnote-40) CPS Guidelines for Prosecutors confirm that before deciding whether or not to summons an unsupportive victim, ‘[f]ull consideration should be given to the specific facts of the case and impact on the complainant's safety and wellbeing’.[[41]](#footnote-41) I examine the extent to which this is deployed in practice in Chapter Four, bearing in mind the influences on prosecutors of both feminist expectations and the present neoliberal climate.

1. **The Gendered Nature of Domestic Abuse: Feminist Explanations**

In this section, I argue that domestic abuse is experienced predominantly by women and that the CPS have, accordingly, adopted feminist accounts of the crime’s aetiology based in gender inequality. These feminist accounts have laid the groundwork for the CPS commitment to ‘tenacious prosecutions’.

Gender is a significant causal pathway to the commission of domestic abuse and, since 2009, its prevalence in England and Wales has remained broadly unchanged.[[42]](#footnote-42) Women are the predominant victims of intimate partner abuse with 26% of women and 15% of men having experienced ‘some form of domestic abuse’ on at least one occasion since the age of 16.[[43]](#footnote-43) Yet, the gendered nature of abuse becomes more marked when one considers who is most frequently abused. Of those who have experienced four or more incidents of intimate partner abuse, the overwhelming majority are women; 89% compared to only 11% of men.[[44]](#footnote-44) Moreover, not only is men’s abuse likely to be more recurrent, it is also likely to be more physically injurious.[[45]](#footnote-45) Even Murray Straus, the controversial ‘family violence’ sociologist whose work has sought to expose the extent of violence perpetrated by women in intimate relationships, concedes that ‘because of the greater physical, financial and emotional injury suffered by women, they are the predominant victims’.[[46]](#footnote-46) Marianne Hester’s longitudinal study confirms that men are significantly more likely to be repeat offenders and that the intensity and severity of violence they use is much more extreme.[[47]](#footnote-47)

Some scholars, particularly in the field of men and masculinities have, nonetheless, asserted equivalent rates of men’s and women’s violence in intimate relationships. Kimmel suggests this may have been ‘motivated by a desire to undermine or dismantle initiatives that administer to female victims [of domestic abuse]’.[[48]](#footnote-48) The gender symmetrists’ contention has invariably been based on the ‘Conflict Tactics Scale’ (CTS), a questionnaire designed by ‘family violence scholar’, Murray Straus, to assess both men’s and women’s perpetration of physical violence. Yet the scale has been roundly criticised for its methodological problems.[[49]](#footnote-49)

The CPS Guidance for prosecutors describes that, ‘domestic abuse is rarely a one-off incident’ and that it includes ‘cumulative and interlinked physical, psychological, sexual, emotional or financial’ abuses that can have a ‘particularly damaging effect on the victim’.[[50]](#footnote-50) The CPS recognises that when domestic abuse is committed within a pattern of coercion, power or control it is primarily, but not exclusively, committed by men against women.[[51]](#footnote-51) Whilst still acknowledging that domestic abuse victims can be men and that the perpetrators can be women, given the overall gender asymmetry of the behaviour, particularly when it comes to repeated abuse, the CPS adopts the United Nations position. This describes ‘domestic abuse’ as:

‘A manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and … violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men’.[[52]](#footnote-52)

It is not surprising that feminists took on the subject and uncovered explanations about both its causes and solutions. Houston describes that the dominant feminist account has been the ‘radical’ feminist thesis that was initially used to theorise rape. In this conception, domestic abuse in the home was considered both reflective and reinforcing of both individual and systemic male domination in society. Houston describes this account as an understanding of domestic abuse as ‘patriarchal force’.[[53]](#footnote-53) Studies support this account and reveal that impulsive men, generally accepting of violence, frequently engage in domestic abuse where their behaviour is buoyed by traditionally held attitudes towards women (for example attachment to gender roles) or feelings of hostility towards women generally.[[54]](#footnote-54)

As outlined, the CPS violence against women strategy now plainly adopts this feminist understanding of the dynamic of abuse as ‘patriarchal force’ and references the work of feminist Michelle Madden-Dempsey to urge prosecutorial pursuit to combat intimate partner abuse as a means of ‘characteris[ing] the state as having values that lessen patriarchy’. [[55]](#footnote-55) Such a commitment to prosecutions speaks to the ‘intrinsic’ (expressive or symbolic denouncement) and ‘consequential’ (actual behaviour changing) value of prosecutions and their potential to render society less patriarchal by setting and evolving norms.

The government’s reliance on the criminal law as a means to address and to end domestic abuse has also given rise to s76 Serious Crime Act 2015 which criminalises, for the first time, coercive and controlling behaviours which may or may not include physical assault. Moreover the commitment to end to VAWG paved the way for Clare’s Law[[56]](#footnote-56) (which gives any member of the public the right to request information contained in police records regarding their partner’s potential risk to them) and Domestic Violence Protection Orders[[57]](#footnote-57) (which allows the police to apply for a magistrates’ court ‘non-contact’ order to obtain short-term protection for an alleged victim).

Noting how recent governmental policy and legislation appears to reflect certain demands made by certain feminist groups, Halley and others have been quick to claim that ‘feminism’ has come to ‘walk the halls of power’ by virtue of a breed of ‘governance feminist’ who has effectively engaged in our governing power structures.[[58]](#footnote-58) ‘Governance feminists’, according to Halley, combine the ostensibly liberal feminist strategy of targeting state institutions and legal reform to achieve equality, with the highly emotive and charged discourse of radical and/ or dominance feminism (in which women are depicted as oppressed, victimised and vulnerable to men’s violence in the home as a result of male tyranny).[[59]](#footnote-59) This recipe, Halley asserts, has proved highly influential in the Violence Against Women field because feminists have found successive neoliberal governments particularly hospitable to their account and demands.[[60]](#footnote-60) In part, she posits this is due to neoliberalism’s commitment to shoring up individual freedoms and, more specifically, victims’ rights (as discussed further in Chapter Three). A less benevolent explanation might be that it is convenient for neoliberal governments to harness a criminal justice response; the radical feminist thesis is easily deployed to both justify and facilitate the ‘expressive justice’[[61]](#footnote-61) and ‘penal populism’ that plays well with the electorate. For, when ‘brutish’ men oppress and mistreat their ‘vulnerable’ women, the government’s deployment of a ‘law and order’ agenda garners approval as a means of protecting victims and punishing offenders thereby controlling the risk of the crime.

