

# Loving fathers? Implications of State Intervention

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## Abstract

Children are the most vulnerable, innocent and powerless group in society. They are most at risk of harm and death in their first year of life and often are victims of and easy targets for violence whenever conjugal discord and familial stress are present. This paper examines in the context of child killing, the parallel cases of failed state intervention, in families in which the male assumed the right to authority and control, but where that position collapsed. Looking across cases where state intervention has failed, the paper argues for a theoretical conception of the state of dysfunction in the family. Situated within this context, and as the title suggests, the paper explores the invisibility of certain risks to child endangerment. In broad strokes, the paper canvasses the argument that the replacement of a dysfunctional parent with a substitute 'parent' model (the State apparatus) that is equally dysfunctional can sometimes have the opposite and adverse consequence of augmenting the propensity to child endangerment. The paper also explores the corollary impact of domestic violence within the family and questions the impact of mandatory intervention as an appropriate strategy in the long term to curb the prevalence of domestic violence and improve child safety.

## Introduction

Patriarchy is an authoritarian, classed, hierarchical social system founded on male dominance in which the keys of authority, definition and control are in male hands. In the twentieth century even after the rise of feminist consciousness, surprisingly, this system still prevails in both overt and covert form, particularly in institutions such as the family, the State and its bureaucratic institutions, law enforcement and the military. In some arenas such as the workforce, education, the arts and public life, women's consciousness has taken on a topical and prominent place in society. Nevertheless as Summers<sup>1</sup> points out, even there, patriarchy maintains

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<sup>1</sup> Summers. A, *The end of equality: work, babies and women's choices in 21<sup>st</sup> century Australia* (2003).

influence. That being so, the representation of the State, particularly where it intersects with the private appears not to have changed significantly over the past century and has preserved such an influence being a pervasive masculine ideology.<sup>2</sup>

Broadly, this paper examines, in the context of filicide,<sup>3</sup> the parallel cases of failed State intervention,<sup>4</sup> and families in which the male assumed right to authority and ownership have collapsed. Two main themes emerge from this context; the state of dysfunction and the masculine representation of the intervention in the family crisis. Three case studies have been selected to illustrate the main themes from which the sub-themes (patriarchal dysfunction, communication and male disempowerment as a source and indicator of dysfunction, and how such disempowerment affects child safety) are discussed.<sup>5</sup> It is within these contexts that the reader is drawn to the complex interplay in the relationship between power and disempowerment and the communication rift that is symptomatic of a deeper problem.

The paper commences with a theoretical conceptualisation of dysfunction and its applicability in the law. The case studies illustrate some of the dysfunctional conditions within this state of dysfunction such as a persistent and progressive deterioration in marital communications. In the first study (Isabel/Paul), the reader is drawn to a parallel between the gendered representation of the State and nature of patriarchy in the nuclear family structure. The central argument in the discussion is that the replacement of a dysfunctional parent with another equally dysfunctional 'parent' model, the State apparatus, can have an opposite and adverse consequence of augmenting female disempowerment. The paper then

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<sup>2</sup> Pateman. C, 'The Patriarchal Welfare State' in Nash. K (ed), *Readings in contemporary political sociology* (2000), 238; MacKinnon. C, *Towards a Feminist Theory of the State* (1989), 161-162.

<sup>3</sup> Filicide is defined as "custodial or non-custodial parents (or step-parents) killing their child(ren)" in Mouzos, J. and Rushforth, C., 'Family Homicide in Australia' *Australian Institute of Criminology Trends and Issues in Criminal Justice No. 255*. (2003) Australian Institute of Criminology.

<sup>4</sup> In this article, State intervention refers to intervention by agencies of the state apparatuses such as the police, community services, health workers and the courts. The data is drawn from my study of forty filicide cases between 2000 and 2007 that were categorised as 'assault' in the National Coroners Information System. All the names in the case studies have been changed.

<sup>5</sup> The themes in this paper are drawn from my study of forty filicide cases in addition to the literature on filicide. The representation of the case studies has been stripped down to ensure anonymity and to highlight the central argument of the paper. All the names in the case studies have been changed and details that could be used to identify the parties involved in the case studies have been omitted. This is done to meet the New South Wales Office of the State Coroner ethics' requirements.

discusses the State response to the dysfunction and some implications of the recent mandatory arrest law<sup>6</sup> in New South Wales.

Following this, the second study (Aala/Gary) is introduced as an illustration of my argument that family functionality is heavily dependent on the state of power relations. Specifically, the paper chooses to look at the impact of the loss of marital power on the male parent and his ensuing response.

In the third study (Mark/Libby), the paper suggests that child endangerment was not always apparent during the preceding incidents of intimate partner violence where the male perpetrator assumed the dominant status. The risks to the child were hidden because the violence was masked by a representation of affective ties between parent and child in addition to the emphasis on shared parenting even when there had been allegations of child endangerment. In practice, State intervention often does not recognise that the violence contained between the parents<sup>7</sup> poses serious risks to the safety of the child, despite domestic violence being recognised as child abuse. This position is posited to be both deceptive and dangerous in that it conceals the unexposed nature of the danger to the child.

The paper concludes on a note of caution that State intervention needs to adopt functional approaches towards understanding and addressing the problem on the real question of safety instead of maintaining the patriarchal dialogue on law and order.

### **The study**

In my study, the majority of child deaths, as a result of abuse, neglect, murder or other suspicious circumstances, were at the time of death known to the State<sup>8</sup> or their parents (one or both) had previously been involved with a professional (social or medical) agency.<sup>9</sup>

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<sup>6</sup> *Crimes (Domestic and Personal Violence) Act 2007* (NSW).

<sup>7</sup> The usage of 'parents' in this paper reflects an essential focus of the dysfunction in the family. In certain contexts, the gendered language of 'mothers' and fathers' might be more appropriate but for ease of reference here, 'parents' specifically refers to the mother and father or persons undertaking parenting capacity.

<sup>8</sup> New South Wales Ombudsman, Report of Reviewable Deaths in 2005 Volume 2: Child Deaths (2006) 2 *Report of Reviewable Deaths in 2005* 7. Out of the 117 reviewable child deaths in 2005, 33 children died as a result of abuse or neglect or suspicious circumstances out of which 25 children were known to child protection services within three years of their deaths.

<sup>9</sup> Wilczynski, A, 'Prior Agency Contact and Physical Abuse in Cases of Child Homicide' (1997) 27 *British Journal of Social Work* 241-253, 243.

