

Speaking through the silence : adult female survivors of intra-familial child sexual assault envisioning justice and resistance in Australian criminal justice systems

Author:

Hudson, Myvanwy

Publication Date:

2013

DOI:

<https://doi.org/10.26190/unsworks/16499>

License:

<https://creativecommons.org/licenses/by-nc-nd/3.0/au/>

Link to license to see what you are allowed to do with this resource.

Downloaded from <http://hdl.handle.net/1959.4/53059> in <https://unsworks.unsw.edu.au> on 2024-05-03

**Speaking through the silence: Adult female survivors of intra- familial
child sexual assault envisioning justice and resistance in Australian
criminal justice systems**

Myvanwy Hudson

A thesis in fulfilment of the requirements for the degree of
Doctor of Philosophy

THE UNIVERSITY OF
NEW SOUTH WALES



University of New South Wales



School of Social Sciences

Faculty of Arts and Social Science

September 2013

PLEASE TYPE THE UNIVERSITY OF NEW SOUTH WALES Thesis/Dissertation Sheet	
Surname or Family name: Hudson	
First name: Myvanwy	Other name/s:
Abbreviation for degree as given in the University calendar: PhD	
School: Social Sciences	Faculty: Arts and Social Sciences
Title: Speaking through the silence: Adult female survivors of intra-familial child sexual assault envisioning justice and resistance in Australian criminal justice systems	

Abstract 350 words maximum: (PLEASE TYPE)
<p>This thesis explored the experiences of adult survivors of intra-familial child sexual assault and the experiences of victimisation, and perceptions of justice, that influence their decision making behaviour as adults. Utilising feminist epistemology and social constructivism, this research examined the lived experiences of adult survivors of intra-familial CSA, as well the views of expert stakeholders who work in a legal, advocacy or welfare capacity with survivors. Twenty two adult survivors completed questionnaires, and fifteen survivors participated in narrative interviews. Nine stakeholder groups also answered semi-structured interviews. Results from the research established the nexus between early experiences of long term intra-familial CSA and bystander denial within the family. The family as an institution influenced survivors' capacity to engage with the criminal justice system as well as criminal justice responses. Additional results demonstrated that not all survivors engaged with the criminal justice system, yet those who used the criminal justice system as a critical space of resistance. Survivors engaged in strategies of resistance in such a way that emphasised their own subjective identity and subversion of the subjugation they experienced as children. The need to establish a subjective identity was essential, and reflected also in survivors' perceptions of justice. The results demonstrated that contrary to popular myths pertaining to the vengeful victim, survivors desired validation, compensation, an opportunity to be heard, as well as perpetrator accountability. Of note is the finding that contrary to Janoff-Bulman's (1985) and later Zehr's (2002) assertion that crime victims suffer from a sense of 'shattered meaning' after their victimisation, survivors of intra-familial CSA by its inherent nature, had rarely experienced a sense of safety, or 'just world' prior to the abuse. The implications of these findings were reflected in their compatibility with Hudson's (2002, 2006) innovative justice principles, and their application to the current debate in Australia regarding sexual assault law reform. These findings highlighted the compatibility of survivors' justice needs with the development of specialist courts, with a few caveats. In order for specialist courts to address survivors' justice visions, a principle of non-adversarialism must be explored, with an incorporation of restorative justice values.</p>

Declaration relating to disposition of project thesis/dissertation		
I hereby grant to the University of New South Wales or its agents the right to archive and to make available my thesis or dissertation in whole or in part in the University libraries in all forms of media, now or here after known, subject to the provisions of the Copyright Act 1968. I retain all property rights, such as patent rights. I also retain the right to use in future works (such as articles or books) all or part of this thesis or dissertation.		
I also authorise University Microfilms to use the 350 word abstract of my thesis in Dissertation Abstracts International (this is applicable to doctoral theses only).		
 Signature	 Witness	13/12/13 Date
The University recognises that there may be exceptional circumstances requiring restrictions on copying or conditions on use. Requests for restriction for a period of up to 2 years must be made in writing. Requests for a longer period of restriction may be considered in exceptional circumstances and require the approval of the Dean of Graduate Research.		

FOR OFFICE USE ONLY	Date of completion of requirements for Award:
----------------------------	---

THIS SHEET IS TO BE GLUED TO THE INSIDE FRONT COVER OF THE THESIS

COPYRIGHT STATEMENT

'I hereby grant the University of New South Wales or its agents the right to archive and to make available my thesis or dissertation in whole or part in the University libraries in all forms of media, now or here after known, subject to the provisions of the Copyright Act 1968. I retain all proprietary rights, such as patent rights. I also retain the right to use in future works (such as articles or books) all or part of this thesis or dissertation.

I also authorise University Microfilms to use the 350 word abstract of my thesis in Dissertation Abstract International (this is applicable to doctoral theses only).

I have either used no substantial portions of copyright material in my thesis or I have obtained permission to use copyright material; where permission has not been granted I have applied/will apply for a partial restriction of the digital copy of my thesis or dissertation.'

Signed L. Hudson

Date 13/12/13

AUTHENTICITY STATEMENT

'I certify that the Library deposit digital copy is a direct equivalent of the final officially approved version of my thesis. No emendation of content has occurred and if there are any minor variations in formatting, they are the result of the conversion to digital format.'

Signed L. Hudson

Date 13/12/13

ORIGINALITY STATEMENT

'I hereby declare that this submission is my own work and to the best of my knowledge it contains no materials previously published or written by another person, or substantial proportions of material which have been accepted for the award of any other degree or diploma at UNSW or any other educational institution, except where due acknowledgement is made in the thesis. Any contribution made to the research by others, with whom I have worked at UNSW or elsewhere, is explicitly acknowledged in the thesis. I also declare that the intellectual content of this thesis is the product of my own work, except to the extent that assistance from others in the project's design and conception or in style, presentation and linguistic expression is acknowledged.'

Signed 

Date 13/12/13

Table of contents

Table of contents	Page
Acknowledgements	8
Chapter 1: Introduction	
Defining child sexual assault	12
Features of intra-familial CSA	16
Consequences throughout the life course	18
Finding one's "no": adult resistance	21
The role of criminal justice	23
Chapter 2: Literature Review	
The impact of CSA: the dynamics of trauma throughout the life course	30
The experience of CSA: silence and denial	35
What we know about reporting CSA: experiences with the police	37
What we know about formal justice: experiences with the court process	42
What do we know about potential reform of CSA?	48
Chapter 3: Theoretical Framework	
Understanding intra-familial CSA survivors' justice needs	68
Understanding intra-familial CSA survivors' choices	71
The family as institution and institutional denial	75
Reframing the debate (i) the concept of resistance	80
Reframing the debate (ii) Hudson's innovative justice	83
Expansion of Hudson's justice principles	94

Chapter 4: Methodology

Introduction	101
Research Design	102
Critically engaging feminist research epistemology	104
Feminist methodology and constructivism	105
Method 1: Questionnaires	109
Method 2: Narrative Interviews	111
Method 3: Semi-structured ‘expert’ interviews	115
Limitations of the research design	117
Coding and analysis	121
Sample Characteristics	124

Chapter 5: Disclosure and Denial

Introduction	132
Disclosure	133
Theorising the context of disclosure:	
Biderman’s (1956) typology	139
Sykes and Matza’s discursive techniques of denial	150
Official reporting and disclosure	166

Chapter 6: Speaking through the silence

Introduction	180
Resistance through critical spaces and symbolic protest	181
Resistance through alternative identities and sites of belonging	190
Resistance through the insurrection of subjugated knowledges	202

Chapter 7: Envisioning Justice

Part 1: Justice Needs	211
The foundation of the justice tree	212
Identity reaffirmation: confirmation of human dignity	216
Part 2: Perceptions of justice reform	235
Specialist courts	235
Restorative Justice	245

Chapter 8: Discussion and future directions

Specialist Courts	259
Validation through voice: entering into the circle of discourse	263
Validation through voice: the right to be heard and the duty to understand	271
Returning to restorative justice	275
Situating restorative justice	280
Expansion of community RJ programs	282
Cross fertilisation: using RJ to inform specialist court initiatives	285
Transformative justice	287
Directions for future research	292
References	296
Appendices	343

Acknowledgements

This thesis was made possible through the ongoing support of my supervisors, Dr Jane Bolitho, who has stuck by me throughout the good, bad and ugly, and Professor Julie Stubbs, whose expertise has pulled me over the finishing line. Thank you for your persistence and faith in me, Jane and Julie. Also, many thanks to Dr Sanja Milivojevic and Dr Leanne Weber for your early contributions and foundational guidance.

Anyone who has written a thesis knows that a PhD is an all consuming process. It is like growing a baby, from an embryonic thought to its expulsion from the birth canal. Like a baby, a thesis flourishes in a safe and nourishing environment. Thank you to my friends who provided me with ongoing emotional and social support. In particular, thank you Tanya Thaweeskulchai, Shirley Kent, Lisa Hobden and Nola Martin for your constructive feedback and loving support. Thank you to Emma Farrell and Dr Michael Salter for your professional feedback on methodology and recruitment.

A PhD written in isolation is a PhD written in deprivation. Thank you to my fellow PhD students who have provided me with a special kind of support that only those who are suffering the same fate can provide. Tera Bok, Holly Champion, Shalini Nadaswaran, Miri Jassey and my other lovely colleagues of Room 311L. Thank you also to people who have provided me with professional and therapeutic support: Dr Dominic Fitzsimmons, Dr Claudia Sannibale, Dr Jacinta Crimmins and Dr Richard Ng, during those dark but inevitable moments.

Thank you to the following agencies for assisting me with this research project: Advocates of Survivors of Child Abuse (ASCA), Liverpool Women's Resource Centre, Bankstown Women's Health Centre.

Lastly, this thesis would not have been possible without all the survivors who generously shared their experiences with me. Thank you for breaking the silence.

Chapter 1: Introduction

In 2009 a ‘family matter’ in rural Victoria, Australia, made national headlines when a young woman shot her step-father in the head before dismembering his body and burying his body parts in their backyard and nearby bushland. At her committal hearing, 10,000 digital images of the young woman experiencing sexual abuse were tendered as defence evidence. Similar evidence revealed that from the age of 14, the young woman had experienced continuous sexual slavery over a four year period, at the hands of her stepfather. Images of oral and vaginal rape and bondage were among the images tendered as evidence (Johnston, 2009).

She told police she had to do what her stepfather had ordered when he was alive because "I was his". Asked what would have happened if she had not shot him, she said: "I probably would have killed myself ... 'cos I couldn't live the way I was'." (Johnstone, 2009)

Such a news item is salient due to its visceral appeal and salacious content: sexual slavery, dismemberment, brutality, not to mention the contentious defensive homicide laws. Yet for a researcher, other aspects of the case appear in sharp relief to a plot that could easily become a contender for Law and Order SVU's next storyline. Most unsettling was the fact that family members, friends and neighbours had expressed earlier concern for the girl's wellbeing, revealing an awareness of the sexual abuse to which the girl was subjected. However, no intervention in the way of a police report or child protection report was made, despite the fact that the girls' teachers and school counsellor were informed and various neighbours suspected the abuse.

Two aspects of this news item raise concern. The fact that in 2009, a young woman shot her stepfather to release herself from sexual slavery (among other motivations) raises questions in need of further research. Firstly, one must question how other adult survivors of intra-familial child sexual abuse (CSA) might manage the consequences of chronic and severe sexual abuse. The other area of concern is that in a contemporary Western society where awareness of child abuse, particularly child sexual abuse, is commonplace, child protection legislation mandates that teachers report suspected child abuse and stories of CSA

pervade the entertainment media, nobody took action to prevent the adolescent in question from being subjected to ongoing harm. This case is clearly not isolated, and historical precedence dates back to the famous Kitty Genovese case (Darley and Latane, 1968) which inspired a new research field in the discipline of social psychology in the form of bystander research, pro-social behaviour and altruism (Darley and Latane, 1968, 1969). However, there has been limited inquiry in social science and criminology regarding the actions of adult survivors of intra-familial sexual assault who have experienced situations of captivity such as that described above. Little is known about the decision making factors that influence adult survivors or the way in which disclosure to family or community bystanders hinders or facilitates further help seeking, such as seeking assistance from the police or health agencies.

The consequences of abuse for adult survivors are not simply reflected in such extreme and seemingly anomalous cases as the one detailed above. Drawing from contemporary issues, another vignette regarding CSA becomes instructive and raises further questions about CSA. At the time of writing, the Royal Commission into Institutional Responses to Child Sexual Abuse has revealed the consequences that victim-survivors have suffered at the hands of the clergy. Precipitating the current parliamentary inquiry was the revelation that forty adult survivors of institutional child abuse committed suicide between the 1960s-1980s (McKenzie and Baker, 2013).

Yet unlike institutional clergy CSA, institutional CSA within the family home is unlikely to warrant the same attention. Parallels between the institution of the church and the institution of the family abound, including bystander complicity, collusion and denial all contributing to the ongoing abuse for victims (Cohen, 2001). However, public policy has given insufficient attention to chronic or multigenerational CSA that occurs in the family as social institution, and the ramifications for adult survivors. As Cowburn and Domminelli (2001) argue, social constructions of the dangerous sex offender as a stranger can mean that intra-familial child sex offenders, and by extension, the experiences of intra-familial survivors are overlooked by hegemonic constructions of the offender as ‘deviant’ or ‘other’, a predator at the margins of society possessing aberrant sexual proclivities.

Too many women and children have been and are being abused within the allegedly safe boundaries of their homes by men they know and trust (Cowburn and Domminelli, 2001:2).

Moreover, while considerable research attention has been given to the constructions of hegemonic masculinity within the family, and the way in which child sexual abuse occurs on a spectrum of gendered violence (Herman, 1977; Rush, 1980; Driver, 1989) limited attention has been given to the family as an institution which facilitates abuse as well as ongoing silence.¹ Arguably, discourses of the family operate to construct the family as an ideal, foundational social institution which is incapable of facilitating acts of harm such as child sexual abuse.

Captivity (Herman, 1992) and the Stockholm Syndrome (Jülich, 2001) are catch phrases that have been used to describe prolonged intra-familial child sexual abuse. Yet such phrases often conjure images of death camps or hostage situations, and these analogies for some are extreme to be of any consequence. However, these analogies which appear discordant with the ideals of family life, describe many survivors' lived experiences of intra-familial CSA. An intra-familial perpetrator theoretically has 24 hour access to a child in his/her care, if one is a legal guardian. This, coupled with the immunity afforded someone in the status of parent/guardian/caretaker, and natural childhood dependency needs, allows for a relationship of domination to be imbued into the parent-child dyad. The juxtaposition of CSA with the ideals of the family, which is constructed as sacrosanct and intrinsic to the 'natural order' of life, benevolence, parental self sacrifice or kinship altruism, can be unsettling to the observer. For the survivor, this juxtaposition can strengthen the barriers that keep her trapped. Renowned psychoanalyst and anti-child abuse activist, Alice Miller, captures this quagmire succinctly:

Like Adam and Eve in Paradise, they have been told to regard cruelty as love. Children are thus forbidden to see their parents' cruelty for what it is and are denied awareness of the cruelty they suffered in the earliest years of their lives. They are forced to believe that children feel no pain, that everything done to them was for their own good, and that if they suffered they only had themselves to blame...But the body never forgets (Miller, 1998:96).

¹ One exception to this has been family systems theory, a psychiatric discourse which places undue culpability on the mother for her husband's sexual offending. This is less about the family than a dysfunctional family premised on women not fulfilling their 'duties.' (Breckenridge, 1992)

Unlike the survivor of genocide or hostage-taking, the child of any intra-familial abuse commonly feels pressured not to despise her perpetrator. There is often pressure to forget the harm caused and to forgive the familial perpetrator, a pressure that would be viewed as offensive were the perpetrator a stranger. Thus, while second wave feminists have aptly identified CSA on the spectrum of gendered violence, insufficient attention has been given to child abuse as first and foremost a crime against children by parents, adult relatives or older siblings. Simply put, this is a crime of the powerful against the powerless in the smallest microcosm of society, the family. Parental privilege, inherent to patriarchal discourses has abounded, and influenced predominant CSA discourses in the disciplines of law and psychology in the early to the mid 20th century (Breckenridge, 1992; Cossins, 2000).

But what is currently known about intra-familial CSA? After forty years of second wave feminist campaigning to put child sexual abuse on the political agenda, much is known about child sexual abuse as a gendered crime, yet current popular debate appears to obscure recognition of abuse in the family, focusing instead on institutional abuse or stranger assaults.

The aim of this thesis is to thus gain an understanding of the unique experiences of survivors of intra-familial CSA in a sample of Australian women who have made contact with women's health centres in metropolitan NSW or the advocacy agency ASCA, in order to understand survivors' distinct experiences of disclosure and decision-making, experiences of criminal justice and resistance, as well as inform appropriate legal and justice responses for this group of survivors.

Defining child sexual assault

CSA can be broadly referred to as any unwanted sexual contact between adult and child. Despite the heterogeneity of definitions of sexual contact, the overriding commonality emphasizes the relative power imbalance between adult and child. The clinical characteristics will be defined, before examining the legal definitions in the jurisdiction of New South Wales (NSW), Australia.

Clinical characteristics of CSA:

From a clinical perspective, CSA can be separated into the following types (Sgroi in Engel, 1989:39):

1. Nudity-the adult parades around the house in front of all or some of the family members
2. Disrobing-the adult disrobes in front of the child, generally when the child and the adult are alone.
3. Genital Exposure-the adult exposes his or her genitals to the child.
4. Observation of the child-the adult surreptitiously or overtly watches the child undress, bathe, excrete or urinate.
5. Kissing-the adult kisses the child in a lingering or intimate way.
6. Fondling-the adult fondles the child's breasts, abdomen, genital area, inner thighs, or buttocks. The child may similarly fondle the adult at his or her request.
7. Masturbation-the adult masturbates while the child observes; the adult observes the child masturbating, the adult and child masturbate each other.
8. Fellatio-the adult has the child fellate him or her, or the adult fellates the child.
9. Cunnilingus-this type of oral-genital contact requires either the child to place mouth and tongue on the vulva or in the vaginal area of an adult female or adult to place his or her mouth on the vulva or in the vaginal area of the female child.
10. Digital (finger) penetration of the anus-perpetrators may thrust inanimate objects such as crayons or pencils inside.
11. Penile penetration of the anus
12. Digital penetration of the vagina-inanimate objects may also be inserted.
13. "Dry intercourse"-a slang term describing an interaction in which the adult rubs his penis against the child's genital-rectal area or inner thighs or buttocks.
14. Penile penetration of the vagina

Engels (1989) adds that all types of abuse can be damaging, and that it is important to note that the intention of the adult/older adolescent is vital to defining some of the above actions as abuse. For example the intention behind nudity and disrobing in front of a child, such as sexual arousal and gratification, is the factor that defines such an act as CSA.

Legal definitions of CSA

The precise legal definitions differ across Australian jurisdiction. Definitions vary jurisdictionally, for example NSW defines sexual assault broadly and transcends the narrow vaginal-penile penetration to which some jurisdictions adhere. However reference will be made to NSW law, as this is the jurisdiction in which most of the research has been conducted. In NSW there are a number of offences under which child sexual assault can be prosecuted. These include sexual assault, aggravated sexual assault, assault with intent to have sexual intercourse, indecent assault, aggravated indecent assault, act of indecency and aggravated act of indecency. These are stipulated in sections 61, 66 and 78-80 of the *Crimes Act 1900 (NSW)*.

Standard classification of sexual assault can be found under Australian Standard Offence Classification (ASOC). Using the ASOC (1997) definition, sexual assault can be defined as “Physical contact of a sexual nature directed toward another person where that person does not give consent, gives consent as a result of intimidation or fraud, or consent is proscribed (that is, the person is legally deemed incapable of giving consent because of youth, temporary/permanent (mental) incapacity or there is a familial relationship).” From this definition, sexual assault is broken down into subdivisions, aggravated sexual assault and non-aggravated sexual assault.

Aggravated sexual assault

Aggravated sexual assault is sexual assault, involving any of the following aggravating circumstances: –sexual intercourse (that is, oral sex and/or penetration of either the vagina or anus by any part of the human body or by any object); infliction of injury or violence on the person; possession/use of a weapon; consent proscribed; or committed in company (that is, by two or more persons). This includes incest, rape, unlawful sexual intercourse, unlawful fellatio/cunnilingus and carnal knowledge.”

Non-aggravated sexual assault

Sexual assault not involving any of the aggravating circumstances as defined in Aggravated Sexual Assault. This includes indecent assault not involving any aggravating circumstances” (Australian Standard Offence Classification 1997).

Prevalence rates

As observed above, the definition of child sexual abuse encompasses a wide range of sexual activity between an adult and a minor, or between an older child and a younger child. Subsequently, it is difficult to arrive at a definitive prevalence rate. International estimates suggest that prevalence rates are between 7 to 36 per cent for females and 3 to 29 per cent for males. (Finkelhor, 1994). In Australia, the International Violence Against Women Survey (2004) reported that 16% of women surveyed experienced sexual abuse before the age of 16 (Moutzos and Makkai, 2004). The ABS Personal Safety Survey (2006) has also shown that 1 million Australian women (12%) reported sexual abuse before the age of 15 (cited in Tarczon and Quadara, 2012). More recently, the Australian Institute of Family Studies (AIFS) has posited that

–Studies that comprehensively measured the prevalence of child sexual abuse found that males had prevalence rates of 1.4 - 8.0% for penetrative abuse and 5.7 - 16.0% for non-penetrative abuse, while females had prevalence rates of 4.0 - 12.0% for penetrative abuse and 13.9 - 36.0% for non-penetrative abuse.” (AIFS, 2013)

The wide range in these statistics can be attributed to definitional discrepancies and differences in research methodologies. Yet, what becomes apparent is that females report greater prevalence of CSA than males, and that even prevalence rates of 12% for penetrative abuse is of considerable concern.

In the USA, the National Violence Against Women Survey 2006 (USA) commissioned by the National Department of Justice reported similar figures, stating that 1 out of 6 women are raped at some point throughout their lifetime. More than half of these women are likely to be raped by the age of 18. In the survey conducted, 21.6% of women were younger than 12 when they were first raped, and 32.5% were aged between 12 and 17.

Thus, more than 54% of the women who experienced sexual assault did so before the age of 18.

Recorded Crime Statistics

It has long been established that most incidents of sexual assault (including CSA) are not reported to the criminal justice system. As the following chapter will illustrate, intra-familial CSA is rarely reported to the authorities while it is still occurring. Thus the following statistics must be interpreted cautiously.

In Australia, ABS Recorded Crime Statistics (2012) reported that 48% (8,672 people) of all recorded sexual assault victims were between the ages of 10-19 and 13.8% were under the age of 9. Together, 61.8% of all recorded sexual assault victims were between 0-19 years old (ABS, 2012). The fact that at least 61.8% of all recorded sexual assault victims were children or adolescents is concerning and suggests an over-representation of children and adolescents in reported sexual assault victimization.

Only a small proportion of child sexual abuse cases are reported to the police (London, Bruck, Ceci and Shuman, 2005). An even smaller proportion eventuates in police proceedings and finalisation in court. As the following chapter will explore, in relation to NSW statistics in 2004, approximately 6.5% of CSA cases reported to the police to the police eventuate in a guilty verdict (Fitzgerald, 2006). The incongruity between the prevalence of child sexual assault and the comparatively low number of convictions will be one issue explored in this thesis.

Features of intra-familial CSA

Studies of CSA highlight that children are more likely to be abused between the ages of three and eight (Browne and Lynch, 1994). In Australia the ABS Personal Safety Survey (2006), of the 1 million women who reported sexual abuse before the age of 15, 2/3 of survivors stated that the abuse began before the age of 11. According to Putnam (2003), the median age is 9 for reported abuse: 10% of victims were between 0-3 years old, 28.4% of

victims were between 4-7 years old, 25% were 8-11 years old, and 35.9% were 12 years and older. The statistics, however, do not account for how long the abuse continued or whether it was a single incident.

One of the glaring absences in official crime statistics is a separation of child sexual assault by perpetrator type making it difficult to identify the proportion of CSA that intra-familial abuse comprises, though some victimisation studies attempt to rectify this gap. In the International Violence Against Women Survey (2004), 20% of perpetrators of CSA were parents (Mouzos and Makkai, 2004). Tarczon and Quadara (2012:9) stated that in the ABS Personal Safety Survey (2006) –fathers, step-fathers and other male relatives (including siblings) made up more than half (51.6%) of perpetrators for females, and approximately one-fifth (21.4%) of perpetrators against males.” Juvenile offenders are also often overlooked, but nonetheless comprise a substantial proportion of intra-familial offenders, often as brothers or cousins. Woods suggests that unlike other juvenile offending that offenders grow out of, juvenile sex offenders capitalise on the secrecy surrounding CSA and hone their skills of grooming (Woods, 1997).