The notion that the feminist movement has collaborated with the neoliberal state’s ‘penal turn’ has fuelled Halley’s concerns that feminism is no longer in total command of the Violence Against Women agenda. Halley has therefore urged that feminists must ‘strive toward an ethic of responsibility in confronting the[ir] punitive [and carceral] ambitions’.[[62]](#footnote-62) Yet, Halley’s portrayal of the strategic ‘governance feminist’ motivated by so-called ‘dominance feminism’ with access to the institutions of state, state-like and state affiliated power is, I suggest, overly simplistic. Her account defines feminism by the outcome rather than recognising feminism as a political process.[[63]](#footnote-63) Feminism takes place (as Halley herself acknowledges) both in the everyday, the micro struggles and the indiscernible and also at a macro, transnational level spurred by social and political activism and ideology. The neat academic argument that Halley makes about highly influential ‘dominance feminists’ (even if this is taken only as a heuristic) ‘seeking to wield governmental power’ by accessing the ‘modes of power they seek to master’[[64]](#footnote-64) overstates feminism’s presence and influence on governmental direction. Halley’s account overlooks members of the ‘women’s movement’ who do not share carceral ambition but who have been directly consulted by government, who have openly campaigned for alternative legal and institutional change and who have championed post-modern and socialist feminist discourses and thought. Indeed, whether feminists in the UK have been able to take part in constructive policy making that steers the government response is restricted by the need for any advocacy group to present themselves and their organisations to neoliberal government departments and funding bodies primarily in terms of how they can offer value for money and cost-savings.[[65]](#footnote-65) I argue that Halley’s account underplays neoliberalism’s dominant ideology and pre-disposition to attend to social problems with penal solutions. Halley’s account therefore exaggerates (dominance) feminist input and minimises neoliberal governments’ strategic adoption of radical feminist theory to propel their own popular ‘law and order’ agenda.

Nonetheless, the ‘patriarchal force’ thesis is visible in the CPS VAWG strategy, despite the theory receiving criticism from many feminists about its ‘heavy determinism’ and for ‘being over-prescriptive in its claims about causes and solutions’.[[66]](#footnote-66) Hoyle observes that the use of radical feminism’s discourse in the government response to violence against women has become an ‘ideological straitjacket’.[[67]](#footnote-67) It suggests that patriarchy is the only or primary way to understand the aetiology of domestic abuse thereby marginalising alternative or complementary explanations about perpetrator offending. Post-modern or ‘third-wave’ feminists urge us to recognise that the ‘patriarchal force’ thesis ignores the non-homogeneity of either the abused or the abuser based in terms of, amongst other things, class, race or sexuality.[[68]](#footnote-68) Whilst male domination will always form a socio-cultural backdrop which explains why domestic abuse is asymmetric and why men are more likely to resort to violence and coercive control, as a single factor explanation it does not explain why some men are and some men are not abusive. Rather, we might recognise that there are factors operating on multiple levels which trigger domestic abuse in their inter-play. Not only do these factors include those operating at the macro level (cultural, attitudinal and structural norms that perpetuate gender inequality and condone male violence) but they also include ‘trigger factors’ at a situational level (such as unemployment related stress, social learning or personal histories and networks) and at an individual level (an abuser’s pathology, psychiatry or substance misuse).[[69]](#footnote-69)

The danger is that, when the state adopts the radical feminist account, a universal male oppressor is conceived, together with an essentialist female victim, which fails to allow for intersectional or post-intersectional accounts of what it is to be someone experiencing domestic abuse.[[70]](#footnote-70) This has paved the way, I argue, for feminist theories of domestic abuse as ‘patriarchal force’ to become interpreted by the state as a need for tenacious and committed criminal justice interventions (where criminalisation carries the symbolic and expressive value of condemning male power, dominance and control over women). In this book I contemplate the consequences of the state adoption of feminist explanations and expose how the state may itself be accused of perpetrating coercive practices in the pursuit of protecting women and advancing their freedoms.[[71]](#footnote-71) Crucially, I advocate that an understanding of domestic abuse as ‘patriarchal force’ need not occlude ‘the various ways in which violence is structured along axes other than gender’[[72]](#footnote-72) whilst accepting that intimate partner abuse always exists within broader, structural conditions of power means that the phenomenon will never be reducible to an inter-personal level alone.

1. **Neoliberalism: The ‘Hegemonic Discourse of our Times’**

Neoliberalism, as an ‘art of governance’,[[73]](#footnote-73) permeates multiple strata of the state apparatus. ‘Governance’ here signals the Foucauldian understanding that legal power is fragmented and dispersed, where agents of the state, such as the Crown Prosecutor, are complicit in (and necessary to) the carrying out of the tactics of government. As neoliberalism has been heralded as the ‘hegemonic discourse of our times’,[[74]](#footnote-74) its nostrums and logics weave themselves into all areas of life, configuring it economic terms. Our vocabularies, habits, principles of justice and practices of rule are all framed in ideology that understands the market as the source of human freedom and where privatisation and profit-making is fundamental. Thus, even in the absence of specific government directives, the CPS will be mediated by the discursive influence of neoliberalism.[[75]](#footnote-75)

Neoliberal politics became the dominant political ideology in the United Kingdom from the late 1970s. The post-war period had been associated with the full state and Keynesian welfarism. Governments had been expected to spend heavily on public infrastructure and welfare benefits so that consumer spending, growth and job creation were stimulated. Thatcher’s incoming 1979 Conservative government, however, no longer articulated this economic rationality, and Thatcher spoke not of collective interests but of the responsibility of the individual to make the most of the free market conditions the government was now offering. Those that faltered were considered to have done so due to individual defectiveness or through choice. The neoliberal rationale justified the hollowing out of social democratic state welfarism because underperforming citizens were labelled ‘undeserving’.

As well as experiencing recession, the United Kingdom in the 1970s faced steadily rising rates of crime. The issue of crime and ‘law and order’ therefore garnered attention during the 1979 election campaigns. The incoming 1979 Conservative government took the opportunity to suggest that welfarism had failed and that post-war penal-welfare criminology - which had largely understood criminal activity to be the result of collective, social and structural failures for which the state had a responsibility to improve- did not work. Penal-welfarist confidence in the potential for offenders to be rehabilitated through social support was replaced by the neoliberal ‘volitional’ theory of criminology.[[76]](#footnote-76) This understood that crime was committed as a result of individually situated opportunities available to rationally choosing actors. As criminals were now considered to be acting out of ‘rational choice’, punitive responses and incarceration were pursued by governments to disincentivise and deter potential offenders. Probation officers were directed by government to ‘manage’ offenders to reduce recidivism, whilst their rehabilitation and welfare role was downgraded.[[77]](#footnote-77) Successive neoliberal governments preferred the tough rhetoric of ‘law and order’ because ‘penal populism’ played well to the electorate.

As neoliberals considered the post-war public sector as bloated and inefficient they advocated the rolling back of state control in relation to public services, preferring privatisation. Yet, where services remained under state control, they became heavily regulated spaces where the ideas and practices of managerialism, together with its cost/ benefit analyses took hold. Already familiar to the private sector and competitive markets, the criminal justice system was also encouraged to streamline procedures, reduce expenditure and measure it outcomes. ‘New Public Managerialism’, as managerialism become known in the public sector, strives for economy in the criminal justice system through the efficient conclusion of cases. The practical dissemination of neoliberal approaches, markedly via New Public Managerial priorities, are present within the CPS and have implications for the delivery of tenacious domestic abuse prosecutions as I explore in Chapter Four.