Out of the forty filicide cases in New South Wales reviewed by the study, twenty-five cases (62.5%) involved incidents of violence either between partners or parent and child in which a history of child abuse is identified, and thirty cases (75%) were known to the State at the time of death. Twenty-one incidents (52.5%) of violence involved male perpetrators. Four cases (10%) involved both female and male perpetrators. There were fifteen incidents involving female perpetrators. Among the female perpetrators cohort, eleven of them killed as a result of mental illness and among the male perpetrators cohort, six of them killed as a result of mental illness. In both cohorts, more than half of the perpetrators in each cohort (excluding those who killed as a result of mental illness) were involved in a state of dysfunction where there existed apparent risks to the safety of the child as a result of strife, abuse or violence perpetrated by one or both parents.

At the time of killing, in most cases, the family could be described as conforming to a nuclear family model such that there had been one male role model and one female role model in the children's lives, whether they were the biological or de facto parent or de facto partner. Only in a handful of cases (5%) was the nuclear model incomplete consisting of a single parent household. A broad assessment of the relationship status shows that in most of these cases the family structure had been patriarchal.<sup>10</sup>

### **The state of dysfunction**

There is some difficulty with conceptualising what dysfunction is and what it represents. This section begins with a narrow theoretical conceptualisation of dysfunction in a family in which there are children, to a broader ambit where it can be understood dysfunction ends. Dysfunction in such a family is framed by the idea that there are certain basic conditions for child safety that if not met, will render a particular situation to be dysfunctional. The state of dysfunction can develop from a cluster of risk factors pertinent to the family or from a stand-alone malignant condition that places a child in the family in danger.

A starting point might be to define functionality. In the familial context, the promotion of safety, support and welfare of children and young persons including the care and protection of children from harm, abuse

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<sup>10</sup> Not all instances of State interventions and patriarchy are dysfunctional. By examining across cases where State intervention has failed, the paper is seeking insights into the complexities surrounding family conflicts.

and neglect found under the *New South Wales Children and Young Persons (Care and Protection) Act 1998*<sup>11</sup> (“CYPA”) is the Government’s foremost responsibility towards the family. This responsibility can be interpreted as requiring all families with children to maintain a basic level of functionality that is, the safety of children.

The criterion of safety as a priority consideration and benchmark for functionality is by no means unreasonable or unusual. The requirement of safety has taken precedence in the mental health approach<sup>12</sup> towards domestic violence. It has been implemented in a number of clinical frameworks such as, at the St. George Domestic Violence Counselling and St. George Child and Adolescent Mental Health Services in New South Wales whose model of practice called the ‘safety intervention model’,<sup>13</sup> focuses on and prioritises the safety of children by addressing

<sup>11</sup> *Children and Young Persons (Care and Protection) Act 1998* (NSW), Sections 8 and 9(a).

<sup>12</sup> Partnerships Against Domestic Violence (1999) *Practice Standards for Working with Children and Young People who have Lived with Domestic Violence*. Brisbane: Family, Youth and Community Care.

Laing. L, ‘Children, Young People and Domestic Violence’ (2000) Issue Paper 2, Australian Domestic and Family Violence Clearinghouse, Sydney..

NSW Health (2003) *Domestic Violence Policy and Procedures for Identifying and Responding to Domestic Violence*. North Sydney: NSW Department of Health.

<sup>13</sup> Cooley. B. and Frazer. C, ‘Children and Domestic Violence: A System of Safety in Clinical Practice’ (2006) 29(4) *Australian Social Work* 462 – 473, 464, 466, 469, 471. The St. George ‘safety intervention model’ is one example of the nationwide approach to child protection. The focus on child safety has developed across most Australian jurisdictions through the governments’ crises intervention programs and initiatives addressing domestic violence, some examples are: the Queensland government’s Children Safety Services’ Child Safety Practice Manual available at: <<http://www.childsafety.qld.gov.au/>> at 3 December 2009; the Victorian government’s Women’s Safety Strategy developed through their Office of Women’s Policy available at

<<http://www.women.vic.gov.au/Web12/owpMain.nsf/allDocs/RWPB61322F19198AF33CA2573DA000610A7?OpenDocument>> at 3 December 2009; the Victorian Office of the Child Safety Commissioner’s Child Safety Policy and legislation available at <<http://www.ocsc.vic.gov.au/>> at 3 December 2009.

The South Australian Department of Families and Communities’ Keep Them Safe reform program available at <<http://www.dfc.sa.gov.au/pub/default.aspx?tabid=283>> at 3 December 2009 aimed at long term reform of their child protection services and systems; in Western Australia, community-wide and interagency collaborative approaches addressing child protection, see

<<http://www.community.wa.gov.au/DCP/Resources/Child+Protection/>> at 3 December 2009, are advocated, one of its initiatives is its aspirational Creating Safe Environments for Children national framework implemented in 2005; The Tasmanian government’s social policy initiative, Safe at Home, available at: <[www.safeathome.tas.gov.au/](http://www.safeathome.tas.gov.au/)> at 3 December 2009, stresses on a safety first approach in police handling of domestic violence.

practical strategies in terms of planning and alternative accommodation. Setting safety as the benchmark for functionality in the family recognises the importance of the basic right to be free from violence for all members in the family, especially women and children whose places traditionally have been confined in terms of status and space.

One approach towards this objective might be to conceptualise dysfunction as falling short of this benchmark, where safety is an issue and children are at risk of harm. Section 23 of the CYPA sets out at least six circumstances in which a child is deemed “at risk of harm”. The breadth of the section appears widely definitive, covering for example physical, psychological and medical needs, physical and sexual abuse, physical and psychological harms and such harms resulting from domestic violence. That stated, this paper recognizes that one difficulty with this approach might be that using the law to set the standard of functionality and safety may stigmatise an unconventional family lifestyle. This could inadvertently place children within the ‘risk’ paradigm that would target such a family before any harm has occurred. If that is already being done, it does not appear to have been applied strictly in the cases being analysed in my study.

If it were a matter for the Court to decide, the emphasis<sup>14</sup> on the best interests of the child will not be incongruent with section 23, if the phrase “current concerns” under section 23 is judicially interpreted to mean a genuine one, as this would temper the danger of stigmatisation. Although limited to child protection, delimiting the concept of functionality at a standard of minimum safety is advantageous for two reasons. Firstly, it establishes a minimum standard of safety expected of families towards children and does so in accordance with the objectives in the present law. Secondly, it provides a working definition in terms of identifying and apprehending child endangerment and a framework for early intervention to better assist families that are approaching dysfunction.