There are features which may distinguish intra-familial child sexual assault from other forms of sexual assault. Over time, an abusive relationship may be established, where the child is effectively silenced through a variety of means, ranging from subtle manipulation to overt coercion (Smallbone and Wortley, 2000; Salter, 2003). Abuse usually escalates over time, as the perpetrator gains the child’s trust or fearful acquiescence (Woods, 1997). Indeed, child sexual assault requires a level of deliberation that indicates perpetrators are not “out of control.” Psychological research has shown that child sexual assault can developmentally progress from less severe to more severe behaviour over time (Kogan, 2003). Kogan argues that this increasing severity is often accompanied by tactics designed to ensure the child’s compliance and maintain secrecy (Kogan, 2003:161). Abusers often use strategies in order to persuade the child they are to blame, that the consequences of disclosure will be disastrous or that the behaviour they are being forced to engage in is normal (Summit, 1983; Rokvic, 2003; McAlinden, 2005). Ultimately these strategies are used to instil in the victim a belief system which perpetuates silence (Summit, 1983).

It is important to note that there are a number of popular discourses and myths which perpetuate public misunderstanding of intra-familial CSA. Contrary to the myths, abuse is not a loss of impulse, or an involuntary reaction motivated by a physiological drive (Cossins, 2008; Engels, 1989) and is often perpetrated by males who conform to norms of hegemonic

masculinity and are heterosexual, often family men who ostensibly conform to society's visions of acceptability (Cossins, 2000; Cowburn and Dominelli, 2001). Thus a popular myth is that CSA is only committed in impoverished, "outsider families" or by deviant predators unknown to the children they plan to abuse. Myths regarding the aberrant sex offender who occupies a "deviant outsider or folk devil" (Cowburn and Dominelli, 2001) role are inherently linked to constructions of masculinity and chapters 2 and 3 will explore the power imbalance and dynamics of abuse within the context of feminist theory and other related frameworks. Other problems related to popular misunderstanding of intra-familial CSA involve the perceived impact of CSA on survivors' lives and its importance as a social problem. For example, the Australian Childhood Foundation (2010) found that 1/3 of Australians surveyed would not believe a child's disclosure of sexual abuse and that Australians rank petrol prices, public transport and roads as issues of greater concern than child abuse, unless they are confronted with the issue in their own lives. The general attitude to child abuse, coupled with the disbelief about the prevalence of sexual abuse, indicates a lack of awareness of the consequences of intra-familial CSA.

Consequences throughout the lifecycle

The manner in which one reacts to adverse life circumstances is generally dependent on a myriad of factors. Stressing the gravity of child sexual assault, does not mean that all survivors suffer adverse effects in adulthood that interfere with aspects of their lives. However, adverse psychological and social ramifications have been noted in survivors, particularly in later years. Psychologically, this can include a lack of self worth and the development of mood disorders such as depression, anxiety, phobia, post traumatic stress disorder (PTSD), multiple personality disorder (MPD) and other dissociative disorders (Allagia, 2004, Kogan 2004, Cardena 1994, Harvey and Herman, 1994). Briere and Runtz (1988) discuss the related PTSD effects of child sexual abuse, of which many are "conditioned responses to early victimization experiences" (1988:94). These include dissociation, flashbacks, nightmares and sleep disturbances. In addition to these conditioned responses, Briere and Runtz (1988:94) suggest that an accompanying set of cognitive effects exist as long term effects of sexual abuse, including "guilt, low self esteem, distrust of others and helplessness". In addition, Finkelhor and Browne (1985) suggest that there are specific impacts of child sexual abuse that cannot be confined to the PTSD model. These specific

impacts include traumatic sexualisation, betrayal, stigmatization and powerlessness (Finkelhor, 1985:68) and comprise a set of ~~traumagenic~~ "traumagenic distortions" that can impact on a child, and later, adult's ability to cope with everyday life.

While the trauma model is not as expansive as it could be in describing the consequences of child sexual assault, there are some benefits to using this approach. Judith Herman (1992a, 1992b, 1997, 2005) has written extensively on the nature of trauma, complex trauma and victimization. Intra-familial CSA often involves long term abuse, due to the nature of the abusive relationship between adult and child. If the adult is a parent or caregiver who lives in the same home, they often have unfettered access to the child and are able to establish a relationship of domination that can continue for many years. Herman (1992a) suggests that such a situation causes ~~subordination~~ "subordination to coercive control," and has numerous impacts.

Herman describes the symptoms of ~~somatisation~~ "somatisation, dissociation and affective changes." Somatization refers to the fact that those who have experienced chronic trauma become ~~hypervigilant~~ "hypervigilant, anxious and agitated without any recognizable baseline state of calm or comfort" (Hilberman in Herman, 1992:380) and experience a range of physiological symptoms such as ~~insomnia~~ "insomnia, tension headaches and gastro-intestinal disturbances." Dissociation refers to ~~alterations~~ "alterations in consciousness," whereby survivors of trauma experience trance-like states, alterations in time where the delineation between past and present is blurred, and where memories can become compartmentalized and fragmented (Herman, 1992a:381). The purpose of dissociation is to protect the child from overwhelming emotions or pain during the abuse through allowing her/him to distance themselves from the event (Sgroi, 1989) Lastly ~~affective changes~~ "affective changes" refer to the psychological losses that accompany the loss of faith that come with severe abuse. Herman (1992a:382) suggests that ~~protracted~~ "protracted depression is reported as the most common finding in virtually all clinical studies of chronically traumatized people." Such protracted depression is accompanied by unexpressed rage at the denial of dignity experienced during the period of trauma.

In addition to the physiological and psychological impacts of trauma, Herman contends that trauma impacts upon one's capacity to form meaningful relationships with others. She suggests that at the time of captivity, the perpetrator becomes

The most powerful person in the life of the victim...the methods of establishing control over another person are based upon the systematic repetitive infliction of

psychological trauma. These methods are designed to instill terror and helplessness, to destroy the victim's sense of self in relation to others, and to foster pathological attachment to the perpetrator (Herman, 1992:383).

This unique relationship of coercion and captivity will be explored in the later chapters of this thesis. One of the consequences of this, however, is that many survivors also have difficulties forming close personal attachments, including intimate relationships (Engels, 1989). As the experience of child sexual assault calls into question basic assumptions about human relationships and the "positive value of self" (Rovkic, 2003) the ability to trust oneself and others has been shown to become seriously diminished. Other studies suggest that survivors may be more likely to experience adult revictimisation particularly in the form of sexual assault or domestic violence. The Australian component of the International Violence Against Women Survey (IVAWS) 2004 revealed that women who experienced childhood abuse, including childhood sexual assault were one and a half times more likely to experience violence during adulthood. The risk of sexual violence for those who have experienced abuse in childhood rises from 26% to 54 % (Mouzos and Makkai, 2004).

Survivors also experience social challenges as well as interpersonal challenges. Such challenges must be viewed from an intersectional approach, and take into consideration the survivors' ethnicity and socio-economic background. In Australia, the consequences of intra-familial CSA are also mediated by one's marginal status, particularly if one is Indigenous or from a particular socio-economic background (McGlade, 2008). For example, sexual abuse allegations are substantiated in Indigenous communities at a rate 5 times higher than non Indigenous communities (Australian Institute of Health and Welfare, 2012).² Studies on incarcerated prisons in the USA highlight that CSA is twice as prevalent in incarcerated female populations than in female college students (Asberg and Renk, 2012); with other studies suggesting that up to 70% of female inmates have a history of childhood sexual abuse (Lynch et al., 2012). With regards to other forms of impaired functioning, other studies also suggest that adult survivors of child abuse in general have considerably diminished social supports in adulthood compared to non-abused populations (Sperry and Widom, 2003).

Such studies are useful for health practitioners, policy makers and those employed to help survivors. It is important to note that these findings are typically correlational, not

² However, this may also reflect the fact that abuse in affluent areas is easier to mask than in populations that are under considerable government scrutiny.

causational, and may run the risk of fuelling discourses that imply survivors are invariably damaged. Research has shown that coping mechanisms and resilience can account for survivors who do not experience revictimisation and other adverse consequences (Lobmann in Mouzos and Makkai, 2004:88). Other research has shown the importance of survivor narratives, which display survivors as adults, who, having experienced severe abuse, have managed to lead productive lives despite the impact of complex trauma (Ronai, 1995; Ronai and Cross, 1998; Gilfus, 1999; Naples, 2003).

Finding one's 'no': adult resistance

Both feminist discourse and clinical discourse discuss the collateral damage of intra-familial CSA throughout the life course (Ward, 1984; Herman, 1992). Yet what really happens to the abused child who grows into an adult? What choices does she make and how does she utilise social institutions such as the criminal justice system, the education system and the family to gain agency? One of the unfortunate bi-products of the aforementioned discourses, particularly the trauma paradigm, is the unwitting tendency to conceptualise survivors as 'damaged', often stigmatising them in the same way as those with a mental illness are stigmatised. Often survivors can experience this when dealing with the "psy" professions (Armstrong, 1994) Intrinsic to this tendency is the failure to view survivors as people, who, as a consequence of having lived through, in some cases, situations akin to sexual torture and slavery, not to mention betrayal, possess expert knowledge that those who have not experienced such oppression do not possess.

Resilience, resistance and agency have become areas of research interest over the last couple of decades and coincide with the imperative to see victim-survivors in a more nuanced light (Naples, 2003; Gilfus, 1999). In my experience as a survivor and having worked in a voluntary capacity with other survivors, stories of resistance and agency abound.³ Such stories range from the middle aged, middle class woman who urinated on her perpetrator's grave the day after burial, or the Indigenous woman who was raped from the ages of four until sixteen, called "dopey-dora" because she was illiterate until the age of sixteen and is

³ As a CSA survivor and researcher I will, on limited, occasion make reference to my personal thoughts and experiences, and only when it will illuminate a particular argument, or highlight my self-reflexive stance underlying the thesis argument

now herself completing a doctorate.⁴ Then there is the promise I made to myself, as a young child, to never again be subjugated in an intimate partnership with a man. Essentially, this thesis is my own act of resistance. I was 15 when I first disclosed that I had been sexually abused, first to a school friend and then to a teacher whom I trusted and liked. While I unequivocally believed that I had experienced abuse, and I believed to some extent that it was not my fault, my own obfuscation became apparent in my reaction to the teacher's response. –That's abhorrent. That's a crime," she had replied, in response to my disclosure. Certainly, I had experienced those years of sexual abuse as painful, terrifying and shameful, but to label my experience as a crime was to endow it with a degree of legitimacy that it previously did not possess. It meant that theoretically, society cared about what happened to me. In Braithwaite and Pettit's (1990) terms, my dominion had been taken, and in being reassured that what happened was a crime, it could be restored. Moreover, such validation, through labelling is, as Hudson (2006), argues, needed for crimes such as these.

I never reported the matter to the police. The young girl who had been assaulted by my perpetrator before me, had reported the matter, and to no avail. I viewed the court process as a potentially retraumatising process which required emotional resources and linear memories that I simply did not possess. Yet my teacher's words have remained with me some 15 years later, and the criminal justice system occupies a 'critical space' within my own cognitive schema that I have developed to resist the subjugating messages communicated by the abuse and abuser.⁵ That what happened to me was a crime combats the perpetrator's messages inculcated in me: *You do not matter; your suffering is of no consequence to the world; the perpetrator was not doing anything wrong; such acts are natural between father-figure and girl child.* Yet such a vignette is anecdotal, and my story should not stand for the lived and diverse experiences of other survivors.

As well, a balance has to be achieved between valorising stories of survival and recognising the extensive suffering and collateral damage experienced by survivors (Bosworth and Carrabine, 2001). An intersectional approach is also essential, as experiences of intra-familial CSA are invariably coloured by race, class and religion. All crime victims have decisions they must make, and such decisions are constrained by a range of factors. For survivors of intra-familial CSA, decisions are more complex, as the perpetrator is not merely the perpetrator, but also a father, an older sibling, an uncle or a mother. Decisions become

⁴ These narrative accounts have been provided by survivors interviewed for this thesis.

⁵ Chapters 5 and 6 will also explore the notion of critical spaces in relation to the survivors interviewed.

more complex when survivors have to negotiate this relationship, as well as the responses of family members, referred to here as familial bystanders. Often the pain one has suffered is subsumed by demands that the survivor remain loyal to the family, by remaining silent about her abuse. The family, in these cases, becomes constructed as a privileged institution, whose interests must be given priority. In these cases, the family as institution supersedes the needs of the less powerful within the family unit. Hiding behind the ideological calls to family unity and togetherness, is the perpetrator.

The role of criminal justice

I have always felt that I could not remain silent about what happened to me. Intuitively, there was a sense that if I remained silent, I would self destruct. I felt particularly coerced by a male mental health professional, who believed that my only hope of recovery was by bringing the perpetrator ~~to~~ justice.” Anecdotally, I knew from witnessing friends’ experiences with the police and criminal justice agencies, as well as court observations as a former law student, that recovery was not necessarily predicated on engaging with the ~~justice~~ system.” Placing the phrase ~~justice~~ system” in quotation marks is deliberate, as it denotes that what exists is a legal system, comprised of common law and legislation and not necessarily a system that one would recognise as commensurate with ~~justice~~.” This leads to the final question underpinning this thesis. What does ~~justice~~” mean for survivors whose perpetrators occupy dual roles of fathers, uncles, brothers, mothers or grandparents? For those who have never experienced a ~~fair or just world~~” by virtue of being born into a life where sexual abuse began in young childhood, is justice simply an act of ~~rebalancing~~” as retributivist Jean Hampton, would suggest? While such questions have been asked of survivors of violent crime (Wemmers, 2007; Herman, 2005) survivors of gendered crime (Hopkins and Koss, 2001; Herman, 2005) and survivors of child sexual abuse (Jülich, 2006), such questioning has not been directed at adult survivors of intra-familial CSA. It is my contention that the combination of historical CSA, with intra-familial dynamics, may elicit a more nuanced and varied collection of justice needs.

As Jonathon Doak (2008) contends, there is popular and academic fear of questioning the ~~big, bad victim~~” about justice. Often vengeance and victim’s desires are erroneously conflated. Yet an understanding of survivors’ visions of their needs and perceptions of justice

is of interest, and necessary for contemporary criminological scholarship, if more appropriate legal reform is to be enacted. This leads us to examine the current legal reform proposals for sexual assault and child sexual abuse, and why legal reform in Australia is needed.

Legal Barriers that impede satisfying interactions with the CJS

The following overview is a short and selective overview of the issues that will be discussed in the following chapters, particularly Chapter 2. The initial investigation process filters sexual assault reports. Many women have reported a level of discontent with the police process, with women reporting that they felt this process was unhelpful and unsupportive. The NSW Violence Against Women Specialist Unit reported that women surveyed felt the police were dismissive and they reported being told that their case was not a priority and that there was insufficient evidence to proceed. In this survey, 89% of cases were investigated by the police. However, only 58% of these cases resulted in charges being laid (NSW Violence Against Women Specialist Unit, 2006:37). After the police lay charges, the matter is handed to the Crown Prosecutor. The Crown Prosecutor has to make a decision as to whether s/he will proceed with the case. This decision is made only “if there is a reasonable prospect of conviction or if it is in the public interest.” (Cook et al, 2001:62). If the DPP decide to pursue the case, the case can be brought to the District/County Courts or the Magistrate’s Court, where a preliminary hearing is held (Cook et al, 2001:62).

There have been a number of criticisms levelled at the court procedure and the way in which the victim is treated on a practical level throughout the process. Such criticisms relate to the fact that many victims are not given information about the court process, that they had not met with the DPP before the case and that they had not received adequate information about their rights in the courtroom (Cook et al, 2001: 63). It is important to note here that victims are merely “witnesses” for the prosecution, rather than active participants in the proceedings. This passive status disavows victims of any agency within the court process (Doak, 2008). However, prosecution guidelines in NSW do require that sexual assault victims are consulted in certain circumstances and that the Witness Assistance Scheme may assist victim-survivors (Office of the Director of Public Prosecutions Current Guidelines, 2010).

Attrition rates throughout this process are high, particularly with child victims/witnesses. As noted before, only about 1 in 10 cases reported to the police result in a

conviction. While several Australian jurisdictions have Charters of Victims' Rights, there is a glaring incongruity between the numerous studies (Eastwood 2003, Neame and Heenan 2003, Taylor 2002, Kerr 2003, Cossins 2006, Cowdery 2005, Fergus and Keel, 2005) which have reported that many victims are often treated poorly throughout the process and the Charter of Victim's Rights instituted by the *NSW Victim's Rights Act (1986)*. This charter states that victims "should be treated with courtesy, compassion and respect for the victim's rights and dignity...". Arguably, the treatment of many survivors throughout the process contravenes the items set out in this charter.

In addition to the other barriers that impede initial disclosure and filter out cases prior to the trial, there are a number of legal barriers which impede conviction. These include the nature of the adversarial system, judicial discretion, the use of a lay jury and jury directions and the use of expert knowledge. One aspect of the adversarial system which has attracted great criticism is that of the tactics enlisted by defense counsel to cross examine the witness (Cossins, 2010; Kerr 2003, Eastwood, 2003; Eastwood and Patton, 2002; Taylor 2002). This criticism has not been confined to sexual assault cases, however, cases where the victim is the only witness and there is no other evidence, are particularly open to criticism. Criticism has also been directed at the way in which the adversarial system closely mirrors the marketplace, where language is used as a persuasive device to win an argument, as opposed to arriving at the "truth" (Taslitz, 1999:81).

Other problematic aspects of adversarialism, include the use of a lay jury, who are not well versed in either legal processes, or the issues surrounding child sexual assault (Boniface 2005, Shakel 2007). This is not to suggest that the problem lies with using a lay jury per se, but the way in which the jury is often subjected to confusing and contradictory jury directions. In addition, expert knowledge, such as knowledge regarding the nature of childhood trauma and its subsequent behavioural manifestations, is often not permitted in Australian courts (Cossins, 2010; Bronitt, 2003)). Thus, without specific clinical awareness of the nature of childhood drama, there is often a lack of understanding about the reasons why an adult survivor would delay reporting CSA.

Certainly, the need for a cultural change within the court system is a concern that has been reiterated by many law reform campaigners. According to Cossins (2010) speaking on behalf of the National Child Sexual Assault Reform Committee, the creation of a specialist child sex offences court is a necessary alternative to the adversarial court system. She cites a

number of reasons in support of reforming the child sexual assault trial, namely: the high rate of recidivism among child sex offenders, the propensity for perpetrators to abuse multiple victims and the difficulties for victims where multiple trials occur and the progressive escalation of abuse (Cossins, 2003:3). These characteristics of CSA create substantial barriers to a successful prosecution within the mainstream CJS (Cossins, 2003). Other researchers have looked beyond the CJS to alternative justice innovations such as restorative justice (Braithwaite and Daly, 2000; Daly and Curtis-Fawley, 2006). Overseas jurisdictions, including New Zealand and Canada have explored the relevance of restorative justice to meeting the needs of adult survivors of CSA (Jülich, 2006, 2010). This is due to the perceived shortcomings of traditional criminal justice, in particular the marginalisation of the victim (Ellison, 2001) and perceived state co-option of the crime (Christie, 1977). Child sexual abuse, due to the high proportion of male offenders, can be described as a gendered crime, and as such, suffers from the same challenges from which other gendered crimes, particularly rape, suffer in the CJS. These include a lack of recognition of the types of harm caused by sexual violence (Lacey, 1998) and a “logic of identity” which views women’s experiences from the position of white, middle class privilege (Hudson, 2006).

In relation to difficulties in gaining recognition for gendered crime, Braithwaite (2002) argues:

The law has no ready terminology for a harmful agency that is bounded by oppression. To entertain ‘oppression’ would be to consider various levels of aggregate responsibility for the crime. It makes sense then that the decrees of law typically do not extend to the multiple agents and social institutions that facilitate harm, both structurally and culturally (Braithwaite, 2002).

Before we consider whether the criminal justice system adequately addresses the complexity of intra-familial CSA we need to ascertain more than just the impact of intra-familial CSA on adult survivors and their decision making. Inherent to this question is an exploration of the pathways to agency that adult survivors take. For some survivors the CJS may offer a sense of vindication (Hampton, 1991) and a sense of symbolic resistance to the oppression they suffered as children (Taylor and Norma, 2011). As a precursor to reform of the CJS we need to understand survivors’ justice needs and perceptions of desirable avenues for legal reform.

Research Questions and Rationale

There are gaps and silences that this thesis seeks to address. Thus, the research questions for this thesis are:

RQ1 What is the impact of intra-familial child sexual assault on women survivors?
How does this affect decision-making around disclosure?

RQ2 What pathways of resistance have these women survivors taken?

RQ3 What are the needs and visions of survivors of intra-familial CSA of a justice system?

The importance of this research cannot be overstated. While many studies have explored the justice needs of victims of violent crime (Wemmers, 2007), or child sexual abuse (Herman, 2005; Jülich, 2006; Bishop and Balboni, 2010) few studies have investigated the specific justice needs of adult survivors of intra-familial CSA, as well as the innovative ways in which adult survivors overcome the impact of sustained, severe abuse. Such research is essential as the prevalence rates indicate that over half the reported child sexual abuse cases are intra-familial (ABS, 2006). The focus on adult female survivors is also important; that 1 million Australian females reported sexual abuse before the age of 15 (ABS, 2006) and that a substantial number suffer ongoing health, social and interpersonal challenges, suggests that this is still an ongoing social policy and criminological concern worthy of research. Moreover, given the popular rhetoric of the family as the building block of society, often mobilised by conservative lobby groups to strengthen patriarchal power (Barrett and McIntosh, 1980), it is essential to interrogate discourses that protect the institution of the family from external scrutiny. This imperative is strengthened when one considers the analogy between chronic child sexual abuse and sexual slavery and captivity (Herman, 1992), demonstrating that intra-familial CSA is a human rights issue that cannot be ignored.

Overview of chapters

Chapter Two will examine the key issues of how the effects of CSA might influence victim-survivors' disclosure patterns. Chapter Two also explores the literature on current

criminal justice responses to sexual violence and child sexual assault, with a view to examining whether adult survivors' needs are adequately addressed in such responses. This chapter argues that current policy initiatives and research do not adequately address the specific needs of adult female survivors of intra-familial CSA.

Chapter Three examines the key intersecting theoretical frameworks that frame the dynamics of long term intra-familial CSA. While intra-familial CSA has long been described as a gendered crime by feminists, it is also essential to examine this form of abuse from an institutional perspective, exploring the exploitation of children by adults. The second half of Chapter Three utilises Barbara Hudson's (2006) intersectional approach to innovative justice, which draws on feminist, post-structuralist and communitarian critiques of the criminal justice system, as a useful framework with which to understand survivors' justice needs. Chapter 4 examines the feminist narrative interviewing approach required to understand survivors' experiences and justice needs. The nature of sensitive interviewing, coupled by reflexivity is considered, and a two-step recruitment is used to elicit survivors' trust and screen survivors who may be unduly traumatised by the interview questions.

Chapter 5 explores the experiences and impact of intra-familial CSA, and directly addresses the first research question of this thesis. This chapter draws on interdisciplinary theory, particularly social psychology's notion of the bystander effect (Darley and Latane, 1968) and Stanley Cohen's adaptation of social psychology to posit a "sociology of denial" (Cohen, 2001) in which survivors' experiences of prolonged abuse can be contextualised. This chapter demonstrates that one of the impacts of CSA is obfuscation and denial on the part of family members and the perpetrator, creating substantial barriers to recourse for survivors. While Chapter 5 examines the barriers to recourse, Chapter 6 challenges the "damage model" commonly associated with the trauma of CSA, and addresses the way in which as adults, survivors resist the silencing and subjugation inherent to intra-familial CSA. One of the emergent themes is the way in which survivors occupy "critical spaces" (McCorkel, 1998), and some utilise the CJS as a form of symbolic resistance (Taylor and Norma, 2011), to challenge entrenched family denial. Underlying this theme is survivors' desires to embody subjective identities (Bosworth and Carrabine, 2011), which are diametrically opposed to the objectification that characterises CSA.

The journey to subjective identity (Zehr, 2002) is a prevalent theme explored in Chapter 7, a theme which encompasses many survivor needs discussed. This chapter explores

justice needs on a continuum presented by Barbara Toews' (2006) as a "justice tree" which is akin to Abraham Maslow's (1943) hierarchy of human motivation: safety and interpersonal stability are often the first concerns, followed by other survival needs such as compensation. Following this survivors seek self actualisation, through the journey to identity, and expressed through the needs of validation, denunciation of the perpetrator and storytelling. This leads to Chapter 8, which argues that Hudson's (2002, 2006) innovative justice principles, largely encapsulate the needs and experiences of adult survivors of intra-familial CSA. These justice principles, combined with Braithwaite and Pettit's (1990) republican theory of criminal justice, are needed in order to explore the utility of legal reforms for adult survivors. Finally, this thesis then concludes with an exploration of the legal reforms best needed to suit adult intra-familial CSA survivors' unique needs.