Harvey has argued that any popular social movement that advances individual freedoms is liable to absorption by neoliberalism.[[78]](#footnote-78) Neoliberalism’s apparent embrace of the Violence Against Women movement is also typical of the way neoliberalism strategically navigates for retention of power, often irrespective of adherence to dogmatic neoliberal orthodoxy. Neoliberal governments gain political advantage through their apparent embrace of feminism; enabling them to effect penal toughness ‘in a benevolent feminist guise’.[[79]](#footnote-79) The feminist campaign concerning domestic abuse has therefore served the neoliberal evolution of criminal justice as an apparatus to manage risk and control offenders. I argue that feminist ideological concepts such as ‘patriarchal force’ have been swept up in and immersed by neoliberal punitive ambitions as they serve neoliberalism’s emphases of responsibilisation and risk management.[[80]](#footnote-80)

1. **Criminal Versus Non-Criminal Justice Responses**

Feminists endorsing criminal justice involvement in abusive intimate relationships recognise the value of criminal justice’s condemnatory power and legitimacy in seeking justice for victims.[[81]](#footnote-81) When a perpetrator is convicted it means that a victim is believed and can represent an important milestone in her journey towards living abuse-free. Habituated prosecutorial action and achieving convictions also address a sense of historic inadequacy, sending the important message that violence against women is wrong. Liberal feminist, Michelle Madden-Dempsey, for example, has confidence in the criminal justice system to create a gender-just and equal society and fends off critique that criminal justice is a ‘blunt instrument’.[[82]](#footnote-82) Her confidence in prosecutorial pursuit lies in her confidence in the ability of legal rules to guide societal norms and conduct, and she consequently urges us to treat committed criminal prosecutions as a viable feminist project to end intimate partner abuse and, indeed, patriarchy generally.[[83]](#footnote-83)

By contrast, feminists such as Aya Gruber and Leigh Goodmark, propose that preferring a criminal justice response to intimate partner abuse absolves the state from having to confront the underpinning structural arrangements that incubate the offending behaviour.[[84]](#footnote-84) If criminalisation is the primary state reaction to domestic abuse, they argue that already marginalised women are disproportionately and negatively affected (immigrants and ‘women of color’, for example, are less likely to voluntarily engage the criminal justice system). Criminalisation does little to prevent domestic violence and, despite its huge costs, it affords little protection to the intended beneficiaries. Moreover, in making criminalisation the default response, alternatives to it remain underdeveloped.

The alternative to having total faith in a criminal justice response on the one hand or pushing for decriminalisation of intimate partner abuse is the ‘survivor defined’ approach which sits in Elizabeth Schneider’s so-called ‘murky middle ground’.[[85]](#footnote-85) Just as this project, Schneider’s ‘feminist law-making’ project interrogates the widely assumed benefit of a criminal justice response. Whilst acknowledging that criminalisation is likely to be an appropriate strategy in many contexts, ‘it is only one of many strategies we ought to be considering’.[[86]](#footnote-86) I share this reticence in over-relying on criminalisation. Until we know the real effect of current practices that emphasise criminal responsiveness, or until effectively functioning alternatives are developed, there is value in drawing attention to the pitfalls of engaging the penal state, acknowledging its limitations, proposing ameliorations to the system and flagging up the opportunities that may be lost by treating the social problem of domestic abuse primarily as crime.

Writing some thirty years ago, Carol Smart urged feminists not to go to law as if it were a panacea and instead to de-centre law as *the* solution to women’s oppression.[[87]](#footnote-87) Querying law’s claim to be able to find the truth of things and law’s failure to transform the quality of women’s lives, Smart called on feminists engaged in both policy production and scholarship to consider non-legal strategies.[[88]](#footnote-88) In the intervening years, her approach has softened as she has observed that law has had a ‘positive capacity to adapt to social change and to offer recognition and affirmation’ for some women.[[89]](#footnote-89) Law’s response to feminism, Smart notes, has included progressive change, and her post-modern feminist project of de-centring law was never intended, she reflects, to mean that feminists and women should ignore law or write it off.[[90]](#footnote-90) Smart maintains that feminists critique the law as it manifests in practice and to expose the way in which law has the power to define women’s subjectivities in ways that do not serve them individually or collectively.[[91]](#footnote-91)

Answering Smart’s appeal, this book interrogates both the working practices of prosecutors in intimate partner abuse cases and the way that women experience the law and ‘tenacious prosecutions’; it identifies the occasions when law meets women’s needs, falls short or even merits abandonment, highlighting when victories won in the criminal justice system may not be worth the price paid.[[92]](#footnote-92) The book therefore challenges criminal law as the pre-eminent solution to intimate partner abuse.

Ambivalence about criminal justice is not unique to feminists. The traditional liberal adversarial model of criminal justice can be a cause of dissatisfaction for critical legal scholars generally. Though not writing explicitly as a feminist legal scholar, Norrie, just as Schneider and Smart, expresses reticence in embracing the criminal justice system. His unease is associated with the neoliberal ‘penal equation’, a formula which requires that ‘crime plus responsibility equals punishment’.[[93]](#footnote-93) Norrie observes that if criminal justice fails to deliver a reduction in crime, society appears to call for more of the same as part of the ‘law and order’ paradigm. Criminal justice is criticised by Norrie as part of society’s set of ‘stock responses’ to social problems where ‘justice’, ‘responsibility’ and ‘desert’[[94]](#footnote-94) sidle up to regressive-looking notions of revenge and payback,[[95]](#footnote-95) the likes of which are unpalatable to left-leaning critical and feminist legal scholars alike.

In addition to concerns about the ‘penal equation’, feminists who express reticence in entrusting the state to end domestic abuse, do so for a range of reasons. The first might be due to the grass-roots nature of the original violence against women movement which achieved dynamism precisely because it worked through informal networks without state involvement. In that vein, Martha Fineman has suggested that a renewed era of feminism might begin ‘with the realization that mounting fundamental challenges to systems of social control means working outside of the existing institutional structures of the state’.[[96]](#footnote-96) Connectedly, by treating social problems as crime, domestic abuse campaigners unwittingly participate in the depoliticisation of a social movement, crowding out not only alternative potentially effective practical responses but also conceptual reimaginings that might overhaul the structural status quo to end violence against women.[[97]](#footnote-97) A second reason feminists might be reticent about relying on criminal justice is due to a cautious regard some feminists have for the potential of the criminal law to deliver impartial justice. For these feminists, calling upon the criminal law supports and legitimates a legal tradition steeped in precisely the sort of social ordering they seek to eradicate. For them, law is not considered gender-free or neutral;[[98]](#footnote-98) law itself might even be characterised as violent or abusive.[[99]](#footnote-99)

My focus on the prosecutorial treatment of domestic abuse inherently requires me to engage with the criminal law and the criminal process. My critical approach is not intended to discredit criminal law’s moral strength, to dismiss its potential to set and evolve norms and its potential to produce beneficial outcomes for many women.[[100]](#footnote-100) Rather, my intention is to reflect on the unintended consequences of the current prosecutorial approach and to suggest improvements for the survivor of abuse. I do this by exposing any shortcomings of the current prosecutorial approach bearing in mind its situation in the wider criminal justice process and by drawing attention to any limiting discourses.

Therein lies the shared aims and methods of feminist, socio-legal and critical legal scholarship of the type the book emulates; the disruption of the legal positivist account of law as emanating from a superior source, delivering coherent reasoning that benefits everyone.[[101]](#footnote-101) I want to reposition survivors not as passive recipients of law but as active participants in law creation. I explore the potential for women’s thrivership with or without the criminal law’s help and suggest that women’s non-essentialist, polycentric and intersubjective characteristics and experiences lend themselves to case-by-case assessment about what is in their best interests.[[102]](#footnote-102) I want therefore to play a part in the discursive unsettling of the (neoliberal) penal equation and any notion that the criminal law singlehandedly has the tools, reach and power to effect the best outcomes for women and, ultimately, to end domestic abuse.