Another approach is to recognise that the conceptual scope of dysfunction in the family is wider than the narrow ambit of child protection. In situations of family conflict and divorce or separation, dysfunction might be conceptualised where there is a rupture of the marital relationship. Certainly not all conflicts have the propensity to cause child endangerment. What is the additional burden that propels a parent undergoing the period of separation stress to harm or even kill his child is the key question here. Having a conceptually rich approach where the

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<sup>14</sup> Jocums & Schlick and Ors [2008] FamCA 1066, [48].

safety of the children is a central issue will allow some flexibility around the conventional parent stereotype, namely the 'mad' or 'bad' parent perpetrator. Some common indicators of family dysfunction, though by no means exhaustive, are mental illness, substance abuse and domestic violence. Moving away from a conceptualisation of dysfunction within these fixed categories will broaden our understanding of the complexities in family relationships. In the context of a patriarchal family structure, children can be at risk where there is domestic violence, the risk does not become any less just because the violence appears to be contained between the parents. From this perspective, it can be said that domestic violence is a form of patriarchal dysfunction. It will be shown in this article that in some instances, the point at which dysfunction has taken a hold on the parent perpetrator is not always easy to pinpoint nor is the law operative or adaptive enough to respond to the dysfunction.

In the case studies to follow, the reader might consider patriarchal dysfunction in terms of male disempowerment or empowerment, depending on how the reader chooses to see it. I chose, based on analyses of particular case studies discussed here, to interpret the male perpetrator as being disempowered in the course of the marital separation. His disempowerment evolves as part of the marital rupture to the extent that he can go no further but to internalise his loss of power turning that power into a form of dysfunctional empowerment that emerges into, what this paper terms, a disproportionate response to the crisis.

It is argued that this process of internalisation prompts the male to wear a 'cloak'<sup>15</sup> hiding his disempowerment, which is as much a function of patriarchal family ideology as is male empowerment. This will be revealed in the studies. From a reading of the case studies, the reader will observe a progressive deterioration in marital communication and eventual loss of marital power, felt most acutely by Paul and Gary. These are crucial factors in the development of the state of dysfunction.

The other parallel insight that I hope the reader will reflect upon is the masculine representation of the State apparatus in its capacity as in 'loco parentis', or substitute 'parent', or guardian to the crisis. This position, it will be argued, sometimes exacerbates the existing patriarchal dysfunction in a manner which either replaces the paternalistic imbalance or, does not recognise and deal with the dysfunctional impact of violent or dangerous paternalism. A dysfunctional State intervention or no

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<sup>15</sup> The theoretical context of the cloak metaphor is discussed in the third section of this paper with reference to the Mark and Libby case study.

intervention when family dysfunction warrants may also increase the risks for children that the state of dysfunction in such a family represents. These are the two main themes which the paper will develop in the subsequent sections.

### **Case study: Isabel and Paul**

In April of the fifth year of Isabel and Paul's relationship, relations had deteriorated to the extent that Paul had told Isabel if she ever left him, he would track her down and kill her. By the end of the month, both parties had effectively separated and Paul lost his job. However, Paul continued to see their children whenever he wanted to. Three months later, he tried to reconcile with Isabel but she rejected him. He then started to realize his threats of violence towards Isabel and threatened often to kill himself. In one incident, Paul threatened Isabel with a knife in the presence of the children. The police were called but no further action was taken. The police spoke with Paul and told him to seek counselling. Two days later, Paul sought counselling but was told that the normal waiting time was ten weeks. On the same day, an Apprehended Violence Order ('AVO') was taken out against Paul, and Community Services ('DOCS') was notified. The AVO conditions were for Paul not to approach or contact Isabel except to arrange for access and not to enter Isabel's residence. Despite the AVO, Paul repeatedly breached its conditions by calling and visiting Isabel. The police were contacted about the breaches. However Isabel did not want to press charges but agreed for the police to speak with him regarding his responsibilities under the AVO. In the next two weeks, there were three failed attempts to negotiate access. After the last failed attempt, Paul broke into Isabel's home with a knife and sexually assaulted her. After she calmed him down, he informed her of his suicide intentions which he promised to retract after she pacified him. Paul then left for work. Isabel left the children with her father, contacted the police and went to the hospital. When the police arrived at her home, she was met with the deaths of the two children.

### **The masculine representation**

In a relationship of conflict or after separation, domestic violence is mainly and more often perpetrated by men against women.<sup>16</sup> It is a

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<sup>16</sup> Laing, L, 'Children, Young People and Domestic Violence' (2000) Issue Paper 2, Australian Domestic and Family Violence Clearinghouse, Sydney. According to the National Homicide Monitoring Program, female homicide offenders were twice as likely as males to be charged with killing an intimate partner or family member but male offenders murder intimates in greater numbers, Dearden, J. and Jones, W, 'Homicide in Australia: 2006-07 National Homicide Monitoring Program annual report' (2008) Australian Institute of Criminology Monitoring Reports 01, 12. It is not



critical catalyst provoking child endangerment. Where the perpetrator is unable to reach out to the partner, he may displace his aggression on the child.<sup>17</sup> A previous history of violence has been shown to exist among the majority of the male perpetrated child killings in Wallace's study<sup>18</sup> than among the female cohort. From a child protection standpoint, the main condition of the state of dysfunction putting children at risk of harm, is the precursor to violence and it commonly begins with the absence of effective communication (at least in the eyes of the male) followed by a disproportionate male response. The sequence of events shows at least two noteworthy communication failures in the case study above, which were a prelude to the violence. First was the family's brush with external intervention while reporting the violence and second was Paul's assault on Isabel.

In the domestic violence context, many victims feel unable to simply leave the relationship of conflict for fear of reprisal, fear of the perpetrator, fear for their safety and their children's safety and an inability to face the overwhelming sense of helplessness<sup>19</sup> or loneliness. Their state of living in fear inhibits any decision to address the violence. Even though victims like Isabel were given a choice in how they wanted to handle the AVO breach, they were unable to make that choice. As per Isabel's statement later,

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uncommon that incidents of domestic violence end in a homicide. See also Ruth Pollard, 'Despite her cries for help, Evelina was left to die', *Sydney Morning Herald* (Sydney), 24 November 2008, electronically available at:

<<http://www.smh.com.au/news/national/despite-all-her-cries-for-help-evelina-was-left-to-die/2008/11/23/1227375062487.html>> at 3 December 2009.

<sup>17</sup> Wilczynski. A, *Child Homicide* (1997), 45.