In essence, this thesis aims to give voice to the experiences and justice needs of victim-survivors, in a political climate where increasingly punitive justice responses are called upon in the name of reducing sexual violence. As advocates and researchers, it is incumbent upon us to allow one of the groups who is most likely to be affected by justice reforms to speak for itself, to bear light on the potential of alternative justice models.

Chapter 2: Literature Review

Introduction: the situation

An examination of the justice experiences and needs of adult survivors of intra-familial child sexual assault (CSA) necessitates both a closer examination of the unique aspects of CSA that affect engagement with the criminal justice system (CJS), as well as a broader examination of the CJS's response to gendered harm and sexual violence. This chapter will explore the existing psychological and sociological literature on the factors that facilitate or inhibit disclosure of intra-familial CSA, as the catalyst for criminal justice engagement. This will be followed by an analysis of the criminological literature on criminal justice responses to sexual violence, examining decision making factors at both the police investigation stage, as well as the trial stage, which lead to both attrition and survivor dissatisfaction with the process. Finally this chapter will examine current reform options, exploring changes in criminal justice policy in Australia over the past decade, and concentrating on the two most commonly researched reform options: specialist courts and restorative justice⁶.

The impact of CSA: the dynamics of trauma through the life course

This section will address the literature on the impact of chronic CSA throughout the victim-survivor's life course, examining the way in which the consequences of CSA can impede survivors' help seeking capacities. The commonly cited consequences of chronic CSA are post traumatic stress disorder, along with "chronic perceptions of helplessness," increased risk of major depression, anxiety disorders as well as an impaired sense of self-identity and diminished capacity for self care (Briere and Elliot, 1994: 57; Herman, 1992;

⁶ Focus will be given to NSW in the review of legislative reform simply due to the fact that a majority of survivors that will be interviewed are from NSW, and thus are affected by NSW criminal justice policy. This is not to discount the extensive reform observed in other Australian jurisdictions.

Finkelhor and Browne, 1986). There have been a range of other studies highlighting the prevalence of PTSD symptoms in adult survivors of CSA (Herman, 1992; Mullen, Martin, Anderson, Romans and Herbison, 1993; Van der Kolk, 1996; Mullen and Fleming, 1998; Macmillan et al, 2001) with the more severe and frequent the abuse, the more likely that traumatic symptoms remain in adulthood (Fleming, Mullen, Sibthorpe and Bammer; 1997). Rodriguez, Ryan, Rowan and Foy (1996) interviewed 117 survivors of CSA, finding that 72% met the DSM-III-R criteria for current PTSD, with 86% meeting the criteria for lifetime PTSD. Severity of abuse had a primary role in predicting PTSD symptoms, followed by duration. This has implications for a study on intra-familial CSA survivors, who, due to the nature of intra-familial abuse, are more likely to experience chronic and severe CSA (LaFontaine, 1990) as well as being more likely to be simultaneously exposed to physical abuse (Wind and Silvern in Polusny and Follette, 1995:145).

Fleming et al (1997) conducted an Australian study on the long term impact of CSA, examining the specific aspects of CSA that influence long term difficulties . Their study initially sampled 3,958 women randomly selected from the Australian electoral roll. Seven hundred and twenty one women eventually participated, with 41% of the final sample reporting an unwanted sexual experience prior to the age of 16, and 20% explicitly reporting child sexual abuse. Their findings confirmed previous hypotheses, that even when controlling for confounding variables such as family and social background, ~~there~~ remains a significant independent association between a history of CSA and increased vulnerability to a range of difficulties in adult life”. Notably, these difficulties were magnified when a survivor had experienced severe abuse such as penetration (Fleming et al, 1997:154). However, the impact of abuse can be mitigated or magnified by protective or detrimental factors in the child’s family environment (Fleming et al, 1997; Edwards and Alexander, 1992).

One of the key theorists on the nature of trauma and the traumatic aftermath of gendered violence, such as intra-familial childhood sexual abuse, is feminist psychiatrist Judith Herman (1977, 1992, 1997, 2005). Herman’s work conceptualises intra-familial CSA such that it captures the repeated victimisation inflicted upon the child within the family. Her conceptualisation of intra-familial CSA within the larger framework of complex trauma is particularly useful. The analogy between intra-familial CSA and other forms of captivity provides insight into why survivors may take years to disclose the abuse, or may remain silent well into adulthood:

Captivity, which brings the victim into prolonged contact with the perpetrator, creates a special type of relationship, one of coercive control (Herman, 1992:378).

Herman's work is noteworthy as she states that in addition to psychiatric disturbances, survivors develop a pathological relationship with their perpetrator, where, the perpetrator comes to occupy sole prominence in the victim's life, such that the perpetrator becomes the most powerful person in the life of the victim" (Herman, 1992:383). She contends that this establishment of control is common amongst a variety of forms of captivity, from childhood abuse to prisoners of war.

The methods of establishing control over another person are based upon the systematic, repetitive infliction of psychological trauma. These methods are designed to instil terror and helplessness, to destroy the victim's sense of self in relation to others and to foster a pathological attachment to the perpetrator. ...the threat of death or serious harm, either to the victim or to others close to her, is much more frequent than the actual resort to violence. Fear is also increased by unpredictable violence, and by inconsistent enforcement of petty ... demands. (Herman, 1992:383)

This method of control can work effectively within the family. La Fontaine (1990:70) contends that the parent/child relationship is inherently unequal. This relationship implies obedience, and dependence on parents for affection and basic survival needs, requires the child to acquiesce to the parent's demands. Where a caregiver is a perpetrator of abuse, the dynamics of captivity are multiplied.

Another "common sense" perception regarding CSA is the seemingly inexplicable relationship between perpetrator and victim-survivor, where the victim-survivor rather than attempting to escape from the perpetrator at the first possible opportunity, aligns herself with the perpetrator. While Herman's work establishes the conceptual framework with which to understand the relationship of captivity and often abject fear instilled in the victim-survivor, Jülich's (2001; 2005) recent work linking the Stockholm Syndrome with experiences of childhood sexual abuse provides insight into this phenomenon. The Stockholm Syndrome describes the contradictory way in which "people who are brutalised sometimes form close attachments with their tormentors" (Van der kolk, 1996:200). The phrase was coined after a bank hostage situation in Stockholm in 1973, where after six days of captivity, survivors grew emotionally bonded to the captors, to the point where they adopted the perspective of the hostage takers and viewed potential rescuers as a threat (Graham in Jülich, 2001:176).

Jülich's research on 21 adult survivors of CSA found that children were emotionally bonded to their abusers such that they felt responsible for their abusers, creating internal barriers to disclosure. Four preconditions precipitated the Stockholm Syndrome, "Perceived threat to survival and belief that the abuser was willing to carry out that threat," "the victim's perception of some small kindness from the abuser within a context of terror," "isolation from outside perspectives" and a "perceived inability to escape" (Graham et al in Jülich, 2001:179). Jülich argues that these conditions are intrinsic to CSA, particularly intra-familial CSA, where there is a "pre-existing" bond and a "continuation of a relationship" due to the perpetrator being a parent and authority figure. Victim-survivors are usually unable to escape from this relationship and given the grooming tactics utilised by perpetrators, are often isolated from the outside world. As a result of the fear created by the ongoing abuse, from which victim-survivors perceive no escape, the victim-survivor develops a sense of loyalty out of self preservation (Jülich, 2001). The victim-survivor may come to anticipate the offender's needs and cater to these needs to avoid harm, she comes to identify the world from the abuser's perspective, and views him as a victim dependent on her. She becomes psychologically enmeshed with the offender and has difficulties separating from his perspective, fearing that the offender's wrath if she separates from him (Graham et al in Jülich, 2001:192). Consequently, Jülich describes the complexity of disclosure for adult survivors of intra-familial CSA, with traumatic bonding as an adaptive response developed to gain perceived control of an uncontrollable situation and sustain hope that one day the perpetrator will stop hurting her. As with earlier descriptions of trauma, such a syndrome becomes counterproductive to help seeking in later life.

Thus far the literature on the nexus between CSA and trauma has illustrated the way in which trauma can severely impact a survivor's life, well into adulthood. However, the passage of time and progression through the life cycle can mean that it is only as an adult that she can address the abuse and consider the next course of action, which for some may involve legal recourse. Herman (1997) describes the dynamics of chronic CSA within the family and its affect on the adult survivor. Herman states:

The personality formed in an environment of coercive control is not well adapted to adult life. The survivor is left with fundamental problems in basic trust, autonomy and initiative. She approaches the task of early adulthood ...-burdened by major impairments in self care, in cognition and memory, in identity and in the capacity to form stable relationships (Herman, 1997:110).

Other impediments to disclosure include impairments in everyday functioning, and interpersonal relationships, with others facing either ongoing victimisation or re-victimisation through adult sexual assault or abusive relationships. As such, self-actualisation (Colarusso, 2011) and other growth needs are sidelined, with many survivors merely surviving. Issues of justice or higher meaning can be luxuries for a survivor ill equipped for the adult world.

Herman (1997:133) suggests that “recovery is based on the empowerment of the survivor and the creation of new connections.” This can occur in a therapeutic relationship, but it can also occur in the context of leaving the family home and creating new, safe adult relationships. Thus for some it is only after empowerment and reconnection occurs that survivors can begin to consider the broader implications of the abuse, including consideration of what the justice system can or cannot achieve. As Lievore contends, the criminological literature assumes that seeking redress from the justice system is a primary concern for survivors; however, as Lievore’s study (2005) in addition to the literature in this chapter, suggests, the consequences of sexual violence can infiltrate every aspect of a survivors’ life, and consideration of legal redress is one among other, more pressing considerations.

Colarusso (2010), in examining the developmental effects of CSA throughout the lifecycle, contends that the effects of chronic CSA do not necessarily abate with time. However, his examination of the life cycle suggests that adulthood to mid-life may be the time when many survivors are compelled either by an internal desire or “interiority” to scrutinise their life thus far, having achieved safety from their family of origin; or by external factors, where for example, some survivors may be forced to confront the impact of CSA after the birth of their children, being unable to deny the effect of the abuse any further or the possibility that the abuser may still be harming children.

The above literature suggests that in many cases it is only in adulthood, and late adulthood for many, that survivors address the consequences of chronic, intra-familial CSA, and search for meaning from their experiences. It raises questions about the necessity for specialist knowledge related to the lifetime traumatic effects of CSA to inform criminal justice responses and policies. Another point of consideration is that the literature provides a model of chronic CSA that can at times be considered too deterministic, with little acknowledgement of the potential for resistance and agency later in life. Indeed, this thesis will also explore the way in which adult survivors of intra-familial CSA utilise strategies of

resistance in their adult lives, as well as the relationship that strategies of resistance have with survivors' interactions with the criminal justice system.

The experience of CSA: silence and denial

Numerous factors can inhibit disclosure of CSA. The literature suggests that the closer the relationship between the victim and the perpetrator, the less likely the child is to disclose the abuse, with a study of 2,924 victims of intra-familial CSA indicating that 79.1% of victims of parental sexual abuse did not disclose during childhood (Hershkowitz, Horowitz and Lamb, 2007:68, also see Kogan, 2003). Hershkowitz et al contend that —the greater dependence of children on their parents, the children's greater sense of responsibility for protecting the integrity of the family, or direct and indirect pressure by the parents may all explain why children living with their parents are least likely to disclose abuse” (2007:73). Similarly, non-disclosure is also exacerbated by the frequency and intrusiveness of abuse (Alaggia, 1994; Connolly and Read, 2006; Kogan, 2003; Pipe, Lamb, Orbach, Sternberg, Stewart and Esplin, 2007). Such factors are found in intra-familial CSA where the perpetrator's opportunity to be alone with the child is greater, and the relationship of dependence means that the perpetrator can abuse the child with limited interruption.

It is also important to examine the dynamics within the family that facilitate or prevent disclosure. Alaggia and Kirshenbaum (2005) examined the factors within families that inhibit disclosure. In conducting narrative interviews with 20 male and female CSA survivors regarding their experiences of disclosure, they found four patterns within families that facilitated delayed disclosure. These included —rigidly fixed, patriarchy based gender roles in the family,” where women, particularly mothers, felt disempowered; the —presence of family violence” which included other forms of child abuse and intimate partner violence; —social isolation” and —closed indirect communication.” These findings highlight the need for a theoretical examination of the way in which family dynamics as well as gender based oppression, underpin disclosure practices. This will be explored in greater detail in Chapter Three.

Connolly and Read (2006) also found that severity of abuse was correlated with a greater use of silencing tactics and grooming strategies. Perpetrator grooming strategies

illustrate the way grooming not only desensitises victims to abuse, but ensures their ongoing silence. For instance, Berliner and Conte (1990) interviewed 23 children between the ages of 10-18 years old (21 females, 2 males) who had experienced both intra and extra-familial CSA, asking open-ended questions regarding the “victimisation process.” They reported pre-abuse behaviour (voyeurism, unnecessary physical contacting and inappropriate sexual talk) was designed to desensitise the child to sexual conduct and also make the child feel complicit. The offender threatened rejection, the disintegration of the family, physical harm or used physical abuse to attain the child’s compliance (Berliner and Conte, 1990:35). Similarly, Smallbone and Wortly (2001) investigated 182 convicted child sex offenders in Queensland, Australia, who completed a 386 item self report questionnaire (Smallbone and Wortly, 2001). The most common method to gain the child’s trust was spending a large amount of time with the child (with 70.9% of intra-familial offenders using this method), touching the child non sexually (67.1%) and giving them a lot of attention (64.6%) (Smallbone and Wortly 2001:4). Within intra-familial abuse, such grooming methods operate simultaneously with punitive discipline or behaviours that otherwise reduce the child’s self-esteem (Edwards and Alexander, 1992; Salter, 2003). Such studies illustrate the complexity of grooming and its direct impact upon silencing the child.

Yet despite grooming, some children do attempt to disclose during childhood. Research suggests that when children do disclose, they are more likely to confide in family members than other adults. In Roesler and Wind’s (1994) study of 228 female incest survivors, parents were more likely to react negatively to disclosure than other adults, with 53.1% of parents responding with anger towards the child, 51.6% ignoring the child, and 53.3% blaming the child. Often non-offending parents and family members are also groomed by the perpetrator (Salter, 2003; McAlinden, 2005) such that when a child discloses, they are met with parental denial or blame, positioned as a liar, malingerer or troublemaker. The perpetrator can invalidate the child’s claims easily, enlisting societal stereotypes regarding the untrustworthiness of children. In addition, the literature demonstrates that sibling abuse is minimised and attributed to normal childhood sexual exploration, rather than an abuse of one child’s power over another (LaFontaine, 1990; Rayment-Hugh and Nisbet, 1994).

Theorists have provided frameworks with which to explain non-disclosure and compliance to long term abuse. Roland Summit (1983) developed the term “child sexual abuse accommodation syndrome” to provide a framework for why children fail to disclose the abuse at the earliest possible occurrence. (Summit, 1983; Keeshin and Corwin, 2011).

Child Sexual Abuse Accommodation Syndrome (CSAAS) is characterised by: *silencing* of the child; *helplessness*, due to the dependence of the child on the adult caregiver; *entrapment* and *accommodation*. As intra-familial CSA is rarely a single incident, the child must learn to manage the realisation that they are entrapped by both secrecy and their sense of helplessness, and hence must somehow adapt to the ongoing abuse, often through dissociation (Summit, 1983). This is followed by *delayed* or *conflicted disclosure*, where children delay their disclosure, or when they disclose, are rarely believed. The adaptive coping strategies designed to deal with the overwhelming nature of abuse, such as self-mutilation or dissociation, or conversely over-achievement or perfectionism, diminish the credibility of the child's disclosure. The final principle is *retraction*, where due to the adverse family reactions the child retracts her statement⁷. For the purposes of the current research, features of the CSAAS have merit in understanding disclosure patterns and survivor behaviour, and as will be demonstrated later, Summit's (1983) model is important for examining the inaccuracies within legal reasoning.

However, sociological understandings of disclosure are also vital. Feminist analyses have posited that often the perpetrator can be abusive towards his spouse and that sexual abuse is associated with patriarchal family structures (Rivera, 1996; La Fontaine, 1990; Driver, 1989; Russell, 1986; Ward, 1984), with Herman and Hirschman's (1977) work on father-daughter incest examining the heightened likelihood of abuse in a family where the father views women and children as his possessions. Beyond feminist analyses, Bell (1993) utilises Foucauldian notions of governmentality to examine the dynamics of intra-familial CSA, providing insight into the micro-level power dynamics which ensure compliance. Thus one of the issues raised by the literature that will be addressed in this thesis is the way in which family responses to disclosure may mediate a survivor's official help-seeking decisions such that official help-seeking is invariably delayed or stymied.

What we know about reporting CSA: experiences with the police

The previous section has shown that survivors' help seeking decisions ~~are~~ are formed through relationships with others, within social contexts and at multiple decision points ”

⁷ the phenomena of false denials has been examined elsewhere (Lyons, 2007)

(Lievore, 2005:8). As such, official disclosure cannot be hastened, despite the adage that “time is the enemy of justice” (Cowdery, 2006). As the police are the gatekeepers to the criminal justice system (Kersetter, 1990) they must be a central point of examination, along with reporting and attrition rates. It is important to note that initial reporting rates remain low. Jordan (2011) states that in the UK, 11% of sexual offences are reported to the police, with a similar figure of 9% in New Zealand reported.

Due to the fact that adult survivors of child sexual assault occupy a dual position as both former child victims but current adult complainants, and the fact that official statistics often do not capture historical CSA, the statistics to be examined here will be sexual assault statistics in general, and CSA statistics where noted. Recent statistics published by the NSW Bureau of Crime Statistics and Research (2010) showed that 4,886 reports of CSA concerning victims between the ages of 0-15 were reported. Of these cases, 603 people appeared in lower or higher NSW courts, with 367 found guilty and 214 offenders receiving a custodial sentence. Similar figures for adult sexual offences showed that 4,119 reports were made to the police, 787 people were charged, with 395 people found guilty and 166 receiving a custodial sentence (BOCSAR, 2010). This illustrates that only 7.5% of CSA cases and 9.5% of reported adult sexual assault cases eventuate in a guilty verdict.

Fitzgerald’s (2006) work on attrition in the NSW criminal justice system demonstrated similar trends, highlighting that 15% of cases involving child victims eventuate in criminal proceedings, with less than 50% of these defendants found guilty. Fitzgerald indicated that the major points of attrition “lie between reporting and clear up,” that is, during the police investigation process, as well as between “clear up and commencement of criminal proceedings” (2006:2). Factors that further contribute to attrition are matters where there is over a 10 year delay in reporting (with only 8.8% (of 386 incidents)) of reported sexual assault, and 14.5% (of 117 incidents) of indecent assault occurring over 10 years ago, eventuating in criminal proceedings (Fitzgerald, 2006:5). When examining the relationship between victim and perpetrator, it appears that only 15.8% of sexual assaults, and 19.1% of indecent assaults where the perpetrator was a family member, eventuated in criminal proceedings. This can be compared with figures which reveal that criminal proceedings are more likely to be proceeded against partners/or ex-partners, with figures sitting at 16.8% for sexual assault and 35.1% for indecent assault (Fitzgerald, 2006: 5).

One of the key shortcomings in the literature and statistical reporting for historical CSA is that often the statistics are conflated with other forms of sexual violence. Thus one has to deduce which cases may be historical CSA matters. Research by the Victorian Law Reform Commission (VLRC) attempted to differentiate between different forms of sexual violence, isolating variables such as reported cases five years after the assault, as well as the relationship to the perpetrator. Interestingly, 59% of penetrative offences other than penile-vaginal rape⁸ were committed by family members (VLRC, 2004). Without the appropriate statistics, one can only speculate that if the offence was committed by a family member, it is more likely that it occurred when the survivor was a child. The VLRC (2004: 70) observed that 11.5% or 884 reports reported from 1994-2002 to the Victorian police involved historical assaults 5 years old or longer. However, they estimate that reporting rates have actually reduced from the early 1990s to the 2000s, where reporting penetrative offences reduced from 30.3% in 1994-5 to 25% in 2001-2, with reporting rape reduced from 11.1% in 1994-5 to 7.5% in 2001-2. Such a reduction may be attributed to survivors of historical CSA being less inclined to report to the police, possibly due to the knowledge that historical CSA is unlikely to eventuate in a successful conviction (VLRC, 2004:74). Reporting sexual violence can be contextualised within a broader examination of survivors' help seeking decisions.

Australian research has examined some of the help-seeking decisions that have lead sexual assault survivors to seek criminal justice recourse. Lievore (2005, 2006) conducted semi-structured interviews with 36 victim-survivors, 65 interviews with workers from 23 specialist services and 55 sexual assault workers/counsellors. It was found that survivors often decided to report the assault to the police after significant people confirmed that they had experienced "serious victimisation" (Lievore, 2006:6). Ultimately, survivors were influenced by a range of factors, including encouragement by others, fearing for their safety or desiring "justice".

More recently, Taylor and Norma (2011) have conceptualised survivors' reporting behaviour as a form of "symbolic protest". Interviewing 60 female survivors of sexual assault who reported their assault to police in Victoria, Australia, Taylor and Norma (2011) found three factors that influenced reporting decisions:

- (a) a belief in the criminal nature of sexual assault, (b) a desire to protect other women and girls, and (c) a desire to raise community awareness and to see the proper

⁸ For example, offences such as digital penetration.

recording of crime ~~–statistics~~” ...We believe these factors motivate women to ~~–symbolically protest~~” the failure of state agencies to properly intervene to stem men’s sexual violence against women (Taylor and Norma, 2011:25).

The notion of symbolic protest was derived from Hill’s (1979) paradigm which describes responses to injustice. This study’s strength lies in its recognition that reporting CSA to the police can have symbolic significance, in addition to pragmatic goals, and conceptualises a pathway for investigating ways in which help-seeking can be a form of resistance, discussed later in this thesis.

However, an examination of survivors’ decision making around help-seeking and disclosure is incomplete without examining the barriers that survivors face when reporting sexual violence to the police. While the data on the reporting patterns of adult survivors of intra-familial CSA is minimal, research on adult sexual assault survivors has proliferated over the past 20 to 30 years. Key studies conducted in the UK and New Zealand by Gregory and Lees (1996), Temkin (1997), Jordan (1998, 2004, 2011), Brown, Hamilton and O’Neil (2007) will be examined, in addition to Australian research by Daly and Bohours (2010); Taylor and Gassner (2011). Gregory and Lees’ (1996:3) study identified four stages in the criminal justice process where a sexual assault case can be excluded, with the first two stages being at the police reporting stage ~~–when a case is ‘no crimed’ by the police,~~” or ~~–when police fail to refer a case to the Crown.~~” In this study 43% of 109 cases examined were ~~–no-crimed,~~” that is, where the complainant either withdraws the case or the police refuse to investigate further due to insufficient evidence, lack of corroboration or the victim possessing mental health issues (Gregory and Lees, 1996:5). In the second attrition stage, only 33% of 301 cases were forwarded to the Crown Prosecutor, with police under political pressure to demonstrate a high clear up rate and only forward matters that were perceived as likely to eventuate in a conviction, such as stranger rape.

While Gregory and Lee’s (1996) work examined the political and organisational influences on police decision making, Jordan’s (2004) qualitative research in New Zealand focused on the key factors that affect police officers’ perceptions of women survivors’ credibility. Jordan quotes studies conducted by Leas (1999) and Temkin (1997) where police officers in the UK believed that up to half of sexual assault complaints made are false. Jordan’s 2004 study analysed 164 closed police files for themes relating to police attributions of victim / credibility. Key factors correlating with police assessing the complaint as false include delay in complaint (35% were ruled false) and previous psychiatric illness (60% were assessed as false) (Jordan, 2004: 36). Of those who delayed their complaint, 86% were

viewed with suspicion. Such findings parallel Gregory and Lee's (1996) earlier study conducted in the early 1990s where cases were no-crimes due to similar attributions. Given the empirical evidence that has shown the consequences of sexual violence include psychiatric illness, the fact that police commonly believe that those with psychiatric illnesses are making false claims suggests a lack of awareness of the nature of sexual assault. Moreover, this indicates that attributions are influenced by masculinist values:

Investigations of rape complaints occur in an organizational context characterized by excessive adherence to masculinist values, and shaped by historical and cultural beliefs regarding the crime of rape (Jordan, 2004: 57).

Brown, Hamilton and O'Neill (2007) conducted a similar study in the UK with police and Crown Prosecutors to examine the attrition rates in sexual assault cases. Brown et al. (2007) sampled 105 police cases, finding that 73% of reported cases were lost during the police investigation process. Similar to previous studies, recency of complaint was pivotal to attrition or retention, with a speedy complaint also associated with possible forensic and hence corroborating evidence. Brown et al. (2007) focus on slightly different issues, that of Jordan's (2004) research, expressly stating that attrition rates are also influenced by police/crown prosecutor anticipation of the jury's potential reaction to the case. They suggest that reform must also centre upon altering societal attitudes towards sexual violence and thus jurors, rather than focusing excessively on police prejudice.