1. **Methodology**

**7 (i) Socio-Legal Research**

In the legal positivist account, law claims to be separated from society and is therefore able to provide ‘natural’, ‘rational’ or ‘objective’ outcomes and determinations. This has been the dominant mode of understanding the nature of law. Socio-legal scholars, however, recognise that legal ideas and practices can be understood as the effect of social, historical, cultural, political or professional consequences and conditions.[[103]](#footnote-103) If domestic abuse perpetrators can now expect to be prosecuted and convicted, positivists might argue this reflects the legitimacy and authority of the law to pursue them. For socio-legal scholars, the same practice of tenacious prosecutions, may also cause them to reflect upon how factors external to law and legal procedure might have brought about the practice; for example socio-legal scholars might reflect on how feminists in the late modern political and cultural era demanded state responsiveness and how neoliberal governments have promoted the expansion of criminalisation.[[104]](#footnote-104)

By using a socio-legal perspective of law, I want to show how ‘law is produced by society’ whilst examining ways in which ‘“society” is produced by law’.[[105]](#footnote-105) Whilst ‘socio-legal’ may imply that I use sociology as method, in fact ‘socio-legal’ scholarship is not confined to sociological theory. A socio-legal orientation signals a *transdisciplinary* understanding of law and legal practices that includes, inter alia, psychology, criminology, political economy and history.[[106]](#footnote-106) By using socio-legal method, I show how prosecutorial decision-making is affected by forces external to legal doctrine, statutory offence considerations and the available evidence.

The area of criminal prosecutions and the role of the criminal prosecutor remains a ‘relatively under researched’ field.[[107]](#footnote-107) The comparative lack of scholarly attention in this area stands in contrast to the pivotal role that prosecutors play:

‘Important boundaries are crossed with the decision to prosecute. Private troubles become public affairs… the mode of law enforcement switches abruptly from private … in which compromise outcomes are… possible … to public adversarial debate in which legal justice is delivered in a binary verdict of guilty or not guilty.’[[108]](#footnote-108)

When prosecutors exercise their discretion in domestic abuse cases, they consult specific CPS guidance and policy. It is here that the overlap between public opinion, shifting societal expectations and decisions of legal professionals is plain. CPS policy and guidance is imbued with sociological influence because the CPS openly carries out consultation exercises with interested parties in the formative stages of policy production, prior to publication and as an ongoing process. The CPS must take into account a range of people, business and voluntary bodies affected by the policy and may contact specific groups affected by the policy if appropriate.[[109]](#footnote-109) The former Director of Public Prosecutions, Sir David Calvert Smith (1998- 2003), opened lines of communication with the academic community and academics may still take part in consultation exercises.[[110]](#footnote-110) In the case of domestic abuse policy for example, consultation took place with feminist groups such as the Fawcett Society, Women’s Aid, Refuge and the UK Network of Sexwork Projects as well as other groups not purporting to be feminist such as London Probation and the British Association of Social Workers. Herein lies the most direct way that current public, expert and feminist discourses affect the direction of CPS working practices and also where the value of socio-legal method for the topic under consideration in this book is patent.

Further evidence that the CPS does not function within a vacuum and must be sensitive to cultural-societal changes is that the Director of Public Prosecutions is accountable to parliament for CPS performance each year when she or he appears before the Justice Select Committee.[[111]](#footnote-111) In this way, the CPS openly interacts with and is responsive to public opinion. So, whilst Crown Prosecutors must act on individual cases fairly, independently and objectively in the interests of justice,[[112]](#footnote-112) it would be a foolhardy prosecution service that failed to reflect in policy shifting societal opinions and political priorities lest it lead, ultimately, to undermining the legitimacy of this public service.

In chapter Five, I use a tributary of socio-legal scholarship – legal consciousness - as a means of analysing the in-depth interviews I conducted with survivors. Marking a move away from simply extracting women’s *attitude* towards the law, legal consciousness enables us to see the variant and contradictory ways women position themselves in relation to the criminal law through their engagement with it, their understanding of it and the way they imagine the law operates. In so doing, the empirical research in Chapter Five evidences the ways in which ‘legality is a social structure actively and constantly produced in what people say and in what they do’.[[113]](#footnote-113) This method signals a disruption to thinking about law as a ‘superior norm’.[[114]](#footnote-114) It reveals how people make sense of their experiences of law, showing how law and justice has or does not have legitimacy for the people whose lives it touches. The method necessarily, therefore, invites normative reflection.

In evaluating women’s legal consciousness, I reveal aspects of the criminal justice system’s gendered nature, its role in perpetuating women’s disadvantage and its part in ‘gendering subjectivity’.[[115]](#footnote-115) Feminist legal theory has always sought to expose law’s implication in the production and perpetuation of gendered power; in this instance, I highlight this through the lens of criminal law’s treatment of abused women.

This book is not concerned, therefore, with an examination of the discretionary decision-making of prosecutors in practice through a closed analysis of the laws[[116]](#footnote-116) or rules and policies[[117]](#footnote-117) set up to guide the prosecutor. Rather it recognises that feminist and neoliberal discourses are disseminated to prosecutors through various means including political agendas, institutional imperatives and practice rationalities. I want also to show that prosecutorial domestic abuse decision-making is constitutive of survivors’ identities and stories. By highlighting the experiences of those women, I hope to encourage prosecutors to equip themselves with the fullest information so that they can make considered decisions in ways that might best support survivor ‘thrivership’.

**7 (ii) Qualitative Research and Thematic Analysis**

Having conducted a review of the literature into the existing concepts, controversies and key figures in the area of feminist legal studies generally and domestic abuse more specifically, I also completed a literature review into the key concepts and theories applying to ‘neoliberalism’. I familiarised myself with government strategy and policy direction in the area of violence against women and closely analysed the CPS policies and guidance. My subsequent qualitative research took the form of nine semi-structured interviews with prosecutors (2017), eleven with survivors of domestic abuse (2017) and five focus groups with domestic abuse support workers, comprising seventeen participants (2019).

As far as recruiting prosecutors was concerned, I sent individual letters to named prosecutors inviting them to take part, anonymously, in the research. As the project became known locally, prosecutors I had not approached directly volunteered themselves and gave me contact details of other potential interviewees. The sample was thus built from my initial local knowledge of prosecutors, networking and the effect of ‘snowballing’. The sample drew from one CPS area in the South of England; a region comprising rural areas and urban and coastal conurbations. Three men and six women participated, eight white and one black, with a spread of experience ranging from associate prosecutors to senior prosecutors with management experience.

Survivors volunteered to take part following my email and telephone approaches to a number of domestic abuse support charities in the South of England (one woman approached me directly having heard about the project independently of the charities I had approached). I also attended one charity in person and spoke at their staff meeting to promote the project and my need for volunteers. The survivors in my sample were all women; nine were white, one was black and one was Asian; all were able bodied. Half of the interviews took place in the women’s homes and the other half at the offices of the charities that were supporting them.