<sup>18</sup> Wallace. A, *Homicide: the social reality* (1986) New South Wales Bureau of Crime Statistics and Research, 115.

<sup>19</sup> Walker. L, *The Battered Woman Syndrome* (3<sup>rd</sup> ed, 2009), ch 4, 69-83. In domestic violence literature, the construct Battered Woman Syndrome proposed by Walker which includes the concept of learned helplessness is controversial in Australia and has been questioned, Stubbs, J., 'Battered Woman Syndrome: An Advance for Women or Further Evidence of the Legal System's Inability to Comprehend Women's Experience?' (1991) 3(2) *Current Issues in Criminal Justice*, 267-270; Eastal. P. W, 'Battered Woman Syndrome: Misunderstood?' (1992) 3(3) *Current Issues in Criminal Justice*, 356-359; Stubbs. J, 'The (Un)reasonable Battered Woman? A Response to Eastal' (1992) 3(3) *Current Issues in Criminal Justice* 359-361. For an alternative perspective on the construct which refutes Walker's concept of learned helplessness, see Gondolf. E.W. and Fisher. E. R, *Battered Women as Survivors: An Alternative to Treating Learned Helplessness* (1988).

‘When I reported the breach the two officers that attended offered me a choice whether to report the breach officially or not. I should not have been offered a choice’.<sup>20</sup>

When the State intervenes to help the family in crisis, it enters in the capacity of in loco parentis. That means the State assumes absolute guardianship or parental responsibilities, whose main concern is the safety of the child where there is no one suitable to care for the child.<sup>21</sup> The onus on the State apparatuses is great when it comes to handling family crises especially in domestic violence situations. It was Isabel’s view at the time that the police officers did not completely understand what was happening. She said,

‘I felt there was general reluctance by male officers to find out what was really going on in my first two calls. Throughout this whole incident, I never once spoke to a Domestic Violence Liaison Officer even after contact with police and I was unaware of this position. I was not referred to her’.<sup>22</sup>

This lack of effective communication was compounded by the State’s display of its inadequate understanding of the domestic violence complex. This caused its functionality to be in question and arguably, augmented the disempowerment felt by Isabel. As the State representative stated,

‘If she is saying she actually wanted to stay in that place and that would be her decision that I would certainly think it was hers to make that she was taking whatever other course of action. I could not see much more that we would have been able to offer if she was saying she is not stuck there. If she was saying she was stuck there and needed some other resource then we could probably offer that assistance. She contacted the police, there is a domestic violence liaison officer and that was the appropriate course of action’.<sup>23</sup>

The two main themes that arise here are the patriarchal dysfunction of the State apparatus and the family, and the masculine representation of the

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<sup>20</sup> This excerpt is extracted from the transcript of the coronial inquest hearing from a statement provided by Isabel at the inquest.

<sup>21</sup> *Children and Young Persons (Care and Protection) Act 1998* (NSW), Section 49.

<sup>22</sup> This excerpt is extracted from the transcript of the coronial inquest hearing from a statement provided by Isabel at the inquest.

<sup>23</sup> This excerpt is extracted from the transcript of the coronial inquest hearing from a statement provided by a Department of Community Services representative at the inquest.

police response to the conflict.<sup>24</sup> Not only was the official representation of the State of male character, its responses such as its reluctance to investigate further into the background of Isabel's circumstances and its assumption that she had spoken with a domestic violence liaison officer were arguably inadequate and dysfunctional. The paternalistic authoritarian response from the State constructing the boundaries of permissive individual behaviour within the family was based on conventional social roles. This reinforced on the family the order in the State that is premised on the system of male domination in the public realm.<sup>25</sup> If the concept of functionality had been applied, the state of dysfunction would have been recognised at the time of the DOCS notification because safety of the children would have fallen short of the standard set out in section 23(d).

The Wood inquiry<sup>26</sup> was set up precisely to investigate the effectiveness of child protection services in New South Wales. The inquiry can be characterised as a knee jerk response to the furor over the string of child deaths in 2008. Its findings on the lack of State resources prompted a similar knee jerk law and order masculine response.<sup>27</sup> The response was to implement new police powers aimed at tackling breaches of the AVO in domestic violence situations. The present police powers were not in force at the time of the case study. In retrospect, some justifications for the new police powers and how they might have, if they were in effect at the time, assisted the outcome, can be ascertained. The new police powers broaden police officers' discretion when handling domestic violence

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<sup>24</sup> For the purposes of this paper, the police response to domestic violence is constructed as masculine, see for example Waddington. P.A.J, 'Police (canteen) sub-culture: an appreciation' (1999) 39(2) *British Journal of Criminology*, 287-309, 298, which argues that police culture promotes a 'cult of masculinity'. While this construction is a model interpretation, it is not a novel contention nor is it the only interpretation. The contention that the State is patriarchal has been discussed and accepted in Connell. R.W, 'The state, gender and sexual politics: Theory and appraisal' (1990) 19 *Theory and Society*, 507-544, at 514-517, 535. In Connell's article, he explains that the construction and description of the State as 'patriarchal', and similarly in this paper the State apparatus and its institutions are described as 'masculine', is justified on the basis of the history of social practices of State structures, that State structures have historically been controlled by men and as a matter of social practice, have a massive bias towards heterosexual male interests. Also see Brown. W. 'Finding the Man in the State' (1992) 18(1) *Feminist Studies* 7-34, 14-16, where dimensions of state power have been conceptualised as 'masculinist'.

<sup>25</sup> Lerner. G, *The Creation of Patriarchy* (1986), 217.

<sup>26</sup> New South Wales, Report of the Special Commission of Inquiry into Child Protection Services in NSW, Executive Summary and Recommendations of the State of New South Wales (2008).

<sup>27</sup> New powers for police in domestic violence cases, *Sydney Morning Herald*, Sydney, 28 November 2008, 5.

cases, although there is some disagreement on this.<sup>28</sup> In the recent past, police officers had the discretion to caution a perpetrator.

This position was not too distant from a similar patriarchal response in the eighteenth century. Then, the police were instructed not to interfere in domestic conflicts unless there was likely to be a serious assault.<sup>29</sup> By contrast, it is now 'mandatory' as a matter of policy that they arrest and charge all perpetrators even where the alleged perpetrator has committed no offence.<sup>30</sup> With this approach, the erratic and selective ways the police have been enforcing AVOs would be minimised.

The present intervention will remove from the victim the burden to press charges, shifting the responsibility away from the individual back to the State. Taking away the burden as well as bypassing the inhibition of fear and helplessness might empower the victim's position in the conflict. However structurally, it is merely replacing one form of male control, a dysfunctional one, with another perhaps more functional but similarly less communicative male approach.