While the aforementioned research is crucial to identifying the attrition points within the CJ process, as well as the factors impacting upon police decision making, it is difficult to isolate figures that focus on adult survivors of CSA. It is only by examining matters such as delay in complaint that it is possible to isolate factors that *may* affect a historical survivor's experience. Research suggests that many survivors of intra-familial CSA are not able to report their experiences of abuse to the police until they reach adulthood and have emotionally and physically separated from their family of origin. Alaggia and Kirshenbaum (2005) suggest that between 30% and 80% of survivors do not disclose CSA before adulthood. This is problematic given the above research which suggests that recency of complaint plays an integral role in whether or not a matter progresses through the CJS (Brown et al, 2007). Having examined the literature on the policing process, the following section will explore the literature on survivors' experiences with the next stage of the CJS, the court system.

What we know about formal justice: experiences with the court process

The literature on the formal justice response to sexual assault and child sexual assault has proliferated over the last 30 years within NSW, capturing the substantial legal changes that occurred in NSW in the 1980s as a result of feminist campaigning (Breckenridge, 1992). At the time, CSA emerged at the forefront of public consciousness, with the inception of legal, public policy and social welfare reform (Armstrong, 1994, Breckenridge, 1992). For instance, in 1984, the NSW Child Sexual Assault Taskforce was established, and in 1985 the law in NSW was amended in several key aspects (Cashmore, 1995:32). Amendments were made to the substantive law in NSW, *Crimes Act 1900* (NSW), whereby the original offence category of “rape” was changed and replaced with the broader category of “sexual assault”, which covered a greater range of sexual offences. Section 66A-F of the *Crimes Act 1900* (NSW) include a range of sexual offences that more accurately captured the wide experiences of CSA, including oral sexual abuse and digital penetration (encompassed under “sexual assault”). The *Crimes Act NSW 1900* also recognises the additional gravity of abuse that is perpetrated by those in a position of trust and authority, through recognising this relationship as a circumstance of aggravation.⁹

Subsequent amendments have also been significant such as the creation of an additional offence category which recognised the evidence that child sexual abuse is often not a single incident event. Following the Royal Commission into the NSW Police Service Final Report, Volume V: The Paedophile Inquiry (1997), the offence category “persistent sexual abuse” was created, stating that “a person, who, on 3 or more occasions occurring on separate days during any period, engages in conduct in relation to a particular child that constitutes a sexual offence is liable to imprisonment for 25 years (s66EA(1) of the *Crimes Act NSW 1900*).” This amendment appears to more accurately capture both the nature of child sexual abuse, as well as the dynamics of prolonged sexual abuse. Yet despite the considerable reforms to the substantive law, survivors face a number of barriers in accessing legal recourse. Such barriers can be attributed to extant values and practices prevalent within courtroom and legal culture.

⁹ See Section 61J Aggravated sexual assault and S61O where “Circumstances of aggravation” include the victim being under the authority of the alleged offender.

Evidence that these barriers still exist despite the aforementioned legislative reforms is reflected in research by Cashmore (1995) and Parkinson et al (2002). While in the mid 1990s there was an increase in the number of CSA cases prosecuted, conviction rates declined. Cashmore (1995) investigated 131 cases in the higher courts, where 46 trials (39.3%) eventuated in conviction and she observed decreased conviction rates in 1992 compared to 1982 (which were at 58.8%), an unexpected decrease given the plethora of aforementioned reforms. Cashmore (1995) argued that the reforms had the unintended consequences of retraumatisation due to courtroom culture and the removal of barriers that allowed younger children to be cross examined. This was mirrored in other literature, where Parkinson and colleagues (2002) conducted a similar retrospective study, using hospital records, court records and longitudinal interviews with parents and their children at the points of 18 months and 5 years following the abuse (Parkinson et al., 2002:351). Of 117 cases examined, only 45 cases reached trial or sentencing, and 32 cases (or 27% of the overall sample) eventuated in a conviction (Parkinson et al., 2002:357). Parkinson et al. (2002) explored reasons for attrition, including the police decision to not lay charges, and the desires of both parents and child complainants to discontinue the investigation. One particular factor leading to the decision not to lay charges included prosecutorial attitudes towards delay in complaint:

The NSW Director of Public Prosecutions issued instructions in a memorandum to his legal staff in 1998 expressing the view that a “significant number” of sexual assault cases should be discontinued. He listed as cases which should be subjected to particular scrutiny those matters that were based on late complaint... (Parkinson et al, 2002:359)

These instructions indicated the extent to which attitudes towards delay in complaint in particular, affected prosecutorial decision making as recent as the late 1990s.¹⁰ This is an issue of concern for all historical survivors of CSA as almost all survivors have delayed their official report to the police, usually well into adulthood.

Another issue prevalent in the literature during the last decade was the re-victimisation of the sexual assault complainant during the criminal trial. One of the pivotal studies regarding criminal justice responses to CSA was conducted by Eastwood and Patton (2002). This study gathered findings from 130 participants across New South Wales (NSW),

¹⁰ It is important to note that this internal practice and attitude towards delayed complaint may no longer be in existence.

Queensland (QLD) and Western Australia (WA). Adolescent and child complainants were interviewed regarding their experiences, ranging from the committal hearing to aspects of the trial, such as cross examination, the use of technology to prevent child complainants seeing the accused, and whether they would go through the court process again. Only 44% of children in QLD, 33% in NSW and 64% in WA said that they would undergo the process again (Eastwood, 2003:3). These results were unrelated to whether the case resulted in a conviction, indicating that aspects of the courtroom culture were responsible for the adolescents' aversion to the court process. The most distressing aspect of the court process was cross-examination, where children were often accused of lying and were subjected to abusive cross-examination (Eastwood, 2003:5).

If in the process of destroying the evidence, the child is destroyed, then so be it..."/ It would be considered cowardly not to go for the jugular when cross examining the child... (Defence Counsel, Eastwood and Patton, 1998:3)

He was a really two faced man...one minute you think he is nice the next minute he is saying I wanted it and I couldn't stop crying...(Complainant, Eastwood and Patton, 1998:3)

Legal and judicial stakeholders were also questioned about the experiences of CSA complainants. When asked whether they would wish for their own child to undergo the criminal justice process, only 1/3 of the legal participants (prosecutors, defence counsel and judicial officers) said they would allow their own children to undergo the criminal justice process, with the remaining participants stating that the trauma incurred by the child would overshadow the benefits of conviction (Eastwood and Patton, 1998, 2003).

Eastwood and Patton (2003) confirm that the criminal justice trial in Australia is influenced by cultural practices and attitudes that stem from 'centuries of disbelief and suspicion of children who accused adults of sexual crimes' and that 'despite decades of reform', children's experiences of child sexual assault trials 'continue to be lessons in injustice, inhumanity and disrespect' (Kelly in Eastwood, 2003:2). The literature indicates that Eastwood's findings are not isolated. Kerr (2003) in examining 18 criminal court transcripts in South Australia explored the treatment of child complainants during cross examination. Language during cross-examination was obtuse and confused children. Kerr states —even when [children] do get into court they are subject to an alien environment that conspires to prevent them from telling their story in a way that empowers them." (Kerr,

2003). Eastwood and Patton(2003) and Kerr's (2003) work indicates two distinct but related problems. Firstly, that there are understandings about CSA which work against children in court, and secondly, that there are standard courtroom practices which are inappropriate for children.

The confluence of these two distinct but interrelated issues is seen in Taylor's (2004) work, who examines the use of masculinist stereotypes during cross-examination and at other key points during the criminal trial. Taylor (2004) also examined the socio-legal construction of the child sexual assault survivor in courtroom narratives. Analysing 22 transcripts in Victoria of father-daughter intra-familial childhood sexual assault in the mid 1990s, Taylor's (2002; 2004) research outlined the way in which the criminal justice trial paralleled the structural inequalities observed in the experience of intra-familial CSA, with legal narratives utilising masculine stereotypes and sexual abuse mythology. Taylor cites Mitra stating that ~~in~~incest cases contain three important aspects of patriarchal power: the law, the family and male sexuality," (Mitra in Taylor, 2004:29). Intra-familial CSA allegations can threaten the apex of male dominance (La Fontaine, 1990:192), ~~the~~ rule of the father," or ~~the~~ literal meaning of patriarchy" (Taylor, 2004:29). As such, narratives must be generated to protect the structures which support male dominance. Taylor found the mobilisation of stock-standard narratives, where misogynistic labels were given to complainants, often by defence counsel, including ~~slut~~, whore, addict, simpleton, mad girl/woman, bad girl/woman, troublemaker" (Taylor, 2004:33). Such labels correspond with the popular myths surrounding CSA in society, including myths that children and women are prone to fabrication, the offender is ~~the~~ real victim", with the child being sexually seductive and initiating the abuse (a myth that was popularised by Freudian psychoanalysis), that if the man does offend he does so because his wife is not fulfilling her nurturing role, and that sexual abuse within the family is not harmful (Driver, 1989:36).

Legal stakeholders' limited understanding of the traumatic nature of chronic CSA was also apparent in Taylor's research. Complainants were asked legally irrelevant yet traumatising questions, such as being asked to describe the extent to which anal or vaginal penetration hurt, whether they desired the abuse to occur, whether they initiated the abuse and why they did not resist their father's advances (Taylor, 2004). This reveals the way in which popular mythology, or Freudian psychoanalytic discourses (Taylor, 2004:259) becomes reified within legal discourse, and reveals ignorance of grooming strategies (McAlinden, 2005; Salter, 2003), the fact that a parent has an inherent relationship of power over his/her

child (LaFontaine, 1990; Herman, 1992) which can easily be abused, and that the nature of sexual abuse can mean that a child often dissociates from the physical and emotional pain of the abuse, such that memories can become fragmented (Herman, 1992; Cardena, 1994; Vanderkolk, 1996). The way in which myths regarding sexual abuse are manifest in the criminal trial and in beliefs of both legal stakeholders, jurors and jury eligible laypeople (Goodman-Delahunty, Cossins and O'Brien, 2010; Cossins, 2008, Shakel, 2007) is also problematic. Indeed, Eastwood et al (2006) also found that sexist assumptions are deeply entrenched in legal reasoning, but are subsumed under the guise of objectivity and neutrality:

The case law on sexual assault reflects the bias and misinformation on which judicial decisions are often made. Generally, key issues, which for decades have been widely recognised as characteristic features of sexual assault victims, are still not fully acknowledged or accepted by the courts (Eastwood et al, 2006:6).

Both Eastwood, Kift and Grace(2006) and Taylor's (2004) research reflect the fact that such myths are not simply mobilised by defence counsel, but also utilised by judicial officers in sentencing justifications. Eastwood et al (2006:6), in endorsing the Victorian Law Reform Commission (2004) contention that legal and judicial stakeholders will be more "responsive to the needs of complainants if they understood the context in which sexual offences occur" argue for a dual focus upon cultural reform as well as law reform, indicating that alterations to substantive law become superfluous without changes in the attitudes which dictate legal stakeholders' behaviour and decision making.

Cossins (2002, 2004, 2006a, 2006b, 2008, 2010) has written extensively on the barriers faced by child survivors of CSA. In particular, her research explores the legal problems associated with delayed complaint and long term intra-familial CSA. Cossins (2006) contends that "the adversarial system is not designed to deal with the uniqueness of child sexual offences". Indeed, regardless of reforms to protect vulnerable witnesses, such as the inclusion of closed circuit television (CCTV) so that complainants can testify without facing their perpetrator, problems remain with courtroom attitudes towards sexual assault, and rules of evidence and jury warnings which "are based on centuries old perceptions of female children, more generally, as liars and fantasisers" (Boniface in Cossins, 2006:301). Again, Cossins' work is not isolated, reflecting the empirical research conducted by Eastwood and Taylor.

As such, the literature indicates that the criminal justice system is ill-equipped to handle the complexity associated with chronic or long term CSA. Cossins (2006) contends that the criminal justice system in NSW fails to account for a number of unique features of long term CSA, enumerated below. Firstly, there is often only one witness to the crime, and a lack of forensic evidence. Moreover the effects of the power imbalance between victim and offender such that the child is groomed to acquiesce to the offender's demands, and thus will not immediately disclose is often not understood. In addition, long term CSA often involves multiple offences over long periods of time such that the child is unable to isolate every individual offence in their memory (Cossins, 2006:308). These concerns become heightened for adult survivors of intra-familial CSA, as the passage of time and their delay in complaint, due to trauma and the dynamics of silencing, exacerbate these difficulties. Of the aforementioned concerns, the power imbalance between victim and offender, the effect of multiple offences, presence of multiple victims and the lack of forensic evidence affect the justice recourse available to adult survivors in particular.

As with previous findings, Cossins' (2006) work attributes the problems in the child sexual assault trial to aspects of the common law which reflect patriarchal mythology regarding gendered violence and sexual violence, as well as cultural courtroom attitudes and practices held by the judiciary and other stakeholders. Cossins (2006; 2004) contends that one overriding problem is a judiciary and jury ignorant of the complex nature of CSA. A survivor's reaction to her perpetrator may often be counterintuitive, with the dynamic of captivity meaning that the survivor is less likely to complain at the earliest possible occasion (see Summit, 1983; Jülich, 2001). From Cossins' (2002; 2006) work, it appears that both lay juries as well as the judiciary are ignorant of the reasons for a delay in complaint, including the Stockholm Syndrome (Graham in Jülich, 2001); Bidderman's compliance strategies (Herman, 1992) and other manifestations of the complex trauma ensuing from intra-familial CSA (Finkelhor, 1986; Russell, 1988, Herman, 1997). Other concerns include the jury directions regarding multiple victims and multiple offences. The duration of intra-familial CSA can often span the length of a childhood, with the sum of each sexual offence being too great to tally. Cossins suggests that while s66E of the Crimes Act 1900 (NSW) outlines the offence category of "persistent sexual abuse" (Cossins, 2006:307), where each count has to be considered independently, highlighting a lack of understanding regarding memory encoding, particularly traumatic memory encoding (Van der kolk, 1996) as well as the nature of CSA.

Predominant themes appear in the literature: re-victimisation during cross-examination, and a legal culture that encourages marginalisation of the victim-survivor. Yet despite this literature there is an absence of research on the experiences of adult survivors of CSA. While the literature appears to highlight the manifest flaws in the current CJS and related agencies, few writers address the flaws intrinsic to the adversarial procedural model as well as cultural attitudes within the CJS. Adopting a feminist analysis allows us to critique the sexism inherent in legal culture; however, any analysis stymies change when it attempts to merely “tinker with legislation” rather than challenge the marginalisation of the victim (see Doak, 2008; Ellison, 2001) and structural failings (Freiberg, 2004, Doak, 2008, King et al, 2010). The following section will examine common proposals, which examine legal culture, legal process and explore alternative approaches to the conventional criminal trial.

What do we know about potential reform for CSA?

Over the past decade in NSW, a range of reform documents have identified the key issues for reform of both sexual assault and child sexual assault. One approach has been to advocate forms of specialisation that embody the unique needs of sexual assault and child sexual assault survivors. This section will firstly examine selected reform documents which foreground the development of specialist courts, before examining the existing specialist courts and restorative justice initiatives both here and overseas. The choice to focus on specialist courts and restorative justice reforms has largely been driven by previous literature and research. Firstly, there is a body of literature which indicates the utility of specialisation (Walker and Louw, 2005; Cossins, 2006, 2008, 2010) as an alternative model to potentially counter the secondary traumatisation of the conventional courtroom, as well as the misconceptions that legal and judicial stakeholders possess regarding sexual violence (Taylor, 2003). Secondly, alternative literature exists on the potential utility of restorative justice as an alternative to conventional justice, which promises to privilege victim’s needs over the needs of the state (Daly and Curtis Fawley, 2006).

Unfortunately, the needs of adult survivors of intra-familial CSA have been virtually ignored in the literature and reform proposals. Researchers have discussed the needs of intra-familial survivors in passing, or as a mere addendum to a broader reform stance. Cossins

(2010) contends that RJ reforms may be beneficial for adult survivors and Daly and Curtis-Fawley (2006) make reference to the needs of intra-familial survivors within their broader RJ research. Aside from cursory comments, the complexity of adult survivors of intra-familial abuse has been ignored.

Summary of key sexual assault reforms in NSW

Unfortunately, few reform documents have addressed the unique position in which adult survivors of intra-familial CSA find themselves. The NSW Adult Sexual Assault Interagency Committee, –A Fair Chance: Proposals for Sexual Assault Law Reform in NSW” (2004) alluded to some of these concerns:

In historical sexual assault matters the long delay in complaint can lead to an implication that a complainant or witness is unreliable. The nature and impact of child sexual assault, including grooming tactics by the perpetrators and their position of power and trust, act as significant barriers for child victims to disclose the assault... (2004:14)

While substantive law reforms have been implemented to address the nature of delay in complaint, the most notable being a change in jury warnings to highlight the fact that a delay in complaint need not imply fabrication (Cossins, 2004) and later recommendations have been made by the National Child Sexual Assault Reform Committee (2010) to educate the judiciary on grooming tactics, no reforms have been proposed to meet the specific needs of adult survivors of intra-familial CSA.

Another aspect of reform relevant to intra-familial child sexual assault was the suggestion that multiple complainants of the same offender be heard together unless it would unfairly prejudice the defendant (2004: 21). As intra-familial offenders sometimes abuse more than one child, or can abuse siblings simultaneously (Elliot, Browne and Kilcoyne, 1995), this reform option would assist many survivors. While these suggestions can apply to adult survivors, little mention has been made regarding systematic reform for this group. Given the absence of recommendations specific to adult survivors of intra-familial CSA in key law reform documents, the reform options below will explore reform for child sexual

assault in general, and later specialisation for adult sexual assault and CSA , with an attempt to extrapolate general principles from these reports.

Child sexual assault reform proposals

Law reform and policy initiatives specific to CSA have also proliferated. For instance, in 2002 the Standing Committee on Law and Justice published a report on “Child Sexual Assault Prosecutions in NSW” (Parliamentary Paper No 208) which aimed to investigate a range of matters relating to CSA in the criminal justice system, precipitated by Eastwood and Patton (2002)‘s research as well as the low conviction rates (20% for cases where the defendant pleads not guilty) of CSA (pg xi). Significant reform options proposed by that committee include a trial specialist court for child sexual offences (Recommendation 43) and reform to the rules of evidence among other special measures.

Of particular interest was the emphasis on specialist training of legal stakeholders, and selection of appropriate judiciary, which may mitigate some of the entrenched patriarchal myths regarding women and sexual assault. Another feature suggested by the DPP (2002) and Cossins (2002) in their submissions to the Standing Committee, was the use of non-jury trials, indicating that while the trial is still adversarial, a specialist sexual offence court may embody elements of non-adversarialism (see Freiberg, 2010). By utilising non-jury trials, the concerns regarding evidentiary rules, jury warnings such as the delay in complaint and hearsay rules, and jury misconceptions were thought to be reduced. However, this was not without contention, with some stakeholders believing the defendant’s right to a fair trial would be impaired (2002: 206).

Subsequent to the Standing Committee, the report of the National Child Sexual Assault Reform Committee (2003) reflected the Standing Committee on Law and Justice recommendations. Relevant to adult survivors of CSA was the proposed “trial mediation program” for historical offences within the remit of the specialist court, voluntary for the participant and accused. Within this a diversionary alternative to incarceration would be offered (Cossins, 2003). Aside from this cursory reference to adult survivors, there has been little attention to their unique needs. This reference suggests that while the needs of adult survivors have been neglected, reformers may be open to non-conventional justice

frameworks for adult survivors. Such non-conventional justice frameworks will be explored later in the section on restorative justice.

Other proposals for innovative criminal justice approaches can be found in the *–Breaking the Silence: Creating the Future, Addressing Child Sexual Assault in Aboriginal communities in NSW*” (2006) report by the NSW Aboriginal Child Sexual Assault Taskforce (ASCAT)(2006)¹¹. ACSAT’s report included an extensive list of recommendations to meet the complex needs of Indigenous communities, such as the appointment of a specialist prosecutor with experience in CSA matters for Aboriginal CSA cases as well as specialist training of the judiciary, to understand CSA in Aboriginal communities (2006:31).

Interestingly, ACSAT examined three possible alternatives to the current CJS: specialist sexual offence courts; inquisitorial procedures and restorative justice (2006: 277). The cited benefits of an inquisitorial process were that it was able to balance the rights of the accused with a *–child appropriate inquiry process.*” (ACSAT, 2006:279), indicating interest in a more inquisitorial process (Kerr, 2003; Cossins, 2003, 2006). Restorative justice was also proposed as a potentially beneficial approach for Indigenous communities. However other Indigenous writers have contested its appropriateness (see Blagg, 2002; McGlade, 2008). This will be discussed in the following section devoted specifically to restorative justice.

The pivotal reform proposed by the NSW Legislative Council’s Standing Committee on Law and Justice (2002), to meet the needs of child victim-survivors (Rodger 2003; Cashmore and Trimboli, 2005), was the NSW Specialist Child Sexual Assault Jurisdiction Pilot (2003-2005) based in Parramatta, Campbelltown and Penrith District and Local Courts (Rodger, 2003:2). The pilot scheme included a child friendly waiting room, CCTV facilities and pre-recorded investigative interview as the child’s evidence in chief and specially trained judicial officers and court staff. However, there was uncertainty about the degree and quality of this training, as observations indicated that children still experienced lengthy and confusing questioning (Cashmore and Trimboli,2005).

In their evaluation of the pilot scheme, Cashmore and Trimboli (2005:60) found improvement in the level of emotional comfort children felt due to alterations of the court environment, including the ability to give evidence-in-chief through pre-recorded CCTV,

which allowed the child to avoid seeing the defendant, as well as a child friendly witness suite. Other improvements discussed included the ability to meet with the prosecutor beforehand and the provision of a support person for the child such as the Witness Assistance Service (Cashmore and Trimboli, 2005:61). Notwithstanding, Cashmore and Trimboli (2005) identified a number of outstanding concerns. Aggressive defence questioning styles during cross-examination, validated by the adversarial legal system (Doak, 2008), remained. According to Cashmore and Trimboli (2005:62), such practices are still commonplace and widely accepted by lawyers and judicial officers.

Consequently, Cashmore and Trimboli (2005) advocated for greater judicial intervention in cross examination, coupled with greater judicial understanding of the adverse effects such strategies have on witnesses, such as preventing articulation of their experiences, and re-victimisation. This evaluation has raised concerns about the extent to which the pilot failed to alter court room culture and cross-examination. Due to the finding that “there was little to distinguish the specialist jurisdiction from the comparison registry apart from the establishment of the remote witness suite at Parramatta,” (Cashmore and Trimboli, 2005: 64) there was little justification for this pilot (given its financial and resource demands) to be continued after its evaluation in 2005. Ultimately the pilot scheme did not achieve its objective and was discontinued. Given this finding, the pilot suggests that there are problems in implementing the full plan for a specialist court.

While the NSW Specialist Child Sexual Assault Jurisdiction Pilot (2003-2005) appeared limited in its reforms, other specialist courts overseas have garnered greater support. As mentioned above, numerous policy documents have advocated specialist courts as a favourable reform for survivors. The NSW Criminal Justice Sexual Offence Taskforce (2006) defined specialist sexual offence courts as:

Sexual Offences Courts... are otherwise ordinary dedicated courts focusing on a specific set of offences in order to provide a more appropriate service to the victims of those crimes. Court staff are trained to ensure that the needs of victims are taken into account and responded to appropriately. Many of these courts also have the physical infrastructure required to assist victims to provide evidence without having to confront the accused in person (CJSOT, 2006:149).

It is important to note that there is no single model for specialist courts. However, discussing specialist domestic violence courts, Stewart (2006:10) contends that either an

interventionist or integrationist approach can underscore these courts. The former approach suggests that the particular court embodies a more supervisory role; ~~“overseeing ongoing progress of offenders’ treatment”~~ while an integrated response appears to draw upon collaboration between different agencies, victim advocates and probation services, with the court coordinating these services to ensure efficiency. The merits of a consultative approach are evident in Stewart’s discussion of specialist domestic violence courts. Stewart describes the practice in domestic violence courts, whereby the magistrate/judge adopts a more expansive role, adopting a ~~“more inquisitorial style by making inquiries from the bench,”~~ and by ~~“engaging with community groups and collaborating with development of policy”~~ (Stewart, 2006:10). While the adoption of a more inquisitorial style will be discussed later in this chapter, of particular interest is engagement with community groups. Regular engagement with stakeholder forums can have the capacity, for victims, victim advocates, researchers and feminist community groups to impart their knowledge and to discursively engage multiple voices.