The seventeen support workers that took part in five focus groups (of sizes ranging from three to five participants) drew from five different charities that I approached via email or telephone across Essex, London and Kent. All were white women. I travelled to their offices to facilitate the focus groups in person (on one occasion I secured an independent office space in a mutually convenient location).

I obtained ethical approval from Kent Law School; all the participants consented to have their testimonies recorded and transcribed and I gave reassurance that their anonymity would be preserved. All empirical work took place face to face in person and was guided by the use of separate semi-structured interview schedules/ focus group prompts. Flexible schedules acted as a topic guide, prompting me to cover the target areas of enquiry but allowing flexibility in terms of sequencing the questions. This method also allowed latitude to explore topics in depth where responses were felt to be significant.[[118]](#footnote-118) The questions were largely open questions which invited extended or ‘rich’[[119]](#footnote-119) responses from participants, permitting respondents to answer in their own terms and reducing direction or influence from me.

Interviews with prosecutors employed, what Roulston has called, a neo-positive[[120]](#footnote-120) approach. A neo-positivist conception of the semi-structured interview technique assumes that the prosecutor being interviewed ‘has an inner or authentic self, not necessarily publicly visible, which may be revealed through careful questioning by an attentive and sensitive interviewer who contributes minimally to the talk’.[[121]](#footnote-121) I used ‘open’ and ‘non-leading’ questions to uncover the prosecutors’ perspectives, opinions and experiences and adopted a neutral role (by not expressing my own perspective on the research topic). In so doing I endeavoured to minimise the risk of bias and researcher influence during the collection of data.

Conversely, when interviewing women survivors, I adopted Roulston’s ‘romantic’[[122]](#footnote-122) approach to interviewing. This meant that I expressed empathy or interest in what was being said so that ‘genuine rapport and trust’[[123]](#footnote-123) could be built between myself and the participant. I felt that such an approach was important because of the sensitive nature of the stories they were telling and the need for the women to feel supported and not judged. I hope that the approach also facilitated the women to feel like they could be open with me.

Central to the project is this perspective of the women affected. My intention has always been to ‘unsilence’ these women and highlighting their perspective forms part of feminist ‘consciousness raising’.[[124]](#footnote-124) By telling their stories, it becomes possible to notice not only differences between them but also their shared perspectives and experiences. By taking women’s standpoint – that is by using women’s knowledge and social reality as the point of departure - I try to expose the narratives of survivors as they have encountered the law. Chapter Five’s exploration of legal consciousness reinforces the *variety* of ways these women use and think about law in their daily lives[[125]](#footnote-125) thereby calling into question any prosecutorial approach that tends to uniformity.

As an active researcher, I acknowledge my own theoretical and lived position in relation to the data,[[126]](#footnote-126) particularly as a former employee and current freelance agent of the CPS and as a white, middle class, heterosexual woman. Reflexivity is essential as it forefronts not only the biases that may guide and motivate me, but it also draws out what I may be inhibited from seeing.[[127]](#footnote-127) My own assumptions, motives and pre-existing hypotheses may never be shaken off, but by recognising them and making my personal experience known, I hope they might become an asset for my research.[[128]](#footnote-128) For example, I sensed that prosecutors felt able to speak candidly with me because they assumed that I would understand their perspective. I therefore acknowledge that my own ‘political and intellectual autobiograph[y]’[[129]](#footnote-129) will have shaped the interview design (which questions to ask and how I was able to recruit prosecutors for example) and the interview process (which questions I asked and which answers I probed) and, ultimately, the end product (the identification of recurrent and pertinent themes and the interpretation of these). Despite this, throughout the data gathering process, thematic coding and interpretative analysis, I have endeavoured to apply objectivity to uncover the themes’ qualities, meanings and implications.[[130]](#footnote-130)

1. **Argument Overview and Chapter Outline**

Past inattentive treatment by state criminal justice agencies in relation to domestic abuse is now being self-consciously reversed by neoliberal governing agendas intent on denouncing crime and holding offenders to account. Governing neoliberals have endorsed radical feminism’s ‘patriarchal force’ thesis, which provides them additional political fuel and theoretical justification for the apparent reliance on criminal justice as a primary means of addressing domestic abuse. In response to feminist calls - to eradicate differing treatment of public and private violence and to understand abused women as vulnerable subjects in need of protection - a ‘tenacious’ commitment to achieving prosecutions has emerged.

The consequences of the current approach are that prosecutors invariably consider achieving convictions in these cases as success. In the context of a prosecution service that is efficiency driven, prosecutors’ readily conceive of the abused legal subject as ‘at-risk’ or ‘vulnerable’. But this can have the effect of requiring prosecution in all cases rather than prompting a genuine survivor-defined, case-by-case approach at the point a woman expresses her wish for case discontinuance. Criminal justice priorities and ways of working can also have the effect of foreclosing alternative ways of conceiving her agency and the ways she can navigate her safety. Reliance on criminal justice as the antidote to domestic abuse renders law and legal processes the preeminent ‘solution’, when in fact women can be frequently disappointed or failed by criminal justice outcomes. At the same time, other strategies to support women in the community to effect their safety become ancillary (such as providing adequate housing, access to an income and to childcare), whilst alternative discourses about the structural causes of and solutions to gendered intimate violence receive insufficient attention.

Chapter Two summarises some of the key moments in women’s history in respect of domestic abuse. It reveals how feminism and its closely associated activist sister, the women’s movement, uncovered intimate partner abuse and rendered it an undeniable social problem. The chapter interrogates the public/ private divide as a means of understanding the production of gender inequality (in society and in law) said be at the root of domestic abuse. ‘Privacy’ was previously used to justify a lack of state intervention in abusive relationships but now the notion garners little rhetorical support and contemporary approaches to the domestic abuse advocate that prosecutions ought to be pursued in the same way as publicly occurring violence. I ask whether a careful engagement with the affirmative potential of women’s ‘privacy’ might assist prosecutorial decision-making when a woman withdraws her support for the prosecution.

If domestic abuse is considered first and foremost as crime, Chapter Two also considers the criminal law itself to be a legitimate target for scrutiny particularly in regards to the claim that it is a ‘gender-free zone’[[131]](#footnote-131) where neutrality, fairness and truth prevails. Prior to the current commitment to prosecutions, when female domestic abuse victims retracted their support for a prosecution, cases were almost inevitably dropped.[[132]](#footnote-132) These women were considered unreliable and non-credible as witnesses[[133]](#footnote-133) as they were failing to behave in the ways expected from legal subjects; self-interested, measured and ‘rational’.[[134]](#footnote-134) More recently (I argue since training between 2005- 2008) in re-assessing women’s decisions to retract, prosecutors make an assessment of what is in the best interest of the victim recognising her ‘particular vulnerability’.[[135]](#footnote-135) No longer dismissing unsupportive victims as unknowing irrational actors, prosecutors make an assessment of how far short of expected ‘norms’ she has fallen and how in need of protection she is. I suggest that ‘tenacious prosecutions’ are the CPS response to re-assessing the legal subject, motivated by a need to show understanding of her vulnerability and consequently to ‘protect’ her from further harm.