Throughout the case study, there were examples of interventions that could have assisted the outcome of the crisis but did not. For instance, the police's failure to communicate their DVLO to Isabel, their failure to apprehend Paul soon after his last assault on Isabel and the position of DOCS in the crisis that appeared to have taken a detached approach in its assessment of the children's safety.

The point of the paper is not to speculate on blame or what could have been done. The circumstances of conflict canvassed in this case study are not unique. Its focus is on the intersection between dysfunctional patriarchy and dysfunctional State intervention that resembles other similar circumstances<sup>31</sup> in which there had been untimely intervention

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<sup>28</sup> Some police claim that their discretion is limited or removed by pro-arrest and mandatory arrest policies because they are under increased pressure to arrest all parties who may be perpetrators: Chesney-Lind, M., 'Criminalizing victimization: The unintended consequences of pro-arrest politics for girls and women' (2002) 2 *Criminology & Public Policy*, 81-90.

<sup>29</sup> See the *NSW Handbook for Police and Police Magistrates* 1905 cited in Allen, J. 'The invention of the pathological family: a historical study of family violence in NSW' in O'Donnell, C. and Craney, J. (eds.) *Family Violence in Australia* (1982).

<sup>30</sup> *Crimes (Domestic and Personal Violence) Act 2007* (NSW), Section 88(b).

<sup>31</sup> Some case studies are: Tony/Diane (de facto was suffering mental illness at the time and health care professionals and police officers failed to pick that up prior to murder); Tim/Anne (social workers failed to take cognisance of warnings by grandparent that stepfather was sexually assaulting child prior to murder-suicide); Conan/Helen

and ineffective communication, leading to child endangerment as a result. This intersection is made dysfunctional by a derisory intervention, where the outcome of the conflict was not assisted by State intervention.

Arguably, where a familial conflict calls for effective State intervention and that State intervention fails to protect a child, it is argued that this failing mirrors that of the patriarchal dysfunction in the family. This should not be the case. The representation of the State has been argued as masculine and paternal. In fulfilling its statutory child protection obligations in familial conflict situations, the State apparatus is, in effect, being substituted for the parental failing (or dysfunction). In order for that intervention to be functional, this paper argues that State intervention has to be timely and adequate in order to be effective. The primary role of the State under the CYPA<sup>32</sup> ensures that it assumes absolute guardianship (or parental) care responsibilities for children deemed in need of care and protection. This clearly did not occur in the case of Paul and Isabel's children. In other words, the *ersatz* parent (State replacement of the dysfunctional parent) needs to adopt a primary focus on the safety of the children if it is to maintain its principal obligations. The next section examines whether this can be achieved in light of the recent police powers in New South Wales addressing domestic violence.

### **A critique on 'mandatory' intervention**

At face value, the implications of the new police domestic violence powers are that women victims might be further denied their voice. On the one hand, the mandatory arrest of the person breaching an AVO treats the breach as an offence,<sup>33</sup> even if it is considered not sufficiently serious by the victim. Rather than reaffirming that women are incapable of autonomy and self-determination, irrational and emotionally unstable,<sup>34</sup> it can reify decades of dysfunctional patriarchy if effectively communicated. At the very least, this legislative initiative represents a positive step towards acknowledging the violence instead of treating the violence as part of a familial 'subculture' or as if it did not exist.

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(community services failed to check suitability of foster parents who had a history of violence); amongst others.

<sup>32</sup> Sections 15, 16 and 49 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).

<sup>33</sup> Section 14 of the *Crimes (Domestic and Personal Violence Act 2007* (NSW); previously, section 562I of the *Crimes Act 1900* (NSW) (repealed).

<sup>34</sup> Lerner G, *The Creation of Feminist Consciousness* (1993), 3-4; De Beauvoir. S, *The Second Sex*, (1997), 15, 175, 608.

Are mandatory arrest laws an appropriate strategy, an effective step towards better communication and do they actually effect a reduction in the incidences of male violence? The results from a United States study<sup>35</sup> suggest that the level of intimate partner homicides increased in states implementing mandatory arrest laws. While this increase cannot be said to be representative of an analogous increase in the level of domestic violence, it suggests that victims are less likely to contact the police to report the perpetrator. This results in an escalation of domestic violence and nullifies any intended potential deterrent effect of arrest on the perpetrator.<sup>36</sup> The results also suggest that when the arrest laws rely on reporting by third parties or outsiders as opposed to family members, such laws appear to reduce harm to the protected individuals. In particular, it effectuates a possible reduction in child homicides.<sup>37</sup>

Whether the arrest and detention of male perpetrators is going to be effective in the long term is questionable particularly if the perpetrator penalises the victim(s) with harsher abuse after the arrest.<sup>38</sup> If the male perpetrator is the breadwinner, removing him would inadvertently have an adverse impact on the family. Findings from several other United States studies also suggest an increase in violence on the victim among groups of lower socioeconomic background. This is particularly so if the perpetrator is unemployed or has a prior criminal record (as opposed to being employed, married or white).<sup>39</sup>

Another unexpected consequence of the arrest of the male perpetrator is the rise in the number of dual arrests of both parties to the conflict.<sup>40</sup> This

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<sup>35</sup> Iyengar, R, 'Does the Certainty of Arrest Reduce Domestic Violence? Evidence from Mandatory and Recommended Arrest laws' (Working Paper 13186, National Bureau of Economic Research, 2007), available at <<http://www.nber.org/papers/w13186>> at 4 December 2009. For evidence that arrest can reduce recidivism, see Campbell, J.C. *et al*, 'Risk factors for femicide in abusive relationships: results from a multi-site control study' (2003) 93(7), *American Journal of Public Health*, 1089–1097.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*, 16.

<sup>38</sup> Above, n26, 36.

<sup>39</sup> Mills, L. G, 'Mandatory arrest and prosecution policies for domestic violence: a critical literature review and the case for more research to test victim empowerment approaches' (1998) 25(3) *Criminal Justice and Behaviour*, 306-318; Sherman, L.W. *et al*, 'The variable effects of arrest on criminal careers: The Milwaukee Domestic Violence Experiment' (1992) 83 *Journal of Criminal Law and Criminology*, 137-169; and Sherman, L.W, 'Attacking Crime: Policing and Crime Control' in Tonry, M. and Morris, N. (eds.) *Modern Policing* (1992). For a later finding, see Sherman, L.W, 'Policing for Crime Prevention' in Sherman, L.W. *et al*, *Preventing Crime: What Works, What Doesn't, and What's Promising* (1997).