Specialisation

Specialist sexual offence courts can range from wholesale innovation to limited procedural change. The South African Courts for Sexual Offences (Petrila, 2003; Walker and Louw, 2003, 2005; Cossins, 2006; Clark, 2006) and the Family Violence Courts in Manitoba, Canada, which also address intra-familial CSA (Ursel, 1992) have been widely discussed in the literature. The focus here will be on the South African experience; the first Sexual Offence Court (SOC), (see Sadan et al, 2001:4) established as the Wynberg Sexual Offences Court in 1993 (Cossins, 2006:322), as well as the Court for Sexual Offences in Bloemfontein, Free State (Walker and Louw, 2005 and 2007) and the Cape Town SOC (Sadan et al, 2001; Cossins, 2006) which is specifically designated for children who have suffered sexual assault. One of key objectives of the South African Sexual Offences courts included efficacy of service provision with a ~~“coordinated and integrated approach between [relevant] agencies”~~ and improvement in both the ~~“investigation and prosecution of sexual assault”~~, accompanied by increased rates of reporting and higher conviction rates (Cossins, 2006:323). Each SOC has two specially trained prosecutors ~~“who prosecute cases alternatively and have five years experience”~~, and are financially remunerated at a higher rate than other prosecutors. To ensure consistency, prosecutors observe the case to finality, and are trained by a specialist

service, known as the Sexual Offences and Community Affairs Unit (SOCA). The remit of this unit extends to covering other policy considerations such as “creating public awareness campaigns” and “[coordinating] the establishment” of the one stop service centre (Cossins, 2006:323). Magistrates preside over cases on a “rotational basis”, and while there is no jury, the procedure remains adversarial (Cossins, 2006:323).

SOCs evaluations have identified certain issues that would need to be addressed, should such a model be implemented in Australia, as some proponents (Cossins, 2006, 2008) advocate. Walker and Louw’s (2005a; 2005b; 2007) research on perceptions of victim-survivors, supportive family members of victim-survivors and professionals, sheds light on the limitations of SOC in reducing secondary victimisation and operational efficacy. Evaluating victim-survivor experiences, 87.5% of victims were satisfied with prosecutor explanations of the trial proceedings and prosecutor time spent with them prior to the trial (Walker and Louw, 2005). Seventy five percent (75%) of victims also felt “totally safe” as they waited to testify (Walker and Louw, 2005:239). Dissatisfaction related to the presence of secondary victimisation and trauma. Seventy eight percent (78%) of victim-survivors did not receive “follow up services” from the one stop centre, giving the victim-survivor the impression that they were only important to the court as mechanisms to secure a successful conviction. Concerns related to the adversarial procedure such as aggressive defence questioning and the failure of judicial officers to intervene to ensure “their dignity” (Walker and Louw, 2005).

With regards to personnel, Sadan et al. (2001:19) found that while prosecutors did have access to specialist training (albeit a limited amount), burnout due to the emotionally disturbing subject matter resulted in a high turnover of staff, which in turn resulted in a failure to retain a pool of expertise within the organisation. Consequently, limited staff resulted in an inability to release prosecutors for training. Walker and Louw’s (2007) study on the opinions of professionals working within the Bloemfontein SOC elicited the opinions of non-judicial professionals, as well as legal professionals, who worked within the court. While social workers and intermediaries felt that the SOC reduced the secondary victimisation experienced by the victim-survivor, the medical practitioners felt that secondary victimisation was not necessarily reduced for victim-survivors. The medical practitioners also raised questions about the imbalance of experience between prosecutors and defence attorneys, believing that defence attorneys had limited medical knowledge and conducted prolonged and unnecessary cross examination of expert witnesses. Interestingly, Walker and

Louw also highlight the ~~the~~ need for courts operating on a victim-centred basis to become more sensitised to their therapeutic or trauma reduction function becomes apparent”(Walker and Louw, 2007:144).

Ursel’s (1992) work on the Family Violence Court in Manitoba, Canada, has also provided us with a successful model of specialisation. This court hears ~~all~~ cases of violence in which the victim is in a relationship of dependence and/or kinship with the accused” and includes cases ranging from common assault, sexual interference (akin to indecent assault in the *Crimes Act* 1900 NSW), sexual assault and murder. The same prosecutor remains with the case throughout the trial. In addition, the court possesses added support mechanisms, such as a child abuse investigation unit, two victim support programs, the Women’s Advocacy services, as well as a lawyer to assist with other problems complainants may have that are unrelated to the case. In addition to specialised prosecutors, there is a specialised unit within the Association of the Crown Attorneys (equivalent of the Office of the Director of Public Prosecutions) which specifically handles family violence matters (NSW CJSOT, 2006:168). Ursel emphasises the key advantages of a specialist court, stating that ~~specialisation~~ creates a new culture of prosecution, which encourages Crown Attorneys to be aware of, and attend to, the special needs of vulnerable witnesses...” (Ursel in NSW CJSOT, 2006:168)

Thus, from the literature it appears that specialist courts possess a range of distinct features that may be of benefit to adult survivors of CSA. The NSW CJSOT Report (2006), which dealt with reforms for adult survivors of sexual assault, and not specifically adult survivors of CSA, states that cultural change demands greater changes than physical restructuring and that cultural change is ~~unlikely~~ to be brought about unless there is increased training of all participants in the court process” (CJSOT, 2006:161). The taskforce report thus advocates for the inclusion of the following elements that have been observed in other specialist courts: ~~a~~ dedicated and separate case management list; specially trained prosecution teams; a dedicated co-ordinator to facilitate specialist listings; specialist witness support; specialist court staff and specialist police training.” (NSW CJSOT, 2006:162). Specialisation of legal stakeholders appears to be the cornerstone of a successful criminal justice reform (Ursel, 1992; Sadan et al, 2001; NSW CJSOT, 2006; Cossins, 2010). The report also recommends that specialisation extend to the judiciary and defence counsel (NSW CJSOT, 2006:163). Consequently, the importance of a specialist judiciary cannot be understated.

Other benefits to specialisation were cited. The Committee also stated that an increasingly expert judiciary would mean that their interpretation of the rules of evidence would be informed by more accurate information regarding the practice of grooming, child sexual assault and child development. Judges would then be able to use appropriate warnings in the appropriate manner, rather than being guided by misconceptions and mythology regarding CSA (2002:205). While the literature lacks consensus on this matter, stakeholders such as the DPP and some counselling agencies (2002: 2005), as well as Annie Cossins, have shown support for judge only trials. This position is also reflected in Stewart's (2005) review of specialist court jurisdictions, where some judges/magistrates adopted a more proactive and expansive role, asking questions of witnesses in an inquisitorial manner.

Reform has centred upon altering substantive law, procedural matters and the general staffing of the courts. The above evaluation denotes minimal discussion regarding broader philosophical frameworks that may guide reform. Clearly there is an imperative to design specialist courts to address the concerns raised by feminist critiques of child sexual assault trials (Taylor, 2004). There is also a need to critically interrogate taken for granted assumptions, such that the victim is merely a witness and not a participant in the CJS and the adversarial system is the best adjudicatory system for ensuring fairness to all parties (Doak, 2008, Ellison, 2001, 1999). In critically interrogating the need to challenge taken for granted assumptions, is the need to be open to innovative approaches to justice that transcend the parameters of the conventional CJS.

Restorative justice

One of the most widely researched innovative approaches to justice is the philosophy and practice of restorative justice. Restorative justice practices have proliferated over the past 30 years such that it is now widely considered as one of main alternatives to conventional criminal justice (Daly and Bouhours, 2011). Restorative justice (RJ) is defined by Marshall (1996) as:

a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future (Marshall, 1996:5).

RJ embodies a future oriented focus and victim focused models of RJ examine the impact of the crime on victims/secondary victims and explores what can be achieved to restore the victim's wellbeing (Cormier, 2002). It recognises the effects of the crime while exploring ways in which the offender can be held directly accountable (Grimes, 2006:4). One notable contrast between RJ and conventional criminal justice is a re-conceptualisation of crime as an offence against the victim in contrast to conventional justice where crime is an offence against the state (Cooley, 2002). RJ views crime holistically (Sullivan and Tift, 2005) where it is seen to be destructive to both human relationships and connections within the community (McAlinden, 2006).

Restorative justice is perceived as a philosophical movement, transcending the parameters of the legal system (Sullivan and Tift, 2005; Pranis, 2002; Braithwaite, 1995); and has also been posited as a "set of ideas about how justice as a lived experience should be pursued" (Pranis, 2002). Intrinsic to this are the concepts of mutual responsibility, empathic connectedness and healing through relationships and the community (Pranis, 2002, Strang 2001). Others suggest that the hybridity of restorative justice (Cunneen, 2008: 299) has emancipatory potential. Liebmann (2007) and McAlinden (2006) have identified generic tenets intrinsic to the restorative justice approach which include: victim support/healing; offender responsibility; the use of dialogue to promote understanding; the attempt to rectify harms; a shift of focus to reparation; bringing informal justice processes to communities; a process of restoration/reintegration; considering the impact of crime on victims; empowering victims/offenders.

However, feminist theorists and legal scholars (Morris, 2002; Bazemore and Earle, 2002; Stubbs, 2002; 2004 Cossins, 2008; Ptacek, 2010) have raised numerous concerns as to the suitability of restorative justice in addressing gendered violence, including CSA. Focusing on CSA, Cossins (2008) doubts the philosophical ideals of restorative justice and its purported claims to restoration, stating that "restoration implies that there was a prior state of freedom that existed for the victim, and a prior state of integration for the offender." (Cossins, 2006:360). For intra-familial CSA, many survivors are socialised into a family environment of abuse and captivity (Herman, 1992) and for many adult survivors one overriding challenge is to learn how to live free of chronic abuse (Herman, 1997). Focusing on the "restoration" of relationships, which can trigger the survivor's learned compliance may not be empowering, compounding the harm already suffered. Critics have cautioned against RJ's promises to heal survivors of trauma. Stubbs (2002) contends that often there is "little or no

recognition of victim trauma and the inability of one conference to be a substitute for on-going therapy” (Stubbs, 2002, 29). Similarly, Cossins (2008) states that healing can be a lifelong journey and such promises can often be facile and misleading. Moreover, the offender’s ability to genuinely participate in a conference and adopt full culpability is of concern. Cossins argues that CSA is characterised by ~~manipulation~~, control, self-gratification and lack of empathy,” (2008:365); an issue examined earlier with regards to grooming strategies (Salter, 2003; McAlinden, 2005). Empathy and a willingness to admit culpability appear intrinsic to the successful functioning of RJ, however, some theorists doubt the capacity for chronic offenders to display these characteristics in an authentic manner.

Intrinsic to the successful functioning of RJ is community support. Stubbs contends that ~~the~~ successful models of [restorative justice] suggest that the ~~inherent~~ qualities of communities are fundamental to positive outcomes”(Stubbs, 2002:50). Yet this is problematic if the community in which the survivor lives tacitly supports practices, such as sexism and domination that facilitate abuse (Rubin, 2010). Moreover, some communities may be sites of abusive sub-cultures (Morris, 2002), and families within these communities may be ~~sites~~ of domestic tyranny”(Coker, 2002), where internal power imbalances may create barriers to successful conferencing (Bazemore and Earle, 2002) and implicitly preclude a survivor from self-advocacy.

However, Angela Cameron (2005), in recognising the limitations of RJ for gendered violence, has outlined a number of characteristics constitutive of an effective programme:

Culturally appropriate; operate in consultation with the whole community; have a systematic, transparent, accountable, ongoing and publically accessible evaluation process; have a clear protocol on selection and determination of cases; take into account survivors’ voices and their need to remain safe and punish offenders for their crimes; be physically protected and safe and have access to advocacy and support (Cameron, 2005:55).

Indeed, some RJ proponents (Hopkins and Koss, 2001; Daly, 2006; Jülich, 2010) have attempted to redress some of the aforementioned shortcomings with regards to gendered violence, designing specific restorative justice programmes to address some forms of sexual assault. The following section will examine RESTORE (USA); Hollow Waters (Canada); South Australian Juvenile Justice program (Australia) and Project Restore (New Zealand)

RESTORE (USA)

The RESTORE (Responsibility and Equity for Sexual Transgressions Offering a Restorative Experience) program (Arizona) was a restorative justice program run by the University of Arizona, in conjunction with Pima County and Tucson County Attorney's Officer, Arizona. RESTORE handled lower level sex crimes such as indecent exposure, public sexual indecency, sexual abuse and acquaintance sexual assault. Offenders had to be first-time offenders of non-continuous sexual violence. The underlying philosophy is explained as understanding

Restorative justice as complementing the conventional criminal justice system, not replacing it. Restorative Justice works best with crimes that usually go unpunished due to a lack of evidence (RESTORE Manual, p.1).

Safeguards were implemented to ensure that survivors were not threatened by the offender as verbal abuse or intimidation of the victim would result in termination of the program and the case would be reverted back to conventional prosecution. Those who designed the program were cognizant of the numerous rape myths and cognitive distortions implicit in patriarchal discourse and the traditional criminal justice system. The survivor's story and empowerment were paramount, as the survivors' desires informed the restitution plan. RESTORE allowed survivors to terminate the process at any time and survivors were given the option as to which avenue (RESTORE or traditional prosecution) they desired, and survivors were given the opportunity to nominate a proxy to appear on their behalf. Koss et al (2002) contend that this program was able to deliver justice and healing through –exposure of conference attendees to anti-violence communications and disseminations to the wider community, thereby undercutting societal supports for gender-linked abuse.” (Koss et al, 2002:13). Consequently, the program appears to have the potential not simply to address the immediate crime, but structurally embedded gender inequalities. This program has since been terminated due to the insufficient number of referrals from the district prosecutors, suggesting that perhaps RJ for gendered violence is not seen by criminal justice officials as an appropriate avenue for redress (Bletzer and Koss, 2012).

Hollow Waters (Canada)

Hollow Waters Community Holistic Healing Circle has been heralded as of the early RJ successes for Indigenous communities in Canada. The programs emerged from concerns formulated by an Indigenous research group in 1984 as they researched the social problems prevalent in the community of Hollow Waters. Researchers found that 75% of Hollow Water residents were victims of child sexual assault, with 35% being victimisers (Ross, 1995). Intergenerational child sexual assault could be attributed to abuse that began when Indigenous children were removed from their parents and placed in boarding schools/institutions where children were brutalised (Sivell-Ferri, 1997).

In 1987, the Community Holistic Circle Healing Program (CHCH) was created, co-ordinating child protection workers, a community health representative and people from the school division and community churches. In addition, an insider knowledge base was utilised:

Almost everyone on the community team has been a victim of long standing intra-familial child sexual assault, which allowed them the ability to empathise with the victim at hand [and] understand the complexities of child sexual assault (Ross, 1995).

The Hollow Waters philosophy viewed relationships as essential, and privileged community interconnectedness of communities. Healing occurred within relationships, not in isolation. Indeed, the notion of traditional healing underlies the First Nations' philosophy of justice with the belief that the human spirit requires respect and dignity (Lee, 1996).

As soon as criminal charges are laid, the victimiser can undergo the traditional CJ route or enter a guilty plea, assume full responsibility and enter the programme (Ross 1995). The team then requests "a delay in sentencing so they can begin their healing work and prepare their pre-sentence report." This report comprehensively assesses the offender's state of mind, chance of rehabilitation, and also takes into account the role of "the victim, the non-offending spouse and the families of each" (Ross, 1995). An action plan is proposed based on a Healing Contract spanning 2-5 years. Failure to adhere to the contract will result in the offender being subject to criminal prosecution.

The victim participates initially through telling her/his story to an intervention team, after which the victim's safety is established and the team ensures that support people are allocated to assist the victim throughout the process. There are thirteen steps that take place during the CHCH Process (Bushie, 1996):

1. Disclosures
2. Establish safety for the victim
3. Confront the victimizer
4. Support the spouse or parent of the victimizer
5. Support the families that are affected
6. A meeting between the Assessment Team and the RCMP
7. Circles with victimizers
8. Circles with the victim and the victimizer
9. Prepare the victim's family for the Sentencing Circle
10. Prepare the victimizer's family for the Sentencing Circle
11. A special gathering for the Sentencing Circle
12. A sentencing review
13. A cleansing Ceremony

The CHHC was evaluated in 2001. Respondents reported significant —~~h~~alth and wellness” improvements to the community. Similarly, recidivism was substantially reduced, with only 2 out of 107 offenders reoffending (Cormier, 2002:11). Cameron contends that the program's success can be attributed to its cultural sensitivity and access to financial and human resources. However, she raises concerns about the supervision of offenders and the limited analysis of gender dynamics within this program (Cameron, 2005). The failure to recognise the gendered power dynamics between victims and offenders is a commonly raised criticism regarding restorative justice programs. When examining the utility of RJ for survivors in this study, an examination of the potential gendered dynamics within available programs will be conducted. In addition, due to its origins in a small Indigenous Canadian

setting, the CHHC model may be difficult to replicate in other contexts, such as in a multi-cultural, urban context.

South Australian Juvenile Justice Study, Australia (SAJJ)

Kathleen Daly's (SAJJ) study examined 400 cases of youth sexual assault over a 6 ½ year period that were dealt with by an RJ conference. Although the archival study did not reveal the conference victim's experiences, or conduct comparative studies with court victims, it did reveal that "41 of the 111 conference victims" or "41 their representatives were able to tell their story about how the offence affected them (Daly, 2006: 352). Daly and Curtis-Fawley (2006) analysed two cases, and the results demonstrate a mixed reaction to RJ. While one case study "Rosie" illustrated victim satisfaction with the process, the other case study "Tanya" illustrates some of the limitations of the process. Tanya was a 13 year old who was raped by her 17 year old stepbrother over 3 months. Tanya had been afraid of attending the conference due to her brother's pervasive violence and her parents' support of her brother. She was dissatisfied with the conference as she felt that the facilitator was unable to control her brother's intimidating behaviour or to ensure that she could adequately engage in an effective dialogue with her brother. Furthermore, she felt that the conference "did not help her deal with the emotional effects of being abused." (Cossins, 2008:370).

Daly and Curtis Fawley (2006) conceded that both cases illustrate the way in which restorative justice may be experienced differently by survivors of different forms of sexual violence. They argue that the differences between a discrete event of sexual assault, such as in Rosie's case, compared to the multiple and ongoing abuse by Tanya's perpetrator, may account for the different levels of satisfaction with the restorative justice response. As Tanya's case was one of intra-familial CSA, she was also facing the added burden of family members who believed she was culpable, and sided with the perpetrator.

Similarly, Tanya's case reveals the complex issues revolving around intra-familial sexual abuse, where loyalties are divided and the potential for re-victimisation exacerbated (Cossins, 2008; Daly and Curtis Fawley, 2006). Cossins argues that victims of familial CSA may have undue pressure placed on them and may also have limited family support (Cossins, 2008:370). This case study embodies some concerns raised by restorative justice critics, illustrating that within RJ there remains a lack of practitioner awareness about the complex dynamics surrounding intra-familial CSA, as there is amongst criminal justice stakeholders.

Methodological concerns have also been raised regarding the evaluation processes of RJ models. A major criticism of RJ studies is that victim satisfaction had not been gauged and most studies about the efficacy of restorative justice are “speculative” (Cossins, 2008:368).

Project Restore NZ

The most recent initiative has been Project Restore NZ, inspired by RESTORE Arizona (see Hopkins and Koss, 2001, Koss, 2010). RESTORE Arizona differs in some respects as it only handles a narrow scope of offence categories and does not handle cases where there has been a persistent and chronic relationship of domination between victim-survivor and perpetrator, or any child sexual assault. In contrast, Project Restore NZ is a community based initiative (which also accepted referrals from the Auckland District Court until late 2009) designed for survivors of sexual assault and historical child sexual assault, and like RESTORE Arizona, was designed to ameliorate some of the concerns raised by feminist scholars regarding RJ. Such concerns include ‘the power imbalance inherent to gendered violence, equality for victim-survivors within the process, neutrality/impartiality of conference facilitators, transfer of power to the community and negotiating a community response’ (Jülich et al, 2010: 63). Thus, one of the main aims of Project Restore NZ “is to be truly victim centred”, as its primary supporters are victim based agencies Auckland Sexual Abuse Help Foundation (ASAH), a counselling and support provider to survivors of sexual assault, and the Safe Network, an Auckland based program for the treatment of child sexual abusers (Jülich, 2010a: 246). Jülich states:

The service provided by Project Restore NZ is underpinned by the belief that victims of sexual assault are not likely to opt for RJ unless they are confident that the community has the ability and commitment necessary to support and oversee consensual outcomes (Jülich, 2010a:246).

Using empirical research on the needs of historical survivors, Project Restore was contracted by the New Zealand Ministry of Justice (2004) to develop best practice guidelines for the use of RJ for sexual violence, building upon the existing best practice RJ guidelines (Jülich, 2010a). These ‘best practice principles’ encompass: voluntariness; full participation of victim and offender; effective participation through being well informed; offender

accountability; flexibility and responsiveness; emotional and physical safety of participants; delivery of an effective process; use in appropriate cases only (Jülich et al, 2010:27).

Project Restore NZ utilises a restorative conferencing model, offering several variations of victim participation, including a “panel process,” where the victim-survivor is absent, but represented by a surrogate (Jülich et al, 2010:51). Referrals originate from the District Court system as well as community or self-referrals. Referrals can be categorised as court (pre-sentencing or post conviction) or community and self-referrals where the matter had not been reported to the police. However, in 2009 the Auckland District Court stopped referring to Project Restore NZ due to another restorative justice provider, the Waipareira Trust, entering into contract with the Ministry of Justice, for all restorative justice cases. The Ministry of Justice’s decision appeared motivated by the need to centralise all restorative justice services rather than a deliberate decision to withdraw cases from Project Restore (Jülich et al, 2010: 17). At the time of evaluation (2010), Project Restore was funded by community funding organisations, but still received referrals from the courts. The Project Restore Clinical Team is comprised of a specially trained facilitator in sexual assault dynamics, an experienced facilitator familiar with other criminal cases, a victim specialist who is a trained counsellor, conversant with the complexity of sexual violence, an offender specialist, a qualified therapist working with sexual violence offenders, and a supervisor, that is, a clinical psychologist who monitors and reviews all cases. This specialist team assesses all cases at the point of referral (Jülich et al, 2010:17-18).

Some factors that determine the suitability of a case for conferencing include: available resources, the offender’s willingness to accept full responsibility, willingness to enter treatment and the absence of safety risks (Jülich, 2010:19). In addition, attention is given to the preparatory process, which entails step by step decision making where consent is gained from the participants at each stage. Within the pre-conference stage, support people for each party are included in the preparation process, which includes educating all involved about the complex dynamics of sexual offending. There are at least 3 pre-conference meetings, but often more, contingent on the needs of the specific case. Following the conference, the two community experts, the victim and offender specialists, monitor the fulfilment of outcomes agreed upon during the conference (Jülich et al, 2010:20). For pre-sentence referrals, a report is given to the court detailing the outcomes, or if the case was rejected, reasons provided to the court. Quantifiable outcomes commonly include the

offender completing community service, providing compensation, writing a letter of apology or engaging in a therapeutic programme (Jülich et al, 2010: 54).

An evaluation of this program by Jülich and her team also found reported evidence of additional qualitative outcomes for survivors, such as finding their voice through being able to break the silence surrounding their victimisation, and better self image (Jülich et al, 2010: 58). Excerpts from interviews with survivors described a sense of self efficacy and sense that they could move on with their lives and participate in activities in which they could not previously have participated. Other excerpts described survivors feeling connected with a community of survivors and no longer isolated (Jülich et al, 2010: 34). Consequently, it appears that Project Restore is able to provide the outcomes Judith Herman (1997) and in a different context, Howard Zehr (2002), describes as measures of healing: empowerment and connection with others.

The Project Restore NZ evaluation comprised of 29 referrals, with 10 community referrals, 3 post sentencing and 16 pre-sentencing but following a guilty plea (the latter practice occurs in New Zealand but not in Australia for serious offences such as sexual assault). Only 9 referrals eventuated in a completed conference, with 4 offenders refusing to participate. For this evaluation, collection and analysis of the data was conducted by researchers not involved in Project Restore; however, Jülich, a founding member of Project Restore, did oversee the final production of the report. At the time of writing no further evaluation had been conducted.

Conclusion

Much has been written in the psychological literature on the impact of intra-familial child sexual assault on survivors during childhood and later life. This chapter has examined the way in which the distinctive aspects of intra-familial abuse exacerbate silencing, denial and non-disclosure, and has examined the conceptual nexus between chronic CSA and other forms of captivity that lead to complex PTSD and pathological attachments such as the Stockholm Syndrome (Herman, 1992; Jülich, 2001). On examination, there are a number of key gaps in the literature on understanding intra-familial abuse from a social psychological perspective, as well as on understanding survivor coping mechanisms later in life. Missing in

particular is an examination of the process of familial denial, and the process of bystander complicity that may contribute to prolonged silencing. Such prolonged silencing invariably affects later disclosure patterns. In addition, an examination of the way in which the clinical literature commonly constructs the adult survivor in a somewhat deterministic manner, precluding the possibility for agency, resistance and empowerment, reveals an additional gap in the literature. As such, the capacity for survivors to resist the consequences of chronic CSA, as adults, is an important focus of this thesis.