Chapter Three sketches the values, strategies and practices of neoliberalism. It notes the deployment of notions of ‘freedom’, ‘individualism’ and ‘responsibilisation’ in the service of increased criminalisation and punitiveness. Neoliberalism’s logics also extend to techniques of New Public Managerialism which, I suggest, are evident at the Crown Prosecution Service. If ‘neoliberalism’, broadly conceived, has been the dominant political ideology of recent times, Chapter Three shows how its constraining logic pervades state responses to domestic abuse and stifles non-penal solutions that might tackle structural inequality in line with materialist and early radical ‘outsider’ feminist goals.

Neoliberalism strategically navigates for retention of power. Its embrace of feminist demands for a criminal justice response to domestic abuse at once bolsters its public credentials yet has the effect of depoliticising and suppressing discordant feminist voices. By treating the social problem of domestic abuse as crime,[[136]](#footnote-136) the state and criminal justice priority becomes one of ensuring individuals are both deterred from committing crime on the one hand – through consistent and committed prosecutions and sentencing – and of protecting victims from the risk of future crime on the other. This rationale has built a crime control culture in which, I argue, the prosecution of domestic abuse is part.

The book turns its focus in Chapter Four away from factors that may have led to the recent turn to criminalisation towards consideration of the consequences; specifically in this chapter Crown Prosecutors’ handling of intimate partner abuse cases. Through analysis of in-depth interviews with prosecutors, Chapter Four, shows that in the CPS the neoliberal technique of New Public Managerialism shapes everyday conduct and ‘working practice’. Managerialism frames prosecutorial practices in terms of administrative outcomes and organisational targets, specifically in the CPS by expecting increased conviction rates. The chapter shows how the tendency to ‘tenacious prosecutions’ can be attributed, at least in part, to features of New Public Managerialism. The chapter concludes by discussing prosecutors’ failure to articulate the gendered nature of domestic abuse (save to acknowledge that victims are usually women). The findings from Chapter Four lend some support to those feminists who have been reticent to harness the criminal justice system for fear, inter alia, that it fails to sensitively deliver nuanced, survivor-defined outcomes.

Chapter Five uses empirical research conducted with women who have experienced intimate partner abuse, to assess the consequences for women from tenacious prosecutions. I use legal consciousness - Ewick and Silbey’s toxonomy of being ‘before’, ‘with’ or ‘against’ the law - as a lens to analyse how this group of women consider, behave and relate to criminal law in daily life.[[137]](#footnote-137) The qualitative interviews in Chapter Five reveal how law may not be a site of refuge or resolution for women survivors and confirms that the criminal process may not always facilitate wholly positive outcomes. Nonetheless, the chapter’s use of legal consciousness identifies the justice possible, if not consistently attained, through legal intervention. The chapter therefore raises a number of factors and lessons that merit prosecutorial attention. These are explored further in Chapter Six.

Chapter Six builds on Chapter One’s observation that the common use of the term ‘vulnerable’ in CPS policy has an ‘othering’ effect, in which the ‘helpless’ victim is perceived to require state intervention in the form of tenacious penal solutions. The depiction of the vulnerable victim, whilst well-intended, is overly simplistic and the victim/ agent dichotomy that underpins it wrongly presupposes that one precludes the other. This final substantive chapter theorises an alternative way of thinking about women who have been abused - as potential ‘thrivers’ - and uses primary data gathered from focus groups with domestic abuse support workers to reflect on my theoretical observations and proposals and suggest practical ways that prosecutors might improve outcomes for women survivors.

Firstly, I propose that prosecutors recognise that we are all ontologically vulnerable, and that, as such, the state bears responsibility to support us to be resilient.[[138]](#footnote-138) As far as the criminal justice system is concerned, the presumption to prosecute domestic abuse (per CPS policy) meets the state responsibility to the extent that consistent prosecutions of abusers have the potential to challenge existing patriarchal structures and ideologies.[[139]](#footnote-139) Thus, the state begins to address the conditions said to be at the heart of much intimate partner abuse. However, this leaves the question open as to how a prosecutor should be guided when faced with a woman who no longer supports a prosecution through the courts.

Secondly, building on the presumption to prosecute as a foundation to domestic abuse prosecutorial decision-making, I urge prosecutors to make tailored decisions at the point a woman expresses her wish for case termination. I argue that prosecutors should make decisions that are focused on enhancing survivors’ chances of ‘thriving’[[140]](#footnote-140) and argue that this focus is not necessarily incompatible with prosecutors’ managerial priorities. ‘Thriving’ is characterised by safety, a positive outlook, improved health and well-being and by a reclamation of the self.[[141]](#footnote-141) ‘Thriving’ means that survivors are functioning well and are able to make decisions from a range of options. Using techniques advocated by scholars in the field of therapeutic jurisprudence[[142]](#footnote-142) - such as displaying kindness and empathy to demonstrate sensitivity to victims’ needs, and being trauma-informed - prosecutors should strive for the best ‘therapeutic’ (mental health and emotional) outcomes so that victims are supported to thrive. Prosecutors might be given training in counselling and inter-personal skills, be encouraged to liaise with domestic abuse support workers more freely and even to discuss the matter with the woman directly. Guided in this way, and taken together, a theoretically informed survivor-defined praxis can emerge. Working with a presumption to prosecute yet considering how to support a survivor to thrive, would sharpen prosecutors’ regard for occasions when prosecution may not be preferable.

Finally, the book’s Conclusion notes prosecutors easily justify ‘tenacious prosecutions’ because the approach expresses state condemnation of domestic abuse as required by policy objectives on the one hand and because it aims for ‘justice’ for victims and the public on the other. Such prosecutorial pursuit has the potential to be part of public education about domestic abuse, to punish and rehabilitate offenders through sentencing and to support victims by holding perpetrators to account. Yet criminalisation heralds the depletion of other practical and conceptual remedies to end intimate partner abuse. Crucially, neoliberalism’s penal response to domestic abuse has the potential to misjudge abused women’s subjectivities and fails to conceive them as potential ‘thrivers’. The conclusion also steps back and reflects upon the gains and losses of feminism’s collaboration with the neoliberal state and, moreover, makes observations about how the findings presented here contribute to the feminist legal project’s exposure of the inherent masculinity of law and legal processes.