<sup>40</sup> Braaf, R, 'Arresting policies: implications of pro and mandatory arrest policies for victims of domestic and family violence' (Paper presented at the Australian Institute of

has been noted amongst Indigenous women in Australia who report domestic violence. They are not uncommonly arrested in the process of police attending a domestic violence complaint if it is found they have an outstanding warrant.<sup>41</sup> Needless to say, the arrest of the victim not only impacts on the safety of the children but also the victim herself who may feel betrayed by the police. As a result, she may become more afraid to defend herself and more vulnerable to manipulation by the perpetrator.<sup>42</sup> In other words, she becomes more disempowered.

While more research ought to be done, it is highly likely that the effect of arrest laws will have some impact on the functionality of the family. In spite of the mandatory arrest laws, there have been complementary police strategies developed towards better handling of the crisis. For example, reform of the Victorian police Code of Practice<sup>43</sup> has resulted in the adoption of an integrative, safety first approach, notwithstanding its pro-arrest policy. The United Kingdom's Metropolitan police have adopted a risk assessment model of intervention<sup>44</sup> that advocates intensive training, risk assessment, standard operating procedures and a strong communication strategy and strong pro-arrest stance. Additional research can be done to determine whether these approaches complement or minimise the impact of mandatory arrest laws whose deterrent effects in the long term are uncertain.

### Disempowerment

What follows next is an examination of the power relationships surrounding violence. This assists in understanding how the disproportionate response is brought about. From the first case study, Paul began his demands by threatening Isabel with a knife in two instances. Both times, Isabel managed to calm him by talking. Paul's authoritative and demanding style of communication and his tendency to

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Family Studies conference, Melbourne, 9-11 July 2008). The paper is available at: <<http://www.aifs.gov.au/institute/afrc10/#b>> at 4 December 2009.

<sup>41</sup> Chan, C. and Cuneen, C. (2000) *Evaluation of the Implementation of NSW Police Service Aboriginal Strategic Plan*. Report commissioned by the NSW Police Service and NSW Ombudsman. University of Sydney: Institute of Criminology, 372. For the report's recommendation on addressing the problem, see recommendation 38, 377.

<sup>42</sup> Chan, C. above, n41, 4.

<sup>43</sup> Victoria Police Code of Practice For the Investigation of Family Violence: Supporting an Integrative Response to Family Violence in Australia. The report is available at: <[http://www.police.vic.gov.au/files/documents/464\\_FV\\_COP.pdf](http://www.police.vic.gov.au/files/documents/464_FV_COP.pdf)> at 4 December 2009, 4, 7, 29, 31.

<sup>44</sup> Campbell, G. 'Working Together for a Safer London' presentation by the Metropolitan Police New Scotland Yard at the 'Better Policing, Better Outcomes: changing police culture to prevent domestic violence and homicide' (presented at the University of New South Wales forum, Sydney, 9 December 2008).

talk down to Isabel indicates a corresponding diminishing of his marital authority.

Research suggests that the husband demand/wife withdraw interaction pattern is related to a corresponding overwhelmingly disproportionate violent response.<sup>45</sup> This is because the demanding role is associated with a perceived loss of marital power by the male in a patriarchal familial framework. In order to compensate for this, some see it as their right to resort to physical violence. From this perspective, male disempowerment builds on the argument that excessive paternalism aggravates the disempowerment of women and children and their respective positions in the family. As a natural and negative consequence, such disempowerment often leads to an increase in risk factors pre-empting child endangerment.

Gary in the following case study and Paul in the case study above had both had lost their jobs before or at the time of the dysfunction. The loss of economic and marital power is often threatening for the male. This is exacerbated when faced with the potential loss of control of his children and family. In this context, the loss of power corresponds to and coincides with an often disproportionate violent response. This contention is further illustrated by the following case study of Aala and Gary.

### **Case study: Aala and Gary**

Aala and Gary had three children in their eight years marriage. After their first child their relationship started to deteriorate. Their fights also turned verbally abusive. Gary believed and felt threatened that Aala would take the children from him and said he felt manipulated by her. Aala felt Gary wanted to control her and she was unable to communicate with him. After one of their fights in their fourth year of their marriage, Aala fled to a women's refuge centre. She later obtained an AVO against Gary and they reached an agreement for shared custody of their children. During this time, Aala moved out with the children and Gary quit his job but they continued to maintain an on and off relationship. Despite the AVO, Aala allowed Gary to visit regularly to see and help her take care of the children while she was at work. However, Gary continued to threaten Aala that she would never be able to take the children away from him. In particular, Aala wanted to take the children overseas to visit her family but Gary would not hear of it. Aala then applied to the Court for an order to take the children overseas without Gary's consent. Pending the

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<sup>45</sup> Babcock. J.C. *et al*, 'Power and Violence: The Relation Between Communication Patterns, Power Discrepancies, and Domestic Violence' (1993) 61(1), *Journal of Consulting and Clinical Psychology* 40-50, 47.



hearing, Gary and Aala had several fights in which Gary constantly changed his mind about travelling. As she had bought their air tickets, Aala tried to leave the country with the children but was stopped by airport security because Gary retracted his consent at the last minute. Aala then filed for a variation of the access terms. When Gary learnt that Aala was seeing someone new, he became increasingly distraught, erratic and aggressive. He also became extremely worried he was going to lose his children. On the day of his access, two days after he learnt of Aala's new partner and a week before the Court hearing, he tried to reconcile their marriage but Aala refused. That weekend, he overdosed the children and drowned them before he attempted suicide.

At the time, Aala described her inability to communicate with her husband prior to him taking their children's lives. She said:

'... whenever I tell him something how I feel he doesn't listen, he always walks off the room once I talk about us, our situation and the children'.<sup>46</sup>

When Gary failed to convince Aala to resurrect their marriage, he turned angry and started to verbally threaten her. For example, he said,

'I love the children more than you. You do not deserve to have them. Do not tell me I have not warned you. I told you that you would never take the children away from me. You are going to be left behind and you only have yourself to blame'.<sup>47</sup>

Like many of the retaliation motivated killings<sup>48</sup> commonly perpetrated by men<sup>49</sup> that are characterised by a history of severe marital conflict, possessiveness and sexual jealousy, the risk triggers in Gary and Aala's marital breakdown are not uncommon. Gary's desire to punish Aala for her new life and their eventual marriage breakdown outstripped his love for the children. Unable to have his way and having his demands (that Aala not leave the country with the children and reconcile their relationship) disregarded, he displaced his aggression onto the children. He did so in the only way he felt he could communicate his position in the conflict and re-assert his diminishing marital authority and power in the relationship. The means adopted was to physically take away from Aala the children she had fought so hard for.