The second half of this review explored criminal justice responses to sexual violence and CSA, demonstrating that while the literature on sexual violence and the CJS is extensive, very little has been written about the complex needs of adult survivors of intra-familial CSA. One of the most striking gaps in the literature is the absence of Australian and international data on intra-familial adult survivors of CSA in the criminal justice system. These survivors occupy a unique position as adults who have experienced child sexual abuse, and are not adequately accounted for by the literature.

This review has also examined proposals that have been made for justice reforms to assist in meeting the needs of adult survivors of intra-familial CSA. Specialist courts as well as restorative justice have been advocated as providing two possible avenues by which the needs of historical intra-familial CSA survivors can possibly be met. However, as with the literature on criminal justice responses, the reform alternatives do not adequately give voice to this specific form of sexual violence, often subsuming and homogenising the needs of adult survivors of CSA, under the term “gendered violence”. Similarly, while some of the literature on restorative justice (Jülich, 2006; Hopkins and Koss, 2000) explores survivors’ justice needs, most of the literature on specialist courts often makes a priori assumptions about survivors’ justice needs, based on the shortcomings of traditional criminal justice models. Through an examination of adult survivors’ justice needs and views on alternative forms of justice this issue will also be addressed in this thesis.

In summary, there is still much research to do on ascertaining the distinctive needs of intra-familial survivors. For instance, with the exception of studies by Alaggia (1994) and Alaggia and Kirshenbaum (2005), bystanders and familial dynamics are often presented as a neutral backdrop upon which generic sexual victimisation occurs. Yet such dynamics are constitutive of the actual experience of abuse and are mediating factors in later recovery. This thesis also explores the challenges unique to adult survivors of intra-familial CSA and the

resistance strategies they have utilised as adults, with a view to also examining their visions of justice and ways in which this knowledge can assist legal and justice reform.

Chapter 3: Theoretical Frameworks

Introduction

Having established in Chapter 2 the scarcity of empirical research on adult intra-familial CSA survivors, Chapter 3 examines a range of theoretical frameworks which contribute to our understanding of their specific needs and experiences indicating those that impact on the experiences of disclosure and help seeking and the justice system's response. In this chapter it is argued that the family as a social institution requires further examination because of the lack of applied research on the way power dynamics within families influence the choices available to victim-survivors of intra-familial abuse. This chapter also provides a critical analysis of the victim-survivor within the medical model of trauma, which is common in the literature. To counter the potential determinism ensuing from the trauma model, this chapter will examine theories of resistance in an attempt to understand survivors' decision making processes as adults, in relation to their early childhood victimisation. By examining theories of resistance, the researcher aims to posit a more sophisticated understanding of survivors' interactions and perceptions of the criminal justice system. This chapter also examines the literature and theoretical frameworks that explore survivors' justice needs, to better inform debate about justice reform. The chapter draws on Barbara Hudson's (2002; 2006) principles of innovative justice in order to develop a yardstick with which to critically assess potential justice reforms.

Understanding intra-familial CSA survivors' justice needs

Justice needs

The discourse of victims' rights and needs has been fraught with contention (Doak, 2008). Doak (2008) highlights the way in which victims' rights discourses have been co-opted for political agendas that strengthen state control rather than cater towards victims' needs. Conversely, the victim has been seen as a formidable threat to the ostensible objectivity of the criminal justice system (Doak, 2008). This fallacious view is understandable given that victims are often erroneously viewed as invariably seeking

vengeance (Herman, 2005). Understandably, a victim caricatured in this manner would be a threat to the CJS's aspirations of 'objectivity'. However, this section examines the literature and the theoretical construction of justice 'needs', that is, the needs related to both survivors' sense of justice, as well as the commensurate requirements that survivors demand from the CJS. In speaking of survivors' needs it is also essential not to homogenise all victim-survivor groups as identical (Stubbs, 2002).

In the literature on the needs of survivors of both violent crime and child sexual abuse, a number of common needs were cited: validation from bystanders as well as an empathic adjudicator; (Herman 2005, Koss 1998, Jülich 2006, Des Rossier et al 1998); the opportunity to tell their story (Jülich, 2006:131); public affirmation and community denunciation of the offence (Des Rossier et al 1998, Herman, 2005:585); confronting the aggressor in a safe space (Des Rosiers et al, 1998) as well as perpetrator accountability and responsibility (Jülich, 2006, Herman, 2005). The literature suggests a desire by victims for greater agency over justice processes, testimony, as well as a desire to create meaning out of one's experiences (Spalek, 2006). The need for validation and community denunciation suggests that bystander censure may be crucial to the process of constructing newfound meaning out of one's experiences. Justice needs, as Balboni and Bishop (2010) suggest, involve the negotiation of one's personal and social identity. In reference to survivors in general, they argue that "many survivors [feel] a need to be acknowledged as human beings who had been terribly violated and harmed" (Primo Levi in Balboni and Bishop, 2010:151). They emphasise the centrality of acknowledgment and validation to the reconstruction of personal identity.

Feminist psychiatrist, Judith Herman (1997), who specialises in working with victims of trauma and abuse, stipulates a process which survivors of trauma, particularly chronic prolonged trauma, undergo, in order in order to 'recover'. Based on her clinical experience she suggests that this process involves ensuring safety, remembrance and mourning and reconnection. It is within this final stage that survivors reconcile their traumatic experiences and are ready to 'move on' and create a meaningful life for themselves. Constructing meaning and a newfound identity can entail, according to Herman (1997), among other processes, a desire for social justice and political action. Within this, Herman conceives of a desire for justice as an act of recovery.

By making a public complaint or accusation, the survivor defies the perpetrator's attempt to silence and isolate her, and she opens the possibility of finding new allies. When others bear witness to the testimony of a crime, others share the responsibility for restoring justice. Furthermore, the survivor may come to understand her own legal battle as a contribution to a larger struggle, in which her actions may benefit others as well as herself. (Herman, 1997:210)

Similar to Herman's (1992) stages of recovery is restorative justice theorist Barbara Toews' 'justice tree'. Toews (2006) uses the metaphor of the 'justice tree', which stipulates the eight individual justice needs that must be fulfilled for crime victims to overcome the impact of the crime: relationship and safety; empowerment; storytelling and expressing feelings, information, growth, accountability and meaning. Like Herman, Toews (2006) suggests that establishing safety in relationships is an essential foundation before the other justice needs can be achieved.

Adopting a developmental perspective, one could suggest that survivors, like all humans as they progress through the lifecycle, have the tendency to construct meaning out of their experiences and desire to strive towards mastery and self actualisation (Colarusso, 2010). Restorative justice proponent Howard Zehr (2002) encapsulates this notion in his attempt to conceptualise the journey of crime victims in the crime's aftermath. Zehr (2002) contends that victims undertake a dual journey-the journey to belonging and the journey to identity. He states:

The core trauma of victimisation might be called the three 'ds'-disorder, disempowerment and disconnection. The journey from trauma to healing thus may mean revisiting issues we thought were long settled: empowerment, order and connection. To put it in other terms, trauma involves the destruction of meaning; transcendence of trauma involves the recreation of meaning.(Zehr, 2002:23-4)

Zehr (2002) provides a holistic conceptualisation of trauma, as well as the implicit agency related to his notion of transcendence. The needs that both victims and offenders have, to construct meaning out of their experience, is not incompatible with the assertion of writers who argue that resistance is achieved through the construction of alternative identities, critical spaces or discourse (Foucault, 1977; Weedon, 1987). The journey to identity and belonging, related to the need for empowerment, order and connection, appears contingent upon acts of resistance and the fight for agency. Zehr (2002), drawing upon

Herman's (1997) notion of 'testimony', discusses the need crime victims have to transform their objectification through the practice of storytelling, an act of discursive resistance.

Examining justice needs is central to this thesis, not simply as a pragmatic exercise in determining which legal reform measures are compatible with survivors' needs, but also in viewing the survivor as an active subject whose experiences and knowledge can contribute to both scholarship and reform. Engaging with the criminal justice system as a potential critical space of resistance will be explored later in this chapter. The following section will examine the theories which frame survivors' help-seeking and justice seeking behaviour, conceptualising both interpersonal and institutional barriers to disclosure.

Understanding intra-familial CSA survivors' choices

Survivors must make numerous choices, including whether they will seek recourse from the criminal justice system (Lievore, 2004). The previous chapter highlighted the way in which disclosure is likely to be inhibited by intra-familial dynamics. This section seeks to understand the dynamics of secrecy within abusive families and how this impacts on survivor decision making. The theory of traumatic bonding and the Stockholm Syndrome, as reconceptualised by Jülich (Graham in Jülich, 2001) will be explored firstly to examine one of the primary psychological reasons why survivors fail to disclose. This will be followed by an examination of Bidderman's (1956) explication of compliance strategies utilised in situations of captivity.

Survivors of intra-familial CSA face additional and distinct problems aside from that faced by survivors of other forms of CSA. Intra-familial survivors must also combat the demands of competing loyalties, bystander complicity, attachment bonds with the perpetrator (Jülich, 2001) as well as mediate the psychological impact of being abused by a caregiver. Thus survivors have to negotiate both an interior landscape where the survivor's sense of self and developmental growth has been impaired by chronic, long term abuse; as well as a contextual landscape where support for the victim may not be forthcoming.

To an outsider, the process of overcoming the effects of abuse may be straightforward. One would imagine a process of disclosure, seeking assistance from health professionals and/or the criminal justice system, healing and then closure. For a survivor who has been born into an environment of captivity and abuse, the aforementioned process

becomes more complex. A victim-survivor of adult sexual abuse has a temporal anchor, a ‘before’ and an ‘after’ that provides her with a frame of reference upon which she can construct meaning and strength. While crime disrupts such an individual’s sense of safety and belief in a just world (Janoff-Bulman, 1989; Lerner in Herman, 1992), she still has visions of a self from before the crime. For many survivors of intra-familial CSA, such a frame of reference is intertwined with the crime; developmentally, it is a sense of self that had been moderated, and circumscribed by chronic abuse.

The notion of “traumatic bonding” has been coined to explain the attachments between victim-survivors and their perpetrators, which prevent the victim-survivor from disclosing violence or separating from the perpetrator. Developmental psychologists have established that the need to form attachments with significant others, or caregivers, in early life is an inherent human need (Bowlby, 1977; Ainsworth, 1989). The need to form attachments continues into adulthood, with humans seeking and maintaining attachments bonds throughout their lives with friends, spouses and their own children (Ainsworth, 1989). Traumatic bonding (Dutton and Painter, 1981; 1993) is a transmutation of normal attachment bonds, whereby the victim develops an emotional attachment with her abuser. While traumatic bonding is often used to describe situations in domestic violence, it has also been used to describe a child’s bonding with abusive parents. Emotional bonding with an abuser, according to Dutton and Painter (1981), is contingent upon a power imbalance, as well as intermittent violence, which is interspersed with moments of care and affection. Such a power dynamic, becomes magnified, such that the victim feels more subjugated, and more dependent on the abuser for her survival. Of course, in the case of child sexual abuse, this is a lived reality. Traumatic bonding presumes that the victim internalises the perpetrator’s world view, and comes to feel responsible for the perpetrator’s behaviour, as well as his well-being (Dutton and Painter, 1981).

Such behaviour is counter-intuitive, as most outsiders would assume that in such a situation of abuse, they would despise the perpetrator, and do their utmost to protect themselves. Yet one must return to Herman’s (1992) conceptualisation of long term childhood abuse as a form of captivity. The dynamics of captivity evade common sense understanding. Drawing upon Graham et al.’s work (1994), Jülich contends that the Stockholm Syndrome is a phenomenon that occurs when the victim is kept in a situation of captivity by the perpetrator, a situation which can extend beyond the original hostage situation to prisoners of war, battered women or, in the case at hand, abused children. Jülich

argues that within Graham et al's (1994) Stockholm Syndrome Theory, the pre-requisite conditions for developing Stockholm Syndrome include:

1. *Perceived threat to survival and the belief that the abuser is willing to carry out the threat.*
2. *The victim's perception of some small kindness from the abuser within a context of terror.*
3. *Isolation from perspectives other than those of the abuser.*
4. *Perceived inability to escape. (Graham in Jülich, 2001:179)*

The Stockholm Syndrome is characterised by paradoxical behaviour on behalf of the victims, who, contrary to common sense expectations, develop positive feelings and even loyalty, towards their abusers (Jülich, 2001:189). Specifically, this emotional bond is underpinned by the machinations of terror. The aforementioned 'positive feelings' are manifested as a response and defence mechanism in a context of terror, as the victim is dependent upon the perpetrator for her survival, and in the case of intra-familial CSA, "nurture and protection" (Jülich, 2001:189). In a situation of helplessness, for her own psychological and physical survival, the victim learns to deny her own needs and anticipate and cater to the perceived needs of the perpetrator. Such an act strengthens the emotional bond between victim and perpetrator. Jülich (2001) contends that for intra-familial child sexual abuse, this is the only survival option for children whose perpetrators are caregivers. Subsequent cognitive distortions develop to also allow the victim the belief that they have some level of control over the situation. Victims grow to believe that the perpetrator is a victim who is dependent on the child for love and understanding (Graham in Jülich, 2001:190). Prolonged, chronic and often extreme abuse, as is the case in intra-familial child sexual abuse, also intensifies the bond between victim and perpetrator, such that the victim has difficulty developing a sense of self separate to the perpetrator. Thus severing the bond through disclosure or official help-seeking can be frightening for the victim, who cannot conceive of a world without the perpetrator (Jülich, 2001:190).

However, not all cases of intra-familial child sexual abuse entail traumatic bonding or the development of the Stockholm Syndrome. In situations where the abuser is not a parent, but instead a sibling or extended relative, it is less likely that traumatic bonding would occur. If the child is not dependent on that perpetrator for her survival, and if the perpetrator's

presence is intermittent, such as a visiting uncle or cousin, then survivors' disclosure patterns may not be contingent upon attachment to the perpetrator.

Instead, the survivors' ongoing compliance may depend on techniques of coercion unrelated to affective bonds. Biderman (1957) conceptualised a typology of coercion and compliance to examine the process by which those held captive comply with their captor's demands. Originally used to describe the techniques used during the Korean War by captors to instil compliance in American prisoners of war, such a typology illustrates that brutality is not the core element; rather, surveillance, fear, terror and occasional kind treatment is much more effective at ensuring the victim-survivor's ongoing acquiescence. This model has been used extensively to describe domestic violence, as well as other situations of captivity (Silvestri and Crowther-Dowey, 2008; Herman, 1992). However, it can be argued that such a model can be used, in conjunction with the Stockholm Syndrome, to explain why survivors may remain silent about the abuse. Biderman's typology emphasises nine key strategies: *isolation* of the victim from external support, *monopolisation of perception*, which "fixes attention upon immediate predicament, fosters introspection, eliminates stimuli competing with those controlled by captor, frustrates all actions not consistent with compliance," *Induced debilitation; exhaustion*, which "weakens mental and physical ability to resist", *Threats, Occasional Indulgences*," which "provides positive motivation for compliance, hinders adjustment to deprivation", *Demonstrating 'omnipotence' and 'omniscience'*, which suggests futility of resistance, *Degradation*, which "makes costs of resistance appear more damaging to self-esteem than capitulation, reduces prisoner to animal level" concerns and *Enforcing trivial demands*, which develops habit of compliance" (Biderman, 1957:619-20)

Biderman's (1957) typology parallels many of the grooming techniques discussed in Chapter 2. *Monopolisation of perception* is another way of describing the process of grooming a child, whereby among many other cognitive distortions, the child internalises blame for her own victimisation, is inculcated in believing the abuse is 'normal' and learns to accommodate the ongoing abuse due to her growing sense of helplessness. In many ways this technique of compliance is perhaps the most powerful, insofar as the capacity to influence a person's perceptions of abuse, the world and her sense of self is at its greatest during childhood. The other facets of Biderman's typology are also instructive, as many techniques such as *induced debilitation*, *demonstrating omnipotence*, and *degradation*, are inherent attributes of the more violent forms of sexual abuse such as rape. Arguably, a perpetrator

need not be an immediate caregiver to enlist these techniques; all that is required is grooming the child to fear the perpetrator, as well as perpetrating violent abuse upon the child.

Despite the importance of these theories, the victim-survivor's reactions to the perpetrator must also be examined sociologically. Essentially the aforementioned typologies and psychological syndromes present a micro analysis of the way power operates to ensure a child's continued silence, but provide little insight into the macro structures that facilitate the process of ongoing silencing and denial. Questions arise as to which social structures facilitate the ideal environment for the development of traumatic bonding, the Stockholm Syndrome and coercive compliance. It is only through developing an understanding of the conditions that facilitate not only intra-familial child sexual abuse, but the accompanying strategies of coercion, that appropriate interventions can be devised. In better understanding the environments which give rise to traumatic bonding, it is imperative to examine the family as a social institution, which, due to its hierarchical nature and sanctified status in society, is predisposed to a potential misuse of power.

The family as institution and institutional denial

In order to examine the disclosure choices of adult survivors of intra-familial CSA, it is imperative to reconceptualise the role of the family as an institution that both shields the perpetrator from external scrutiny and fosters denial and silencing amongst its members. Often the family is discussed as a mere backdrop to abuse, whilst comparable investigations of institutional child sexual abuse such as within the church or school systems are interrogated much more comprehensively. Indeed, Bittman and Pixley (1997) contend that ~~the~~ "the family is often wrapped in a sacral cloak and to criticise it appears to be attacking the natural order itself" (1997:18). Adopting a critical theory of the family as an institution, divests the family of the mythologising that obscures the power dynamics and domination within many families. Institutional dynamics within the family can contribute to both non-disclosure and mediate help-seeking behaviour and, conversely, criminal justice responses to survivors later in the adult survivor's life (Alaggia and Kirshenbaum, 2005).

Indeed, it has been argued that one of the factors that contribute to non-disclosure is rigidly fixed gender roles premised on a patriarchy based family structure (Alaggia and

Kirshenbaum, 2005). Thus, theorising the family as an institution is incomplete without addressing the gendered dynamics of patriarchy, fatherhood and power. The family as a social institution endows adults with hierarchical or structural power over its more vulnerable members, children. As semi-citizens who have only recently been granted rights, children are still viewed as the possessions (albeit possessions that should be cared for) of their parents. Yet La Fontaine contends, —the unequal distribution of power among individual members of the household is rendered invisible by referring to it as a family,” (La Fontaine, 1990:179). Moreover, Moller Okin suggests that such power, even if rendered visible is viewed as —natural, or benign” (Moller Okin, 1997: 16).

These *a priori* associations with benevolence can be problematic. The structural power exercised within the family is implicitly hierarchical (Driver, 1990) and can be manifested firstly as —generational” power and secondly, as —gendered power” (La Fontaine, 1990:187). It is evident that CSA reflects a misuse of generational power as well as gendered power. Yet such misuse of power is further complicated by the fact that it is masked by entrenched mythology that imbues family relations with perceptions of altruism and caring that very often —legitimise certain rights over people” with La Fontaine arguing that there has been association of —rights over children with property rights” which legitimises the abusive behaviour of father figures over their children. Such power can also be manifested between siblings in sibling abuse, where older, often male siblings exercise the power derived from age that is normalised within the family, as well as the power derived from gender (La Fontaine, 1990).

Gendered power is often readily discussed in critiques of the family. Dobash, Dobash, Cavenagh and Lewis (1998) suggest that —the family is a highly gendered institution,” a perspective reiterated by other feminist scholars (Herman and Hirshman, 1977; Driver 1989; La Fontaine, 1990). This is best encapsulated by conceptions of fatherhood which see the role of the father as naturalised and paramount to the well-being of the child (Ruddick, 1997; Moller Okin, 1997; Nicholson, 1997; La Fontaine, 1990). LaFontaine (1990) argues that the father is often placed at the —apex of the familial structure” and endows the father with a social status —marked out to serve, figuratively speaking as the fount of the rule making and rule-following that is the basis of social organisation” (Fortes in LaFontaine, 1990: 192). Yet the reality is that by endowing men with pre-ordained authority, the worst excesses of fatherhood are manifested, such as the propensity to exploit, dominate and assault (Ruddick, 1997). Such authority is nonetheless legitimised by broader notions of parenthood, which as

LaFontaine states “confers authority over children on adults” but is constrained by obligations upon those with such authority to behave altruistically and place the interests of their children before their own. While this may be an ideal to which many aspire and some may satisfy, at its worst, it can be used as an ideological tool to legitimise the worst excesses of parental objectification of their children.

Examining Biderman’s (1957) typology, it becomes apparent that normal aspects of parental discipline, when taken to the extreme, are commensurate with these tactics of coercion, particularly, *isolation*, *threats*, *demonstrating omnipotence* and *occasional indulgences*. Until a child is of school attending age, there is nothing preventing an abusive parent from isolating their child from the outside world. Until the age of 6, it is possible that a child’s only contact is her immediate family and the tactic of isolation can be at its most powerful. Similarly, a parent’s *omnipotence* is demonstrated within these aforementioned years as to the child, her caregivers are her source of survival. They are all knowing and all powerful. For non-abusive families, *threats* of reasonable discipline as a behaviour modification tool are used as one among many child rearing tools. However, for a parent perpetrating sexual abuse, threats of discipline or punishment can be utilised to coerce a child into sexual activity and ongoing silence. Lastly, *occasional indulgences* can be construed as kindness or care that distracts the child from focusing upon the perpetrator’s abusive behaviour. Thus normal parental care-giving practices such as birthday gifts or school stationary can be seen by the child as evidence of the parent’s care and love. Drawing upon both the fundamental tenet of traumatic attachments, it can be seen that abusive caregivers, simply by following some standard parenting practices, can strengthen the child’s emotional attachment with the perpetrator.

Moreover, it may be argued that the family operates as a ‘status shield’ for perpetrators of intra-familial CSA (Shaw and Skolnick, 1996), insofar as discourses of hegemonic masculinity may focus attention on the dangerous “other” as offender, rather than the family man (Cowburn and Dominelli, 2001; Cossins, 2000; Collier, 1995). La Fontaine (1990:150) contends that the family is comprised of a “set of moral dogmas” that mask the multiplicity of inequalities. One such moral dogma is that both parents, by nature of having children in their care are automatically altruistic. Despite the fact that the division of labour is still such that women carry the bulk of the early child care (Nicholson, 1997), it is nonetheless often an honorific status bestowed upon mothers and fathers equally. This is often reflected within judicial reasoning, where certain judges have been known to pronounce

that the perpetrator as a father and ‘family man’ is unlikely to be a danger to the wider community (Taylor, 2004) and therefore does not warrant the full weight of the respective sentence. Barrett and McIntosh (1980) also refer to this shield as the “ideology of familialism” which bestows upon this particular social institution additional privileges such as the right to privacy and freedom from external scrutiny.¹² Arguably, one of the reasons why survivors are more predisposed to developing traumatic attachments such as the Stockholm Syndrome (Jülich, 2001) is the traditional reticence of outsiders, even extended relatives to interfere with the ‘private’ affairs of the nuclear family. Survivors may come to learn that their attempts at disclosure will not be heeded by outsiders, in addition to learning that outsiders may not be willing to come to their rescue, thereby strengthening their sense of isolation and dependence on the perpetrator.

The family has been construed as a potential “site of domestic tyranny” (Coker, 2002). The abusive family could be construed as a microcosm of the oppression that occurs within oppressive regimes. Parallels can be drawn between the utility of Biderman’s (1957) typology of coercion in prisoner of war camps, with the form of tyranny used to enlist the compliance of victims of intra-familial CSA. In order to arrive at a more cogent understanding of the family as an institution it is useful to devise analogies between institutional practices within the family and similar institutional practices within other institutions. For long term sexual abuse to occur without intervention, certain practices of normalisation and denial must be implemented (Sykes and Matza in Cohen, 2001). Very seldom is there only the abuser and child within the family—often there are other siblings, non-offending parents, other adult relatives and neighbours with whom the child also interacts. However, limited attention has been given to the dynamics within and surrounding the family institution that may contribute to the denial and secrecy surrounding the abuse. Both contemporary sociological and psychological literature have placed their primary focus of analysis on the victim-perpetrator dyad, directing attributions at individual pathology or social pathology. Yet greater theoretical and empirical attention is required in recognising that the abuse does not operate in a vacuum, and bystanders play a crucial role in the mediation of survivors’ disclosure attempts and decision making processes.