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3. Crown Prosecution Service, ‘A Consultation on the CPS Violence Against Women Strategy and Action Plans- A Response to Consultations’ (2012) available at <<https://www.cps.gov.uk/publication/consultation-cps-violence-against-women-strategy-and-action-plans-response-consultation>> accessed 6 February 2020. Crown Prosecution Service, ‘Domestic Abuse Guidelines for Prosecutors’ available at <<https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors>> accessed 9 February 2020. [↑](#footnote-ref-3)
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5. Vanessa Munro, ‘Violence Against Women, ‘Victimhood’ and the (Neo)Liberal State’ in Margaret Davies and Vanessa Munro (eds), *The Ashgate Research Companion to Feminist Legal Theory* (Ashgate 2013) 234. What I mean by New Public Managerialism is described in Chapters Three and Four. Succinctly, it describes an ideology usually associated with the private business sector (here the public sector) that strives for systems efficiency and economy, typically overseen by an expanded management structure. [↑](#footnote-ref-5)
6. Domestic abuse, or domestic violence, is defined across government as, ‘any incident of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners … regardless of their gender or sexuality’ and covers a range of types of abuse, ‘including, but not limited to, psychological, physical, sexual, financial or emotional abuse’ in Crown Prosecution Service, ‘Domestic Abuse Guidelines for Prosecutors’ (CPS 2014) available at <https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors> accessed 2 March 2020 [↑](#footnote-ref-6)
7. Crown Prosecution Service, ‘Violence Against Women and Girls Crime Report 2015-16’ (CPS 2016) 31 available at <<https://www.cps.gov.uk/sites/default/files/documents/publications/cps_vawg_report_2016.pdf>> accessed 17 April 2018. [↑](#footnote-ref-7)
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11. Francis Bennion, ‘The New Prosecution Arrangements’ (1986) Criminal Law Review 3- 15, 3; and Crown Prosecution Service, ‘The Decision to Charge’ available at <<https://www.cps.gov.uk/cps-page/decision-charge>> accessed 1 March 2020. [↑](#footnote-ref-11)
12. The ‘realistic prospect of conviction’ or ‘evidential’ test is met when impartial assessment of all admissible evidence concludes that a court would be ‘more likely than not to convict the defendant of the charge alleged’. Crown Prosecution Service, ‘The Code for Prosecutors’ (2018) available at <https://www.cps.gov.uk/sites/default/files/documents/publications/Code-for-Crown-Prosecutors-October-2018.pdf> accessed 1 March 2020. [↑](#footnote-ref-12)
13. Crown Prosecution Service, ‘Domestic Abuse Guidelines for Prosecutors’ (CPS 2014) available at <https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors> accessed 2 March 2020 [↑](#footnote-ref-13)
14. A Crown Prosecutor has discretion to discontinue a case under s23 Prosecution of Offences Act 1985 or apply to withdraw the charge or offer no evidence in court. In the Crown Court, alternatively, the prosecutor may ask that the count be left to lie on the indictment, apply for a motion to quash the count or invite the Attorney General to enter *nolle prosequi.* [↑](#footnote-ref-14)
15. A hearsay application may be made as follows: s116(2)e Criminal Justice Act 2003 if the victim is in fear; s114(1)d if it is considered ‘in the interests of justice’ to do so; s118/ common law if it falls under the principles of res gestae. [↑](#footnote-ref-15)
16. Crown Prosecution Service, ‘Domestic Abuse Guidelines for Prosecutors’ (n 13). [↑](#footnote-ref-16)
17. The court has power to issue a summons under Serious Organised Crime and Police Act 2005, s169 where the court deems it is in the interests of justice to secure the material evidence of the witness at trial. [↑](#footnote-ref-17)
18. Crown Prosecution Service, ‘Policy for Prosecuting Cases of Domestic Violence: 2005’ (n 2). [↑](#footnote-ref-18)
19. In spring 2017, the CPS introduced four new mandatory domestic abuse e-learning modules. Crown Prosecution Service, ‘Crown Prosecution Service Annual Report and Accounts 2016-2017’ (2017) available at <<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/628968/CPS_annual_report_2016_17.pdf>> accessed 13 February 2020. [↑](#footnote-ref-19)
20. Crown Prosecution Service, ‘Delivering Justice: Violence Against Women and Girls’ report 2018- 19’ (CPS 2019) available at <https://www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2019.pdf> accessed 28 January 2020. [↑](#footnote-ref-20)
21. Mimi Kim, ‘Challenging the Pursuit of Criminalisation in an Era of Mass Incarceration: The Limitations of the Social Work Response to Domestic Violence in the USA’ (2013) 43 British Journal of Social Work 1276. [↑](#footnote-ref-21)
22. Leigh Goodmark, *A Troubled Marriage: Domestic Violence and the Legal System* (New York University Press 2013). [↑](#footnote-ref-22)
23. Lisa Goodman and Deborah Epstein, *Listening to Battered Women: A Survivor-Centered Approach to Advocacy, Mental Health, and Justice* (American Psychological Association 2008). [↑](#footnote-ref-23)
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26. Matthew Hall, *Victims of Crime: Policy and Practice in Criminal Justice* (Willan Publishing 2009) 143- 146. [↑](#footnote-ref-26)
27. Lauren Cattaneo et al, ‘The Victim-informed Prosecution Project: A Quasi-experimental Test of a Collaborative Model for Cases of Intimate Partner Violence’ (2009) 15(10) Violence Against Women 1227. [↑](#footnote-ref-27)
28. Lisa Goodman, Kristie Thomas, Lauren Bennett Cattaneo, Deborah Heimel, Julie Woulfe and Siu Kwan Chong, ‘Survivor-defined Practice in Domestic Violence Work: Measure Development and Preliminary Evidence of Link to Empowerment’ (2016) 31(1) Journal of Interpersonal Violence 163. [↑](#footnote-ref-28)
29. Carolyn Hoyle and Andrew Sanders, ‘Police Response to Domestic Violence: From Victim Choice to Victim Empowerment’ (2000) 40(1) British Journal of Criminology 14. [↑](#footnote-ref-29)
30. Bruce Winick, ‘Applying the Law Therapeutically in Domestic Violence Cases’ (2000) 69 UMKC Law Review 33, 64. [↑](#footnote-ref-30)
31. Eve Buzawa and Carl Buzawa, ‘Domestic Violence: The Criminal Justice Response’ (3rd edn, Sage 2003). [↑](#footnote-ref-31)
32. Nichols, ‘No-drop Prosecution in Domestic Violence Cases’ (n 25). [↑](#footnote-ref-32)
33. Donna Wills, ‘Domestic Violence: The Case for Aggressive Prosecution’ (1997) University California Los Angeles Women’s Law Journal 173. Evan Stark, ‘Mandatory Arrest of Batterers: A Reply to its Critics’ (1993) 36(5) American Behavioral Scientist 651. Dennis Saccuzzo, ‘How Should Police Respond to Domestic Violence: A Therapeutic Jurisprudence Analysis of Mandatory Arrest’ (1998) 39 Santa Clara Law Review 765. [↑](#footnote-ref-33)
34. Lenore Walker, *The Battered Woman Syndrome* (4th edn, Springer 2016). [↑](#footnote-ref-34)
35. Wills (n 33) 178. [↑](#footnote-ref-35)
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37. See for example Martha Mahoney ‘Victimization or Oppression? Women’s Lives, Violence, and Agency’ in Martha Fineman and Roxanne Mykitiuk (eds), The public Nature of Private Violence: The Discovery of Domestic Abuse (Routledge 1994) 59-92. [↑](#footnote-ref-37)