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<sup>46</sup> R v Fraser [2004] NSWSC 53, excerpt taken from trial transcript, 21 October 2003.

<sup>47</sup> This excerpt is extracted from Aala's application for an Apprehended Violence Order.

<sup>48</sup> Wilczynski. A, above, n16, 45.

<sup>49</sup> Daly. M. and Wilson. M, *Homicide*, (1988), 213-219.

However, at no time did Isabel (from the earlier case study) or Aala fear for the safety of the children because their partners had consistently been loving fathers. In her affidavit in support for her AVO application in 1997, Aala said,

‘[Gary] then grabbed me by the arm, threw me out the door and left with the kids in the car, I tried to stop him by sitting in front of the car but he threw me out. I am fearful as he can get violent based on past experience. I am not fearful for my children as he loves his children. I wish to get DVO to stop him harassing threatening and assaulting me.’

### **The invisibility cloak over dysfunction<sup>50</sup>**

There is no doubt that custody proceedings are traumatic for all parties involved. Some parties agree to mutual separation but many couples separate on acrimonious terms. In the filicide literature,<sup>51</sup> the rupture of the marital relationship is often seen as the precipitating factor associated with the disproportionate male response and the subsequent killing. In some instances, there are no apparent prior warning signs before the killing takes place.

The next case study demonstrates the lack of obvious risk factors that would alert authorities to the preeminent child endangerment. It is as though there is an invisible cloak covering the dysfunctional parent. This cloak of a loving parent is worn by the father. It operates as a mask which conceals his true intentions and hides the nature of the underlying dysfunction. The role of the cloak shifts the gaze away from and conceals the dysfunction by re-inventing the image of the exemplary parent and consequently resists State intervention. The invisible cloak can be likened to a veil that functions as a divide between the private and public faces. It can be theorised that this veil is an aspect of the patriarchal familial form that reveals the lingering deeply held belief that men have the right to own and control their wife and children.<sup>52</sup> The veil constructs and maintains the cloak in a space that has neither the private nor public elements. This is the space of the social realm.<sup>53</sup> The question is therefore

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<sup>50</sup> This conceptualisation is a work in progress that is matched against my empirical research in the wider context of representation.

<sup>51</sup> Marleau, J.D. *et al.*, ‘Paternal Filicide: A Study of 10 Men’ (1999) 44 *Canadian Journal of Psychiatry*, 57-63; Bourget, D. and Gagne, P., ‘Paternal Filicide in Quebec’ (2005) 33, *Journal of the American Academy of Psychiatry and Law*, 354-360; Wilczynski, above, n13, 45.

<sup>52</sup> Lerner, G, above, n25, 24, 213.

<sup>53</sup> Arendt, H, *The Human Condition* (1958), 28.

how does one pierce this veil/cloak to expose that which is hidden to the public gaze?

### **Case study: Mark and Libby**

Libby and Mark had two children during their eleven years together. During the eighth year of marriage, there were allegations of emotional, verbal and physical abuse made against each other. In the tenth year, they separated. Libby filed for custody of the children. When Libby found her couch slashed during the period of separation, she lodged a police report and requested an AVO to support her custody application. However she stated that she had no fears for the children's safety. Therefore she was told that she did not qualify for an AVO. In her custody affidavit, she alleged Mark did not return the children to her at their agreed time. Mark was unable to obtain legal representation in time for the hearing. The Court granted interim residence orders to Libby. Mark started exercising his regular contact with the children pursuant to these orders.

Three months later, Libby agreed to Mark's request to have the children during his three weeks' leave. When the children were delivered to him, he told Libby that he wanted to keep [Mary]<sup>54</sup> and threatened her that if she refused, she would never see the children again. The police and DOCS were contacted. DOCS requested the police to assess the children and circumstances under which they were being cared for. The police attended the premises on Sunday and noted that the children were happy to be with their father. Mark denied making such comments to Libby and said she was trying to cause trouble for him over their custody dispute. The police left satisfied that the children did not appear to be in immediate risk of harm. DOCS was to attend the premises on the following Monday for a welfare check but did not. The following week Mark became uncooperative towards Libby on the phone because she did not give him the answer he wanted and he again threatened her. An urgent application was filed to discharge the earlier contact orders and be replaced by supervised contact between father and children. An order was also sought for a warrant authorising the police to take possession of the children.

At the hearing, the Court issued orders for Mark to present himself and to report to a police station. The court also ordered Mark to facilitate telephone contact between Libby and the children. Mark complied with the order the next day. The children appeared well cared for. On the same day, he also purchased video cassette tapes. However, when Libby was

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<sup>54</sup> According to Mark, Mary had previously expressed a desire to live with her father.

not able to speak to or contact her children, DOCS was contacted. They attended the premises two days later but failed to locate Mark and the children. Two days later, Libby expressed her concerns before the Court. Based on those concerns, the Court granted the Recovery Order. Two days later, the police located a vehicle with three deceased bodies belonging to Mark and the children. They also located the video cassette tapes containing his last words.

From the perspective of the police at the time of her AVO application, Libby did not appear to have any fears for the children's safety although she clearly had concerns for the custody proceedings. She had not reported any physical violence towards her or the children. Hence the endangerment to the children and any underlying state of dysfunction in the family was not apparent. The husband demand/wife withdraw interaction pattern, though, would have indicated that a corresponding and disproportionate violent response, arising from Mark's threat to Libby, would have placed the children at risk of harm. The difficulty in taking action in the legal realm was that there were no incidents of physical violence at the time except for the ongoing acrimonious relations as a result of the contentious custody proceedings. The following excerpt introduces how Mark felt about the processes of separation and the Family Court. Following that is a critical discussion on the recent amendment to the Family Law Act (1975) and its present emphasis on shared parenting.