Stanley Cohen (2001) in his use of bystander theory discusses the way in which atrocities can be perpetrated without intervention within both the public sphere of nation

¹² However, it must be argued that each family is ‘not created equal’, and that certain families have traditionally been subject to greater state intervention than others, such as poorer families, Indigenous families and certainly non-nuclear families.

states and the private spheres of the home. While Cohen makes limited reference to the family and child sexual abuse, his work is useful in that there are limited sociological or criminological studies on the micro-strategies of power utilised by perpetrators to maintain the victim-survivor's compliance and other adult's unwitting complicity (see Salter, 2003; McAlinden, 2005). Perhaps the most useful work exploring the dynamics of intra-familial CSA is that utilised by Vicki Bell (1993), who explores the Foucauldian use of disciplinary power within the home to enlist the victim-survivor's compliance. Her examination of tactics of compliance such as self-surveillance establishes a precedent for the researcher's current utilisation of Cohen's (2001) and by extension Darley and Latane's (1963) and Syke's and Matza's (1956) work. Bell's (1993) use of Foucauldian discourse analysis will be emulated in analyses of the research data later in this thesis.

This section has attempted to examine adult survivors' help seeking choices and behaviour, specifically exploring reasons as to why survivors have difficulty disclosing the abuse. The theoretical analysis firstly explored psychological theory, namely traumatic bonding, the Stockholm Syndrome (Jülich, 2001) and Biderman's (1957) typology of coercion and compliance, highlighting the sense of loyalty survivors often feel towards their perpetrators. However, this theory has emphasised that such loyalty is often underpinned by the child's helplessness and terror. In addition, this section has also explored the way in which the family as an institution can facilitate this traumatic bonding, not simply due to the child's implicit dependence on the parent, but also due to the family's hierarchical (often patriarchal) power structure and propensity for misuse of power, as well as the tendency for the family to be protected from external scrutiny (LaFontaine, 1990; Alaggia and Kirshenbaum, 2005). In concluding this section, this chapter has also examined the strategies of denial utilised by bystanders within the family to perpetuate silencing and denial of the abuse. Yet despite the importance of examining barriers to help-seeking, it is also imperative to reframe the debate with regards to the agency that adult survivors have displayed. It is only in examining acts of resistance that a more robust understanding of adult survivors' help-seeking behaviour can be achieved.

Reframing the debate (i) the concept of resistance

Trauma and resistance

Much of the extant literature concentrates on the short and long term consequences of child sexual assault on survivors' lives. While theories of trauma are useful in helping us examine the problems survivors face as adults, one limitation of this approach is its capacity to conceptualise survivors as devoid of agency, which negates the multiple ways in which survivors symbolically and physically resist the subjugation they experienced as children. Feminists have critiqued the medical model of trauma which positions survivors as invariably damaged by their early victimisation (Alcoff and Gray, 1993; Armstrong, 1994; Gilfus, 1999; Crossley, 2000; Naples, 2003). Gilfus (1999) contends that trauma theory or the "individual pathology model of trauma" de-contextualises the traumatic injury from the systems of power that precipitated the power, as well as the social and cultural inequalities that also contribute to the injury. She also argues that trauma theory fails to account for multiple and intersecting contributors to trauma such as racial discrimination or social marginalisation. As such, survivors with identities or experiences that fail to conform to the narrow boundaries of the trauma paradigm have their experiences distorted or invalidated (Gilfus, 1999:1243). Thus, in order to better understand survivors' conceptions of justice and their interactions with criminal justice agencies, it is essential that other conceptual frameworks be devised, in addition to Herman's construction of complex trauma, to understand survivors' behaviour¹³. Theories of resistance for example, may allow us to examine the ways in which survivors can use the criminal justice system as a form of "symbolic protest" (Taylor and Norma, 2011).

While it may not be appropriate to explore survivors' experience of resistance as children while the abuse is being perpetrated, examining resistance may offer a better understanding of the deliberate choices that survivors make as adults and a more nuanced investigation of adult survivors' help-seeking behaviour. It may also challenge the "feminist analyses which adopt over-monolithic notions of male power and male control over women" (Sawicki in Brooks, 1997:55). Early relevant literature on resistance can be traced to Foucault's conception of power, where power is dispersed and seen as precipitating "sites of

¹³ It can be argued that Herman, due to her background as a feminist activist, as well as a psychiatrist, provides a theory that departs from the overly prescriptive trauma paradigm of which the aforementioned authors speak. Prescriptive trauma paradigms position the victim-survivor as invariably damaged, and deny the capacity for agency late in life.

resistance, struggle and change.” (Brooks,1997:63). This notion of power underpins much post-structural feminist analysis (Weedon, 1987).

Resistance has been theorised from multiple perspectives. Resistance, from a post-structural feminist perspective, can adopt the character of “new discourses producing new truths” (Ramazanoglu in Brooks, 1997: 63). Discursive strategies of resistance are a commonly cited form of resistance in the literature. McCorkel (1998) in her analysis of a prison drug rehabilitation centre for women, devised the term “critical spaces” of resistance, used by women to define alternative identities and challenge the limiting and derisive labels placed upon them by those in power within the facility. Ronai and Cross (1998) discuss the phrase “narrative resistance” in their investigation of exotic dancers who subvert the discourses that label them as deviant.

Resistance is also manifested through identity. Gilfus (1999) draws upon the work of Lugones (1990) to describe “world travelling”, a practice where survivors inhabit a “multiplicity of selves” journeying at the time of the abuse from a world of harm to a psychological world free of harm. This is often seen as dissociation in the clinical literature (Herman, 1992), however Gilfus uses this phrase to describe the resistance strategy used at the time of the abuse as well as the search for embodiment as adults:

Identity and subjectivity for a survivor...are bound up in this multiplicity of selves and the ability to world travel. Survivors carry memories of which no one else will speak, fragments of those other worlds in which they have travelled, and those multiple selves they invented in order to endure and survive... (Gilfus, 1990:1247)

Bosworth and Carrabine (2001) in the context of prisoner resistance, discuss the role of “identity as a site of negotiation of power”, emphasising the centrality of subjective identity as a form of resistance. For the purpose of examining adult survivors, theorising resistance through identity allows us to examine the ways in which adults “come to identify as survivors” (Naples, 2003) and the implications this has on their forms of “symbolic protest” (Taylor, 2011) and interactions with the criminal justice system.

Resistance could also be analysed from the perspective of targets as well as strategies. The targets of resistance are equally widespread and include institutions as well as discourses. Bosworth (1996) contends that resistance can be used to evaluate the legitimacy of a particular institution. For survivors, there are multiple targets of resistance: the institution of

the family, the authority of fatherhood discussed earlier, or the discourses surrounding victim identities. These discourses include the patriarchal mythology surrounding sexual abuse victims, or the equally limiting therapeutic discourses which can construct survivors as inextricably damaged (Naples, 1993; Armstrong, 1994). Both “critical spaces” and “narrative resistance” can be applied to survivors for whom the identity of victim of child sexual abuse is often associated in a pejorative manner with incest victim, mental health patient, drug addict or juvenile delinquent. Survivors can also challenge the deterministic prophesising of some feminists who state “the female’s early sexual experiences prepare her to submit in later life to the adult forms of sexual abuse heaped on her by her boyfriend, her lover and her husband...” (Rush in Driver, 1989:25) through renegotiating adult relationships according to their own needs.

What this suggests with regards to the criminal justice system is that survivors may utilise the CJS as an overriding discourse to counter the pejorative discourses of other institutions, or as suggested in Taylor and Norma’s (2011) research, as a form of symbolic protest against the perpetrator or the family who supported the perpetrator. This illustrates that the CJS can perhaps be seen as one possible weapon or ‘critical space’ occupied in the artillery of resistance used by survivors. In this way the CJS is akin to other researchers’ conceptualisation of the CJS (Lievore, 2003), that is, the CJS is one amongst many options to be considered when dealing with the aftermath of CSA. It also suggests that resistant narratives may still be utilised in court, but may be under-acknowledged because they do not accord with dominant understandings of CSA. When examining reforms that can be made to legal knowledge of CSA, this is something that may need to be considered.

Some resistance theories carry inherent critiques (Bosworth and Carrabine, 2001; Bosworth, 1996). The most prominent critique is that resistance theory overestimates the degree of agency that may be available to a person (Bosworth and Carrabine, 2001). In so doing, overestimation can ignore the limitations imposed by differences in identity and thus place culpability upon the victim-survivor for not being able to overcome the consequences of long term trauma as easily as others. Certainly, the opportunities for resistance for a white middle class urban woman would potentially be greater than the opportunities afforded a woman marginalised by class and race, as well as gender. In addition, an over-reliance on resistance can obscure the real power relations that lead to forms of subjugation such as sexual violence.

Reframing the debate (ii) Hudson's 'innovative justice'

Theorising justice principles

Chapter 2 discussed selected reforms that have been formulated in Australia and overseas to address the weaknesses in CSA law and policy. However, the ineffectiveness of some reforms discussed highlights the need for a broader justice philosophy to guide necessary reforms. Without a guiding ethos or philosophy, reforms are liable to be ad hoc and ill conceived. Yet a broader justice philosophy requires returning to a working definition of justice which transcends that dictated by the white, male hegemony. Feminist and critical criminologists have attempted such a reformulation, with feminists contending that justice must above all be concerned with the dynamics of domination as opposed to difference (Flax, 1995; Young 1990). That is, that justice should be granted on the basis of removing oppression, rather than on the basis of a justice seeker's identity.

Barbara Hudson (2002; 2006) proposes an innovative model of justice informed by feminist, post-structuralist and communitarian critiques of mainstream justice. This section below explores the five principles of justice expounded by Hudson: *justice must be discursive, relational, reflective, plurivocal and rights regarding*, while also examining the way in which these principles can be applied to the needs of female adult survivors of intra-familial child sexual assault. Importantly, Hudson (2002:206) contends that the central theme which traverses all principles is that of *'equal respect'*.

Justice as discursiveness

Discursiveness is axiomatic to Hudson's (2002, 2006) five justice principles and operates in response to the logic of identity where some people, by virtue of their identities, are excluded from the benefits of western criminal justice. In particular, women and those of minority ethnic groups are not adequately protected by the criminal justice system, by virtue of inhabiting identities that deviate from the white, middle class man (Hudson, 2006). Discursiveness is as much a practice as it is an ideal. Hudson derives her principle of discursiveness from theories expounded by those such as Habermas (1989) and Benhabib (1992) where Habermas' principle of discourse ethics:

Relates to a principle of moral argumentation... Its principle postulates: Only those norms may claim to be valid that could meet with the consent of all concerned, in their role as participants in a practical discourse... (Habermas, 1989:40)

Hudson's discursiveness extends the principle to criminal justice, where each person should be given adequate space to speak. Yet the practice of speaking entails two preconditions. Firstly, Hudson contends that those who are outside the privileged circle of discourse must be given assistance to access this circle (Young in Hudson, 2006:35). Secondly, access to this discursive space must not be tokenistic and requires "openness to identity claims that are not based on similarity" such as the aforementioned logic of identity. This allows discussion to transcend the narrowly defined legal categories that define matters as pertinent from a white, male perspective but also allows discussion of harms as defined by the individual, or applied to this scenario, the female survivor.

Discourse does not mean straining towards consensus; it does not mean dissolving wrongness into relationship difficulties. Discourse as a process of justice means that all claims must be listened to respectfully and that denial either of wrongs done or of the humanity of the wronged and wrongdoer is ruled out: the culture of denial in all its forms must always and everywhere be challenged (Hudson, 2002:224).

Two elements of the above excerpt illustrate the utility of discursiveness for the subject of this thesis. The amelioration of the culture of denial that may exacerbate harm is relevant to the institutional dynamics of intra-familial abuse discussed earlier in this chapter. Institutions such as the family embody a micro-culture which can normalise domination and harm, as well as denial. Discourse is a particularly useful practice that can be employed to combat this micro-culture of denial. Discursiveness through storytelling and testimony also enables survivors to engage in strategies of resistance, which satisfies interpersonal affective needs in addition to justice needs.

Indeed, the principle of *discursiveness* is useful to understanding the needs of adult survivors due to the unique nature of intra-familial CSA. While it would be a mistake to subsume all adult female survivors under a homogenous category of female victim, it is safe to utilise the feminist critique that legal discourses of rape and sexual abuse adopt at best, a masculinist viewpoint, where the harm, corporeality and emotionality intertwined with this crime is abstracted (Lacey, 1998), or at worst, reproduce phallogentric and misogynistic discourses reversing culpability onto the victim-survivor (Cossins, 2000; Jordan, 2001; Taylor, 2004). As Hudson contends —harms have to be described in terms of legally

recognisable categories” and as the previous chapter demonstrated, despite advances in the substantive law, legal stakeholders still have difficulties understanding the complex nature of intra-familial CSA, or chronic CSA. The adverse consequences, manifested in counter-intuitive behaviour such as a pathological attachment to and protection of the perpetrator in the form of the Stockholm Syndrome (Jülich, 2001), or the disturbing reactions ensuing from complex trauma (Herman, 1992), mean that the experience of long term intra-familial CSA is not adequately accounted for within dominant legal discourses. Legal discourse and the ‘logic of identity’, premised upon the “idealised characteristics of the white, western man”, entails the much valorised characteristics in Western society of agency, autonomy and self-sovereignty (Hudson, 2002; 2006). Such characteristics are the antithesis of chronic CSA, where the experience of objectification and helplessness can engender disgust, rather than sympathy for the victim-survivor, in the rational, autonomous legal actor. As discussed in the previous chapter, Herman (1992, 1997) in her exploration of the antipathy towards many trauma survivors, ranging from war veterans, concentration camp and child abuse survivors, suggests that trauma challenges ‘just world thinking,’ (Jannoff-Bulman, 1985; Lerner in Herman, 1997) a privileged world view that suggests that harm only comes to those who are deserving. For someone in power to consider an alternative perspective would be to contemplate one’s potential helplessness and the limited scope of one’s sphere of influence in the face of numerous, and sometimes arbitrary forces over which one cannot exert energy.

Thus there is often the common argument, mobilised during sexual assault and CSA trials by the defence counsel as to why the victim-survivor did not stop the attack by screaming or fighting back (Taylor, 2004). For intra-familial CSA, a commonly mobilised argument used to “disprove” a survivor’s account, is that the victim did not fight back against her father, or did not call out, or did not disclose the abuse to a teacher, or neighbour (Taylor, 2004). Such an argument has been viewed as reasonable within the courtroom, having salience with jury members; yet this is the discourse of those who have always had agency, who are actors in the world rather than being acted upon. As Herman (1997) suggests, those who have never experienced a traumatic event, where their life or bodily integrity has been threatened, have a tendency to believe that if they were to experience such an event, they would act differently, they would not allow themselves to be victimised. While feminist critics have focused upon the phallocentric conceptions of rape and sexual abuse (Mackinnon, 1987) little attention has been given to the more insidious aspects of dominant

legal discourse and the almost taken for granted world view of agency and sovereignty that has been entrenched in western consciousness since the enlightenment.

In addition to discursiveness being central to the matter of developing legal understanding of intra-familial CSA, it is also crucial to survivors due to the silencing and denial that have perpetuated chronic CSA. At the heart of chronic intra-familial CSA is silencing of the victim-survivor. Silencing operates on the level of grooming, where survivors are groomed to acquiesce to the offender's demands and silence her pain and distress while being assaulted (Salter, 2003). Denial of discourse for the survivor begins in childhood, where attempts to disclose the abuse to other family members are met with hostility or denial. For the more severe forms of CSA such as childhood rape, the experience can be akin to forms of torture, where it can be so painful and overwhelming that the child dissociates, either through leaving her mind, leaving her body or in more extreme cases, developing other personalities to cope (dissociative identity disorder) (Herman, 1992, Rivera, 1987, 1998). The childhood rape as torture analogy is useful in helping us theorise the language destroying nature of this crime. Phelps (2000) in quoting Elaine Scarry, who has researched the nexus between torture and language, states:

Scarry first lays bare the inarticulability of physical pain-when in pain we cannot accurately describe it to another nor can we fully understand another's pain. The ability to speak words disappears- physical pain does not simply resist language but actively destroys it Phelps (2000: 40)

This is exacerbated when the pain is experienced by a child too young to possess a cognitive schema to explain what is happening to her. As the research has shown, perpetrators use a range of linguistic grooming strategies to ensure compliance including bribes, deflection of culpability, threats and lies (Smallbone and Wortly, 2001; Berliner and Conte, 1990). The overwhelming nature of the assault(s), coupled with the lack of sexual knowledge and requisite development possessed by the child and the perpetrator's grooming strategies, effectively proscribes the child turned adult from possessing the language and discourse to describe the harm she has suffered adequately. As an adult, overcoming the effects of chronic intra-familial CSA entails development of her own discourse.

Justice as relational

The next principle Hudson discusses is justice as being *relational*, with reference to both identities and rights. The perspective that rights are relational departs from the liberal conception of rights that conceives of rights as a finite commodity to be owned, with some liberals suggesting that rights are a balancing act where one group is endowed with rights at the expense of another group (Hudson, 2006; Doak, 2008). This is seen most clearly in the argument against victims' rights with some theorists adopting the 'zero-sum' approach, that is, that to give rights to victims within the criminal trial is to deprive defendants of their rights to a fair trial (Doak, 2008). In contrast, Hudson cites feminist theorists who expose the false dichotomisation of rights, with Minow (1990) viewing "rights as relationships" that "demarcate reciprocal rights and duties" (Minow in Hudson, 2006:37) and Iris Young (1990) stating that "rights are rules that limit behaviour," such as removing oppression (Young in Hudson, 2006:37). Through this framework then, rights are safeguards, which Hudson views as intrinsic to "conditions of discourse" where "denial of rights means silencing of the Other, denying her pain and exclusion, refusing her membership, her freedom and her identity" (Hudson, 2006:37).

With regards to the relational aspect of identity, Hudson posits that it is "situations and relationships that determine which aspect of identity is the more significant". Thus, relationalism is concerned with "the network of relationships with the community and the state" as well as the "relational nature" of responsibility and culpability (Hudson, 2006:37). Deep relationalism as argued by Norrie (2000), explores the way in which culpability and responsibility must move beyond the liberal notion of the individual offender, and examine the mitigating structures and values in society that facilitate offending (Hudson, 2002).

All three aspects of relationalism: identities, rights, and responsibility can be applied to the needs of adult survivors. The identity often ascribed to the sexual assault survivor is largely gendered, ignoring the nuances of race, culture or religion that may in the context of experiencing or surviving sexual violence, play a greater role than gender. Angela Harris' critique of 'dominance theories which propose gender as the key element of identity' (Harris in Hudson, 2006:36) can be applied to the way in which intra-familial CSA has been formulated in the feminist literature. As discussed in the previous chapter, a missing critical element in the literature is the way in which child sexual assault is subsumed under the umbrella category of gendered harm, with little attention given to the fact that first and

foremost this is a crime committed against children by adults or adolescents. While a gendered approach to the identity of the survivor is no doubt important to understanding part of the picture, such a blanket conceptualisation is ultimately limiting. Similarly, the approach to survivor identity premised on the medicalisation of child sexual assault can be helpful for clinicians but criminologists and social scientists should be cautious of ascribing a medical model in their work, due to the implicit determinism partially evident in the literature.

Where relationalism is most helpful is in creating a space in which the unique needs of adult survivors of intra-familial CSA can be addressed. Adult survivors, in terms of their needs, can be situated on the nexus between adult survivors of adult sexual assault and child survivors of child sexual assault. As the literature illustrated in the previous chapter, many survivors suffer from the aftermath of CSA well into adulthood, with some survivors' lives being considerably impaired as a consequence. Yet the literature fails to address forms of resistance to this early abuse, or to highlight that while survivors may flourish and achieve mastery in some aspects of their adult life, they may be significantly impaired in others: this theoretical gap that will be addressed in Chapter 6 of this thesis. A framework useful for such an approach is Alcoff's notion of 'positionality':

The concept of positionality includes two points: first, as already stated, that the concept of woman is a relational term identifiable only within a (constantly moving) context; but second, that the position that women find themselves in can be actively utilised (rather than transcended) as a location for the construction of meaning, a place where meaning is constructed, rather than simply the place where a meaning can be discovered. The concept of woman as positionality shows how women use their positional perspective as a place from which values are interpreted and constructed rather than as a locus of an already determined set of values (Alcoff, 1988:434).

Although positionality will not be a central point of exploration, its framework is useful for the aims of this thesis, in exploring the way in which survivors make meaning out of their experiences, resist the disempowerment that can be carried through from childhood, as well as explore notions of justice. Positionality is commensurate with relationalism in that both allow for an identity that is not circumscribed by the limitations of a fixed identity such as gender, instead examining identity within the given situatedness of the time.

The conceptual shift from rights as a commodity to rights as safeguards is again much needed for adult survivors of CSA. To conceive of rights as relational safeguards is an

essential step to empowering survivors. Intra-familial CSA is committed in an environment where parental rights over their children appear pre-ordained, with some theorists such as LaFontaine (1990) believing that such preordained rights operate to legitimise CSA within the family. However, if rights are conceived of as obligations and safeguards, rather than a commodity or possession, rights become attendant upon those who utilise them to act to reduce oppression rather than facilitate it. Levesque (2000) who has written extensively on human rights and child sexual abuse suggest that “parental rights” should only be given to those relating to the role of parent: violation of a child through rape also violates one’s duties as a parent, and should throw into question such ‘rights’. However, even this conception views rights as something to be given and terminated. Such a perspective permeates those whom contend that children’s rights will diminish parent’s rights. Relationalism allows us to view rights holistically, and in such a manner, the right to family sovereignty does not subsume the basic human rights of each individual within the institution. Rights become obligations, not privileges or possessions, and depart from the liberal notion of liberty towards something of the communitarian notion of liberty (Hudson, 2002; Braithwaite and Pettit, 1990).

Relational justice as expanding notions of culpability and responsibility is also important for intra-familial CSA. Feminists have discussed the systemic underpinnings of sexual violence and the nexus between extreme manifestations of hegemonic masculinity and dominance (Cossins, 2000; Collier, 1995). Exploring the cultural mores that valorise dominance, and indirectly facilitate sexual dominance, is important in challenging some of the more misleading stereotypes regarding sex offenders, that is, that sex offenders are deviant “others” characterised by ethnic, class or sexual marginality (Cowburn and Dominelli, 2001). As this thesis will demonstrate, while culpability should be located with the offender, other forms of culpability such as bystander complicity, which operate to prolong chronic abuse through lack of intervention, must be explored. Moreover, the growing number of studies on adolescent sex offenders and multigenerational offending suggests that Norrie’s ‘deep relationalism’ should be employed.

Justice as reflectiveness

Hudson states that “reflective justice means that each case should be considered in terms of all its subjectivities, harms, wrongs, and contexts, and then measured against concepts such as oppression, freedom, dignity and equality” (Hudson, 2006:39). Examining

each case according to the notions of oppression, dignity and equality departs from the traditional criminal justice system's imperative to categorise experiences according to abstracted legal categories.

For a crime such as chronic child sexual assault, where the offence is not discrete but continuous, reflective justice offers considerable promise. Intra-familial CSA involves not just the sexual assaults, but the grooming strategies, the silencing and the denial that perpetuates the abuse. Chronic CSA can permeate the survivor's entire childhood. Often intra-familial CSA coexists with other forms of abuse and family dysfunction.

—Individualising justice” to —transcend fixed categories” (Hudson, 2006:39) is compatible with the continuous nature of chronic CSA. While there is no offence category for the psychological grooming that socialises children to believe their sole purpose is to gratify their adult caregiver or older sibling, when compared against the yardstick of oppression and dignity, grooming becomes seen as a crime against the child's dignity. Similarly, threats of extreme violence and psychological terror are not proscribed by legislation, but held against the principle of oppression, the use of psychological terror to enlist the child's acquiescence in sexual activity, which is often not addressed through the legal system, is an oppressive experience worth redressing.

Utilising the principles of oppression, freedom, dignity and equality as yardsticks with which to guide justice reform means that those who masquerade behind the privileged identities in Western liberal justice are exposed to scrutiny. Thus the fact that a victim-survivor's perpetrator is a 'white collar family man' well known in the community and with no prior record are rendered redundant in the face of his acts that deny dignity inherent to maintaining one's bodily integrity. The discourses explored in Chapter 2 so prevalent in legal reasoning pale in contrast to fundamental tenets of oppression, freedom, dignity and equality. Thus it does not matter whether the perpetrator is a man of 'good character' and the adult survivor is a woman with a history of mental health issues, criminal convictions and revictimisation. Justice as the removal of oppression and the promotion of dignity and equality supersedes such categorisation.

In this sense, reflectiveness is both expansive and reductive. It transcends narrow legal categories but it also reduces the capacity for those who benefit from the 'logic of identity' to avoid immediate scrutiny. By utilising yardsticks such as oppression and dignity, the gaze becomes transferred from the perpetrator's identity or social status (family man,

white collar professional, community leader, or conversely the monstrous other, or the deviant) to the individual nature of the oppression suffered.