38. Lauren Catteneo, Lisa Goodman, Deborah Epstein, ‘The Victim-Informed Prosecution Project: A Quasi-Experimental Test of a Collaborative Model for Cases of Intimate Partner Violence’ (2009) Violence Against Women 1227, 1229-30; Eve Buzawa and Carl Buzawa, ‘Domestic Violence: The Criminal Justice Response’ (3rd edn, Sage 2003). [↑](#footnote-ref-38)
39. Nichols, ‘No-drop Prosecution in Domestic Violence Cases’ (n 25). [↑](#footnote-ref-39)
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47. Marianne Hester, ‘Who Does What to Whom? Gender and Domestic Violence Perpetrators in English Police Records’ (2013) 10(5) European Journal of Criminology 623. [↑](#footnote-ref-47)
48. Kimmel (n 45) 1332. [↑](#footnote-ref-48)
49. Murray Straus, ‘Measuring Intrafamily Conflict and Violence: The Conflict Tactics (CT) Scales’ (1979) Journal of Marriage and the Family 75. The Scale draws on participant recollections of violence from the preceding 12 months only; it does not consider context, such as whether the person was acting defensively; and it does not distinguish between levels of violence deployed- so a slap carries the same weight as a serious wounding. It has been contended that if gender symmetry is to be asserted at all it would be more accurate to suggest it clustered at the very lowest levels of violence (see Rebecca Dobash, Russel Dobash, Kate Cavanagh and Ruth Lewis, ‘Separate and Intersecting Realities: A Comparison of Men’s and Women’s Accounts of Violence Against Women’ (1998) 4(4) Violence Against Women 382). [↑](#footnote-ref-49)
50. Crown Prosecution Service, ‘Domestic Abuse Guidelines for Prosecutors’ (2014) available at <<https://www.cps.gov.uk/legal-guidance/domestic-abuse-guidelines-prosecutors>> accessed 9 February 2018. [↑](#footnote-ref-50)
51. Crown Prosecution Service, ‘Violence Against Women and Girls Report 2016-2017’ (CPS 2017) available at <<https://www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2017_1.pdf>> accessed 27 April 2018. [↑](#footnote-ref-51)
52. Resolution adopted by the General Assembly48/104. Declaration on the Elimination of Violence against Women (1993). [↑](#footnote-ref-52)
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54. Michael Johnson, *A Typology of Domestic Violence: Intimate Terrorism, Violent Resistance and Situational Couple Violence* (Northeastern University Press 2008) 32. [↑](#footnote-ref-54)
55. United Nations, ‘15 of the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences: A Critical Review (1994- 2009)’ (2009) 27 available at <<http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>> cited in Crown Prosecution Service, ‘Violence Against Women and Girls Report, 10th Edition, 2016-17’ (2017) A1 available at <<https://www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2017_0.pdf>> accessed 23 March 2020. See Chapter Two for a fuller discussion on Madden-Dempsey’s work. [↑](#footnote-ref-55)
56. The Domestic Abuse Disclosure Scheme was introduced in March 2014. [↑](#footnote-ref-56)
57. Domestic Violence Protection Orders were introduced in March 2014. [↑](#footnote-ref-57)
58. Janet Halley, Prabha Kotiswaran, Rachel Rebouché and Hila Shamir, *Governance Feminism: An Introduction* (University of Minnesota Press 2018) 31. [↑](#footnote-ref-58)
59. ‘Radical’ and ‘dominance’ feminisms both describe structural male domination as causational to women’s oppression. [↑](#footnote-ref-59)
60. If feminists can be shown to have successfully influenced the UK government’s VAWG strategy then the most transparent way that this is likely to have been achieved is through feminist engagement with the frequently deployed mechanism of government consultations with interested parties. [↑](#footnote-ref-60)
61. See for example Kristin Bumiller, *In an Abusive State: How Neoliberalism Appropriated the Feminist Movement Against Sexual Violence* (Duke University Press 2008). See my Chapter Three for an exploration of what is meant here by ‘expressive justice’. [↑](#footnote-ref-61)
62. Halley (n 58) 31. [↑](#footnote-ref-62)
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64. Halley (n 58) 13. [↑](#footnote-ref-64)
65. Armine Ishkanian, ‘Neoliberalism and Violence: The Big Society and the Changing Politics of Domestic Violence in England’ (2014) 34(3) Critical Social Policy 333, 333. [↑](#footnote-ref-65)
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67. Ibid 162. [↑](#footnote-ref-67)
68. Ibid 162. [↑](#footnote-ref-68)
69. Lori Heise, ‘Violence Against Women: An Integrated, Ecological Framework’ (1998) 4(3) Violence Against Women 262. [↑](#footnote-ref-69)
70. See also *Goodmark* (n 22) 3 in which Goodmark suggests that in the US the dominance feminism ‘portrait of a subordinated woman in need of salvation anchor[s] laws and policies’. [↑](#footnote-ref-70)
71. An accusation Mills makes about the state in the United States in Linda Mills, *Insult to Injury: Rethinking our Responses to Intimate Abuse* (Princeton University Press 2003). [↑](#footnote-ref-71)
72. Munro, ‘Violence Against Women, ‘Victimhood’ and the (Neo)Liberal State’ (n 5) 238. [↑](#footnote-ref-72)
73. Michel Foucault, in Michel Senellart (ed), *The Birth of Biopolitics: Lectures at the College de France 1978-79* (Picador 2004) 131. [↑](#footnote-ref-73)
74. Robert Reiner, *Law and Order: An Honest Citizen’s Guide to Crime Control* (Polity 2007) 1-2. [↑](#footnote-ref-74)
75. Margaret Davies, ‘Feminism and Flat Law Theory’ (2008) 16(3) Feminist Legal Studies 281, 282. [↑](#footnote-ref-75)
76. Malcolm Feeley, ‘Crime, Social Order and the Rise of Neo-Conservative Politics’ (2003) Theoretical Criminology 111, 112. [↑](#footnote-ref-76)
77. Emma Bell, *Criminal Justice and Neoliberalism* (Palgrave Macmillan 2011) 90-91. [↑](#footnote-ref-77)
78. David Harvey, *A Brief History of Neoliberalism* (OUP 2005) 41. [↑](#footnote-ref-78)
79. Elizabeth Bernstein, ‘Carceral Politics as Gender Justice? The “Traffic in Women” and Neoliberal Circuits of Crime, Sex and Rights’ (2012) 41 Theoretical Society 233, 235. [↑](#footnote-ref-79)
80. See also Munro, ‘Violence Against Women, ‘Victimhood’ and the (Neo)Liberal State’ (n 5). [↑](#footnote-ref-80)
81. Elizabeth Schneider, *Battered Women and Feminist Lawmaking* (Yale University Press 2000). [↑](#footnote-ref-81)
82. Michelle Madden-Dempsey, *Prosecuting Domestic Violence: A Philosophical Analysis* (OUP 2009) 215. [↑](#footnote-ref-82)
83. Ibid 222. [↑](#footnote-ref-83)
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86. Elizabeth Schneider, *Battered Women and Feminist Lawmaking* (n 81) 5. [↑](#footnote-ref-86)
87. Carol Smart, *Feminism and the Power of the Law* (Routledge, 1989) 5. [↑](#footnote-ref-87)
88. Ibid 5. [↑](#footnote-ref-88)
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91. Carol Smart, *Feminism and the Power of the Law* (Routledge, 1989) 25. [↑](#footnote-ref-91)
92. Donna Coker, ‘Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review’ (2001) 4 Criminal Law Review 801; and Ruth Lewis, ‘Making Justice Work: Effective Legal Interventions for Domestic Violence’ (2004) 44 The British Journal of Criminology 204. Heather Douglas, ‘Battered Women’s Experiences of the Criminal Justice System: Decentring Law’ (2012) 20 Feminist Legal Studies 121. [↑](#footnote-ref-92)
93. Alan Norrie, *Law and the Beautiful Soul* (Glasshouse 2005) 75. [↑](#footnote-ref-93)
94. ‘Desert’, meaning to receive appropriate and deserved punishment for one’s behaviour. [↑](#footnote-ref-94)
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