Like Gary (in the case study above), Mark was not able to tolerate the pressures of going to Court. This was how he narrated his experience dealing with the pressure of interacting with the State, with reference to his increasing lack of marital authority:

'This is just a quick little message for you, just to let you know how unfair and biased the system seems to be. I have not been right through the system. I have only been trying to deal with this for three and a half months and I am at my wit's end with it. I have been put through nothing but punishment and abuse and treated like a common criminal. And for what? I was a good husband, a good father and a good worker. I did all the right things that a father is supposed to do. My children mean everything to me. They were my life and my life is non-existent anymore. I am expected just to sit back and watch it all take place around me and I am sorry but I just could not do that. I cannot bear with it anymore. I have put up with nothing but torture and abuse and punishment, yet I did everything to the best of my ability. I provided the best I possibly could. I

was the best father I could be. I was the best worker and husband I could be and yet for some people it just is not enough.<sup>55</sup>

The recent amendment<sup>56</sup> to the *Family Law Act (1975)* in 2006 and its current emphasis on shared parenting has been interpreted by some judges as requiring equal time, even when domestic violence has been raised. This means that access orders are now given to both parents whereas previously they were seldom granted to fathers. This position was viewed as detrimental. In awarding greater access between father and child, the Courts have been awarding access including unsupervised contact in the circumstances of alleged and uncorroborated, or poor evidence of domestic violence.<sup>57</sup> While the Courts have an obligation to take cognisance of domestic violence allegations in the family, they do not have an investigative function and often have to rely on child protection reports. If none are forthcoming at the time the matter is being heard, due to a fear of reprisal from the perpetrator, lack of inter-agency cooperation or lack of information sharing<sup>58</sup> between State agencies, the dysfunction of the family is camouflaged. This might accentuate the crisis exacerbating child endangerment. The Wood inquiry has pointed out that the communicative discrepancy in the legal system is seen in the inconsistent and unbalanced representations by legal and State representatives in the Children's Court. This has contributed to the lack of available, fair and up-to-date evidence before the Court.<sup>59</sup>

In our society, there still exists a level of commonsense with regards to the parent-child bond and rightly so. While shared parenting initiatives aimed at balancing access equally between both parents are important, there is on the other hand, the risk of child endangerment. This arises when the propensity to violence is cloaked by the assumed protective status given to an otherwise loving parent. The commonsense approach is reflected by the Court in this case. The Court felt that its decision had to

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<sup>55</sup> This excerpt is extracted from coronial records therein contained the transcription of the tape recordings left behind by the deceased father.

<sup>56</sup> *The Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth).

<sup>57</sup> Moloney, L. *et al* (2007) *Allegations of family violence and child abuse in family law children's proceedings: a pre-reform exploratory study*. Research Report No. 15. Melbourne: Australian Institute of Family Studies. The report is available at: <[www.aifs.gov.au/institute/pubs/resreport15/main.html](http://www.aifs.gov.au/institute/pubs/resreport15/main.html)> at 4 December 2009. This study was conducted in Victoria and South Australia. Its findings are not representative of all Family Court decisions in Australia. The purpose of citing this study is to show the potential implications of access orders.

<sup>58</sup> Above, n26, iv.

<sup>59</sup> *Ibid.*

be bound by the best interest of the child principle as its following comments indicate.

‘The most important one is the safety of the children but it can be just as harmful for the children to have police go in and remove them from their father’s home. And I mean, I do not know what the position of the mother is, whether she could be up there tonight or whether it means she has got to collect them tomorrow or the following day so it means that somebody has got to care for them. And that, as you know, can have an extremely adverse impact on children’.<sup>60</sup>

It is difficult to ascertain exactly when the state of dysfunction began in this case. The dysfunction criteria under section 23 of the CYP A would not apply in this case unless section 23 (e) was amended to read “a parent or other caregiver has behaved in such a way towards the child, young person or [insert – other parent] that the child or young person has suffered or is at risk of suffering serious [insert – physical] and psychological harm”. The insertions suggested however would open the floodgates to questions on what types of behaviour would be within the boundaries of acceptable parental conduct within the family. Moreover, it might even be viewed as an encroachment on the family space especially where an argument might be made and would probably stand, that such behaviour is typical given the acrimonious relations between the parties regarding the issue of custody.

In spite of the fact that an increasing number of filicide circumstances suggest that emotional bonds in a dysfunctional patriarchy can become fatal, the bottom line appears to be that as long as parents appear to care for the children, the State cannot predict risk of harm to them and there is nothing the State or anyone can do to avert child endangerment.

## **Conclusion**

One benefit of defining the state of dysfunction is that it can be directly applied to the conflict. This would circumvent cases where there is a cloak of invisibility over the potential violence towards the child. While it is not always possible to identify and apprehend all instances of child endangerment, particularly in cases where fathers exhibit emotional bonds towards their children and where the risks appear to be hidden, it is possible to set a minimum standard of safety in families and explore the conditions from which dysfunction arises. A clear indicator of impending child endangerment is the presence of domestic violence in a household.

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<sup>60</sup> This excerpt is extracted from the transcript of Court proceedings.

The presence of domestic violence constitutes sufficient evidence that there is going to be serious psychological harm towards the child.<sup>61</sup> Accepting this evidence as part of the approach towards canvassing policies addressing domestic violence is crucial for timely and effective external intervention.

On the other hand, the lack of domestic violence does not mean that the child is free from harm either. The intersection between State apparatuses and the family plays an important role in dictating the path of the displaced parent. There is a need to understand how in such cases the contextual dysfunction in the family arises. Perhaps the trigger for the disproportionate male response is symptomatic of a wider communicative failure on all fronts. Perhaps it is also the case that, when faced with the prospect of an increasing collapse of power over the children and family, the male who is entrenched in the patriarchal framework, believes he has the right to respond with possessive violence. This seems to be the cornerstone for understanding why filicides happen among fathers who appear to care for and who have been displaced from the family.

The irony that State intervention that is intended to prevent child endangerment has the propensity to exacerbate the conflict is not lost here. It aims to and has an absolute duty to prevent child endangerment but when it comes down to the practical handling of crises exemplified in the case studies in this paper, it has exacerbated the issue. This suggests a mystification of the interaction between domestic violence and State intervention in family. The right approach in cultivating the appropriate types of State response is important. The disintegration of patriarchal control over the family seems to be the initial catalyst setting the backdrop for child endangerment. One suggestion is for State responses to instil and empower a healthy response<sup>62</sup> to conflict. Whether or not that is achievable is open for discussion. In any event, a more in-depth and comparative research needs to be undertaken to further explore the relationship between risk factors associated with child safety, the impact of domestic violence and external intervention measures.

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<sup>61</sup> Laing, L, above, n12, p4.

<sup>62</sup> The New South Wales Government report, *Keep Them Safe: a shared approach to child wellbeing 2009 – 2014* and the recent National Government's initiative, *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009 – 2020* have formulated a long term nationwide plan for support and early intervention services to focus on child wellbeing and safety as key priorities.