Justice as rights-regarding

Another principle expounded by Hudson (2002) is that justice must be *rights-regarding*. The notion of human rights permeates each of these justice principles discussed here, but deserves its own space for discussion. Hudson contends that despite the critique of a rights based discourse by feminists and communitarians, who conceive of the liberal notion of rights as fundamentally flawed, they nonetheless agree upon the importance of rights. Quoting Cohen, Hudson states that —human rights have become...the major normative discourse of the present era” (Cohen in Hudson, 2002:213). Hudson examines the new generation of human rights legislation post 1945, citing Ashworth’s exploration of the European Convention of Human Rights which differentiate rights according to the extent to which they can be derogated (suspended or reduced according to circumstance) (Ashworth in Hudson, 2002:215).

This hierarchy of derogation divides human rights into first tier rights, second tier rights and third tier rights. First tier rights are what could be seen as absolutes, non-derogable rights such as the right to life and bodily integrity, that is ~~the~~ right to life, the right not to be subjected to torture or to inhuman or degrading treatment, the right not to be subjected to forced labour and the right not to be subjected to retrospective criminal law” (Hudson, 2002:215). Second tier rights are strong rights, and include ~~the~~ right to fair trial, and the rights to liberty and security of the person.” Such rights are compelling, and should only be derogated under persuasive circumstances (Ashworth in Hudson, 2002:215). The third tier of rights include ~~the~~ right to freedom of expression, the right to freedom of thought and religion, the right to respect for private life” (Hudson, 2002:215). These may be circumscribed or rescinded only in cases of national security or when the exercise of such rights contravenes the rights of others.

While Hudson discusses the hierarchy of human rights in relation to the current risk based society and the increasing derogation of rights as a consequence of the politics of fear and risk (Hudson, 2002:218), the debate on derogation has specific relevance to the needs of adult survivors of intra-familial CSA. Feminists have cautioned that certain third tier rights such as the right to family life and right to privacy has effectively perpetuated violence against women and children in the family (Moller-Okin, 1988), the right to family life has

become intertwined with mythologising the family as altruistic, benign or pre-ordained. Earlier in this chapter, a reformulation of the family was proposed: by reconceptualising the family as an institution on par with other cultural institutions, we are able to de-sanctify the family and caution against the familial relativism akin to cultural relativism¹⁴. Ashworth's derogation of rights benefits adult survivors of intra-familial CSA as their right to dignity and bodily integrity supersedes the offender's right to his private family life. There is justifiable concern for the exercise of state power against individual rights, or the domination of one individual over another; yet there needs to be greater protection of the rights of individuals against the rights exercised by cultural relativism.

Another concern with rights for adult survivors is the way in which a liberal rights-based discourse is enacted within the criminal justice system. The inherent attitude to rights in the criminal justice system is that rights are a finite commodity, to endow the victim with greater rights is for some, to reduce the amount of rights open to the offender. Rights thus must be viewed as relational: to treat one group with dignity surely does not detract from the dignity of another group. In addition to rights being relational, as Hudson suggests, rights are ~~—~~a condition of discourse.” Hudson quotes Lyotard stating ~~—~~the universalism of human rights is —the right of universal access to discourse: the silencing of a human being...is an irredeemable wrong.” (Lyotard in Hudson, 2002:223). If one reflects on the essence of any form of objectification, the commonality is denial of voice and of autonomy: as discussed earlier, pain destroys language. Justice for survivors thus requires the engagement of discursive justice.

Discourse as a process of justice means that all claims must be listened to respectfully and that denial either of wrongs done or of the humanity of the wronged and the wrongdoers is ruled out: the culture of denial in all its forms must always and everywhere be challenged (Cohen in Hudson, 2002:224).

Yet as Hudson (2006) later discusses, drawing on the work of Iris Young (1990), discourse is not simply a matter of allowing all parties to speak. Some individuals must be brought into the discursive circle of justice, with those ~~—~~who are most excluded...given privileged access to discourse” (Young in Hudson, 2006). But then, what does it mean to be given access to discourse? Previously this has been undertaken tokenistically, with

¹⁴ Some Australian research has shown that in judicial sentencing, child sex offences committed by white collar fathers (Taylor, 2004; Cowburn and Dominelli, 2001) with no previous record are often minimised, with the concern for protecting the family taking precedence over the wellbeing of the child.

underprivileged groups consulted perfunctorily and decision makers ruling a final decision that served privileged interests. While Hudson (2006) has shown the compatibility of her principles of innovative justice with restorative justice, a further challenge would be to apply this framework to formal models of justice.

Discursiveness as a principle, as discussed here, means much more than allowing a space in proceedings for various participants to speak. It means openness to challenges to the identity of law, and openness to identity claims that are not based on similarity...also means that any topic can be raised by any participant, and for feminist critics of liberal justice, this has meant in particular that behaviour in the private sphere must not be off limits...(Hudson, 2006:35)

However, it is my contention that discursiveness must transcend the ability to speak, and must also acknowledge what occurs with this speech afterwards—that the listener is equipped and willing to listen to the nature of this speech.

Justice as Plurivocality

Thus the last principle to be discussed is *plurivocality*. Hudson (2002:206) suggests that for justice to be plurivocal it must —recognise and hear the different voices of the plurality of identities and social groups that must have their claims met and find ways of living together, in radically pluralist contemporary societies.” While Hudson discusses these principles directly in relation to restorative justice as a response to the growing politics of risk within criminal justice, the need for plurivocality is apparent in formal justice’s response to adult survivors of intra-familial CSA. Returning to earlier critiques such as that of Smart (1990), who contends that law establishes itself as a divine arbiter and adjudicator of truth, and as such has the power to disqualify or validate knowledge. A review of the literature on child sexual assault trials in Australia illustrates the way in which law’s knowledge has been reflective of white, affluent male bias, and at its worst, reflects the normalised sexist and patriarchal ideologies that exist as a ubiquitous undercurrent within Western society (Taylor, 2004; Eastwood and Patton, 2002, Cossins, 2000). Yet the literature illustrates that such ideologies are manifest in knowledge claims mobilised by psychoanalysis and outmoded theories in psychiatry, which are nonetheless utilised as truth. Indeed, critical legal theorists have stated "legal reasoning is an inherently repressive form of interpretive thought which limits our comprehension of the social world and its possibilities" (Gabel in Schepelle, 1989:2078).

The challenge then, for formal justice, is to conceive of a framework which incorporates different voices and the plurality of identities. This includes incorporating current theories from neuro-science regarding the impact of long term trauma on adult survivors, as well as theories from the behavioural and social sciences. However, plurivocality demands more than this, as it is contingent upon the “incorporation of different voices and the plurality of identities”, and poses considerable problems for substantive law and formal criminal justice. Education of legal stakeholders and the judiciary about different voices and knowledges is one step; however, to somehow embrace the multiplicity of identities in Western pluralistic societies, what may be required is consultation, as is conducted in some specialist courts (Stewart, 2005), with a variety of social groups.

Expansion of Hudson’s justice principles

While Hudson’s justice principles have considerable utility for the theorised needs of adult survivors of intra-familial CSA, and Hudson has shown the transferability of these principles to the practice of restorative justice, she does not discuss the ways in which such principles can be realised within the constraints of formal justice. This is important because some research suggests that many survivors of sexual violence or child abuse still prefer conventional forms of justice over restorative justice (Herman, 2005). While restorative justice appears somewhat promising in its potential to meet some of the needs of victim-survivors of sexual abuse (Jülich, 2006), it is imperative not to neglect reform of mainstream criminal justice.

One area of mainstream criminal justice that requires further investigation is the adversarial process and the difficulties this procedural model creates for the needs of victims, as well as for the goals of feminist, communitarian and post-structural critics of liberal justice. While much of the critique has been concerned with the logic of identity (Hudson, 2006), limited attention has been afforded the procedural model which may assist in strengthening the position of white male hegemony. A number of writers have conceptualised the shortcomings of the adversarial procedural model with regards to the needs of vulnerable witnesses, a category which can be used to describe adult survivors of intra-familial CSA (Steffen, 1988; Sward, 1989; Jackson, 1992; Ellison, 1999, 2001; Jolowicz, 2003; Doak,

2008). Doak (2008) suggests that the very nature of the adversarial paradigm, is designed to embody linguistic combat.

Trials are typically characterised by a highly competitive and confrontational atmosphere, which renders them fundamentally ill-equipped to address emotional trauma and private conflicts that have arisen as a result of the offence. The contest culture of the courtroom is not at all conducive to listening to the accounts of individual witnesses, let alone healing conflicts (Doak, 2008:35).

Other writers such as Reichel (2008) contend that this paradigm emphasises competition and the rules of the competition (manifested as procedural law), at the expense of factual guilt. Thus an excessive focus is placed on the manner of adjudication rather than determination of whether the accused is factually guilty (Ingraham in Reichel, 2008: 171). Paramount to the adversarial system are the ‘safeguards’ of cross-examination and orality, purported to ensure that the evidence presented is subjected to sufficient interrogation (Reichel, 2008; Doak, 2008). However, both Doak (2008) and Ellison (2001) contend that it is precisely these safeguards that further exclude victims of crime from what Hudson (2006) would label the ‘discursive circle of justice’. Cross-examination and orality are almost sacrosanct, with criminal law students being taught the importance of such principles as the cornerstone of justice. However Doak (2008) contends that the presumptions underlying the validity of cross-examination and orality as a means of acquiring the ‘truth’ need to be challenged. The presumption that cross-examination is the best way of acquiring truth from those who take the witness stand is weakened when one considers the effect that threatening situations have on one’s cognitive processing abilities, short and long term memory, as well as one’s emotional wellbeing.

Adversarial theory argues that demeanour and ability of the witness to remain composed and relaxed during cross-examination are indicators of veracity. Such a perspective fails to take account of the psychological literature which indicates that giving evidence in an unfamiliar and stressful environment will almost certainly cause an adverse effect on the witness’s ability to recall accurately past event (Doak, 2008:252).

One could suggest that such cornerstones of adversarialism such as cross-examination and orality were born of a time where justice was only accessible if one inhabited the privileged identity of which Hudson (2006) speaks. This assertion enhances the imperative to explore

other variations of our current procedural model. However, this is not to create a rigid dichotomy between adversarialism and inquisitorialism, demonising the former while valorising the latter. Inquisitorialism is not without its weaknesses though this is beyond the scope of discussion here (Reichel, 2008). Moreover, it would be incorrect to suggest that the two models are mutually exclusive, with legal scholars highlighting the cross-fertilisation of the two models (Reichel, 2008). A more fruitful discussion then, is to explore the way in which a model of non-adversarial justice, theorised by King, Freiberg, Bagatol and Hyams (2010) can engage with Hudson's justice principles and allow us to utilise a holistic set of principles that can be translated into both formal and restorative justice practice to assist adult survivors of intra-familial CSA.

King et al's (2010) work appears commensurate with the principles of *discursiveness*, *plurivocality* and *reflectiveness*. King et al (2010) illustrate the compatibility of their theory with that of Hudson's in their conceptualisation of non-adversarial justice reform. They argue that rather than focus upon legal reform, reform should encapsulate the broader justice system and its interactions with society. Non-adversarialism, Freiberg suggests, is characterised by:

An approach to justice, both civil and criminal, that focuses on non-court dispute resolution, including the role of tribunals and public and private ombudsmen. It also includes processes used by courts that may not involve judicial determination, or court processes that involve judicial officers both pre- and post-determination of guilt or sentence in exercising more control over process. Its basic premises are prevention rather than post-conflict solutions, cooperation rather than conflict and problem-solving rather than dispute resolution (Freiberg, 2010: 304-5).

This approach also contains a number of elements, the first being that non-adversarial justice should emphasise a *'justice' system*, rather than a *'legal system'*. By this courts are only viewed as one of many mechanisms in society that can help solve disputes. This element resonates with the practices of restorative justice that Hudson (2002; 2006) discusses as well as communitarians such as John Braithwaite (1995). The related emphasis on *'problem solving'* views conflicts or crimes as reflective of more endemic social, economic or cultural problems that also need to be addressed. This approach is useful to the concern of long term intra-familial CSA which some feminist theorists (Cossins, 2000) view as a manifestation of gendered violence, symptomatic of normative hegemonic masculinity. Moreover the

emphasis on ‘problem solving’ parallels Hudson’s principle of relationalism, which views crime as structural and systemic.

Other elements that comprise non-adversarialism include the emphasis on process, not outcome, partners, not adversaries, active not passive judges, interdisciplinarity, comprehension, and prevention (Freiberg, 2010). ‘*Process, not outcome*’ Freiberg argues, emphasises ‘validation, voice and respect’ through privileging procedural fairness for all parties. The emphasis on validation and voice is intrinsic to Hudson’s principles of *discursiveness* discussed earlier. In addition, *partnership rather than adversaries*, as well as *interdisciplinarity* which encourages partnership amongst legal and non-legal stakeholders as well as the use of broader academic disciplines to inform practices, demonstrates the way in which Hudson’s justice principles can operate within formal justice practices, where communication between stakeholders and the use of multiple forms of knowledge embodies *discursiveness* and *plurivocality*. Lastly, non-adversarialism’s element of *comprehensiveness*, which emphasises a ‘holistic approach’ and ‘creative problem solving’ as pivotal to resolving legal problems appears to have an affinity with Hudson’s principle of *reflectiveness*, which emphasises the individual and unique nature of cases beyond the constraints of legal categories.

Despite the apparent similarities in sentiment between Hudson’s justice principles and King et al and Freiberg’s non-adversarial justice, non-adversarial justice endows the judicial officer with a more specific role. The element which promotes *active, not passive judges* constructs the judge in a more interventionist manner, a role that reflects the specialist court practices discussed in Chapter 2 and a reformulation of the role of the judge as impartial arbiter in the adversarial criminal justice system. Such a reformulation may offer considerable options for survivors of sexual violence, given that the literature on the sexual assault trials illustrates the lack of judicial intervention in harsh and re-traumatising cross-examination. Yet this element also highlights some of the issues related to authority and the role of legal stakeholders that Hudson’s work does not address.

Indeed, one element absent in Hudson’s justice principles is the role of the state in protection of an individual from domination of the other. Her work emphasises the importance of protecting individuals, particularly individuals, who, due to their identity as demonised ‘other’ are prone to having their human rights diminished, from the excesses of the state. In addition, Hudson attempts to combat the power of dominant groups over more

vulnerable groups through her focus on discursiveness and human rights, stating “denial of rights means silencing of the Other” (Hudson, 2006:37), as well as acknowledging that often those who are outside the discursive circle of justice must be provided “privileged access” (Young in Hudson, 2006 :33). Yet, as with her other principles, she does not address the way in which non domination can be realised within the constraints of the existing criminal justice system.

A solution to implementing non-domination within formal justice is to re-examine the constituent elements of Hudson’s (2002) original conceptualisation. Elements of communitarianism cited by Hudson (2002) and discussed by Republican theorists such as Braithwaite and Pettit (1990) explore the notion of justice as non-domination and what the formal criminal justice system can implement in order to promote this goal. For non-domination to be combated, additional constraints may need to be implemented in order that individuals who have experienced substantial domination are able to engage with the aforementioned principles. The communitarian conception of rights was cited by Hudson and constitutes in part her reformulation of the *justice as rights regarding* principle. For communitarians such as Braithwaite (1990, 1995), rights or liberty is seen as something to be “safeguarded from the predations of others” and “equates freedom not with being left alone, but with being given equal protection before a suitable law” (Braithwaite and Pettit, 1990:57). Despite feminist criticisms of communitarianism (Hudson, 2002) the sentiment inherent in feminist criticism parallels the work of Iris Young, who states “rights are rules that limit behaviour, they are rules of conduct that protect freedom and dignity”(Young in Hudson, 2006:37). Braithwaite and Pettit’s (1990) theory becomes useful to us in their elucidation of how the abstract goal of rights as non-domination, or what they term the pursuit of dominion, can be realised within the criminal trial.

For Braithwaite and Pettit (1990) the pursuit of dominion must be realised through the principles of parsimony, checking of power, reintegration and reprobation. The practices of reprobation and reintegration are most relevant here, in that the purpose of reprobation within the criminal justice system should be that it “be designed to ensure that criminality is subject to more or less effective reprobation or disapproval in the community” and that the purpose of reintegration be that

The most important target for reintegration is the victim of crime. The victim has been devalued as a person. She has been given the message by another human being that

she is unworthy of enjoying rights to non-interference. (Murphy and Hampton, 1989)...The victim's dominion can be restored in a number of ways but the most effective is likely to be when the relevant community acts symbolically and tangibly to assure the victim that she is not devalued as a person, that her dominion is worthy of respect (Braithwaite and Pettit, 1990: 91).

Thus it is incumbent upon stakeholders within the criminal justice system to intervene and symbolically condemn practices of domination. In this way the trial assumes a different character, where non-domination and endowing the survivor with the newfound role of subject complete with associated rights, becomes as important as the rules of procedure. The rhetoric of the "rights of the accused" cannot be mobilised to further domination, as was seen in the criminal trial practices discussed in Chapter 2 (Taylor, 2004; Eastwood and Patton, 2002; Kerr, 2002). In addition to passing sentence, the judge adopts the role of symbolically conveying disapproval of the crime, thereby communicating to the victim-survivor that her rights are worthy of being protected. Such simple practices divert the focus away from simply adhering to the rules of due process, observing procedural fairness for both the victim and the offender (Tyler, 1990).

Conclusion

This chapter explained help-seeking choices made by adult survivors of intra-familial CSA, and the justice needs of survivors, as well as establish a theory of justice that can cater for the needs of adult survivors of intra-familial CSA. Arguably, a suitable model of justice reform is contingent upon the development of both a robust theory of justice appropriate for survivors, as well as an understanding of the factors that influence survivors' decision making processes.

By exploring the nature of traumatic bonding and strategies of coercion, and the environments in which this phenomena occur, it becomes easier to understand why some survivors demonstrate loyalty and allegiance to their perpetrator, or fail to disclose for many years. Theorising the family as a social institution devoid of its 'sacral cloak' also allows us to examine the way in which family dynamics can affect survivors' experiences of CSA. The concept of the "ideology of familialism" (Barrett and McIntosh, 1980) demonstrates why

some survivors of intra-familial abuse are either met with disbelief or are silenced by familial bystanders. Moreover, by exploring the family as a set of moral dogmas it can be easier to explain why criminal justice agencies and social services may behave differently to abuse that occurs within white, middle class families (Taylor, 2004). These theoretical frameworks identify some of the unique factors that distinguish intra-familial CSA from other forms of CSA and more clearly elucidate the behaviour patterns of adult survivors.

The theory of resistance expands our understanding of adult survivor behaviour as it challenges the determinism of trauma theory, which at its worst, positions survivors not just as damaged by their experiences, but incapable of making healthy decisions for their lives. By examining the various forms of resistance-from discursive to identity construction-we are able to see how survivors' interactions with the justice system can potentially be viewed as a form of symbolic protest or critical space (Taylor, 2011; McCorkel, 1998). Resistance theories can also enable researchers to examine survivors' motivations for help seeking and the forms of justice needs they may possess.

Chapter 4: Methodology

Introduction

While there is a large clinical body of knowledge regarding the traumatic after effects of intra-familial CSA, there has been a dearth of research on adult survivors of intra-familial CSA and their patterns of help seeking and resistance. As such, this research aims to establish the unique factors that contribute to survivors' decision making and experiences with the CJS. Intrinsic to these aims are the following questions. How do survivors cope in the aftermath of long term CSA? What role does justice play in survivors' pathways of agency and resistance? And how does the intra-familial nature of offending impact on decision-making processes regarding justice and pathways of resistance?

Several arguments have been proposed in this thesis. Firstly, the unique nature of intra-familial abuse will affect survivors' experiences of help-seeking behaviour, particularly the dynamics of abuse and power specific to the familial institution. Secondly, survivors' desire for empowerment will contribute to their help seeking behaviour. Lastly, that survivors' needs and understanding of justice move beyond the punitive stereotype of the vengeful victim and relate more to broader needs. This study is important because it rectifies the gap in the research on the non-clinical and non-medicalised lived experiences of adult survivors of intra-familial CSA. While many studies examine the adverse affects of CSA on adults throughout the life-course, this thesis focuses on adult survivors as active agents in their lives, who are capable of resisting and recreating lives in spite of their early trauma. The epistemological approach of social constructivism combined with feminist praxis allows us to problematise women's experiences in such a way that we view survivors as active agents who engage with a variety of discourses to make sense of their earlier victimisation. This approach also allows us to examine the various lenses through which intra-familial CSA can be conceptualised.

Research Design

The research design uses a mixed method approach to answer the following three questions:

RQ1 What is the impact of intra-familial child sexual assault on women survivors?
How does this affect decision-making around disclosure?

RQ2 What pathways of resistance have these women survivors taken?

RQ3 What are the needs and visions of survivors of intra-familial CSA of a justice system?

A feminist epistemology frames this study, and the mixed method approach was used in order to access a diverse range of survivors and to gain a deeper understanding of survivors' experiences, as well as increase confidence in the research findings. The voices of adult survivors of intra-familial CSA are critical to this study. As this is an extremely sensitive topic, particular strategies were enlisted that would encourage participation in as safe and respectful manner as possible. This chapter will explore the feminist research framework which shaped the research design, before describing the research methods, ethical considerations, limitations and the eventual sample researched.

A deliberate decision was made to focus solely on female survivors. While male survivors are an under-researched group who would benefit from greater representation in research, they have been excluded from the current research. As a female researcher, I am better able to build rapport with other female survivors. The second consideration follows from feminist research principles. While most survivors suffer from similar consequences of CSA (Herman, 1992), as adults, their experience of help seeking, criminal justice responses and societal responses will be mitigated by their gender, as well as class and ethnicity. Thus to interview both male and female adult survivors may potentially ignore the differences between the way in which males and females are socialised to respond to victimisation.

Feminist research strategies are numerous and wide-ranging, yet the overarching commonality lies with the aspirations of accessing subjugated and marginalized voices. The use of such research strategies also acknowledge(s) that the term objectivity is used to privilege a particular discourse or epistemological claim. Gottfried identifies the consistent theme in feminist research as —the representation of women's experience as the beginning and

often the end of the production of knowledge claims..." (Gottfried in Taylor, 1998:358). This approach has at its central tenet the goal of female empowerment. Lather also argues that ~~feminist~~ researchers see gender as a basic organizing principle which profoundly shapes/mediates the concrete conditions of our lives. Feminism is, among other things, "a form of attention, a lens that brings into focus particular questions." (Fox Keller, 1985: 6)" (Lather, 1988:571).

It has been posited that there are five main features that comprise feminist methodology: attention to gender and gender inequality, experience, reflexivity, participatory methods and action (Taylor, 1998:360). These will be briefly summarized. Bringing attention to gender and gender inequality means choosing to study issues and problems that fall under this umbrella. The notion of experience as a feature of feminist scholarship means asking women themselves how they have made sense of their experiences. In a study of CSA, it means asking women what has happened to them and about their interactions with the legal system. Because a dynamic of CSA is silencing the victim-survivor, one step towards equity is validating the survivors' experiences, using their experiences as the basis for learning. The notion of ~~reflexivity~~ suggests that the researcher's subjective experience influences both the ~~production~~ and interpretation of research" (Taylor, 1998:368). As Kreiger suggests, ~~arguments~~ are always based to a certain extent on our own experiences" (Kreiger in Taylor, 1998:368).

Ultimately, it is impossible for a researcher to eschew themselves of their social and personal context. This facet of the feminist research strategy was the most challenging, as ~~reflexivity~~ requires researchers to come from behind the protective barriers of objectivity and invite others to join with us in our learning." (Etherington, 2007:599) My experience as a survivor and as an active participant in community awareness campaigns must be acknowledged to avoid subjective imposition of my experience on participants, as experiences of sexual abuse and the individual's reaction to the abuse are diverse and multitudinous. Acknowledging my occupation of multiple identities is also essential for reflexivity. I am of Asian and European extraction but acculturated into mainstream Australian culture, am middle class and a highly educated young woman. Because I share with my participants the experience which is the focus of my research, I was cautious to avoid falling into the trap of believing that there was equality between myself and the participants, a dangerous belief as I occupy a number of other, potentially privileged positions.

Another key element of feminist research is involvement of the participants in the research process itself, so as to break down the hierarchical structure that the researcher and participant dynamic often create. This also involved giving participants a sense of agency by allowing them to interpret and analyse their own problems, a strategy advocated by other feminist researchers (Aker, Barry and Eselveld, 1983; Bacchi, 2005). It also entailed allowing the participant to partially decide the areas of her experience she would like to discuss and focus upon, as advocated by Aker et al (1983). For example, during the interview process, some survivors decided that they wanted to spend more time speaking about resistance than justice, or vice versa. Participation then became about a balance of sharing control over the interview agenda. In addition, the component of participation was also achieved by inviting survivors to seminar presentations to view the findings as well as keeping in touch with survivors after the interview to include additional thoughts and insights that may have been generated as a result of the interview.

At the heart of feminist research is a commitment to activism, a desire to reduce gender inequality, and a commitment to emancipation (Acker et al, 1983). The desired emancipation, however, extends beyond women, to the emancipation of children from exploitation and objectification. This thesis will provide additional knowledge about the distinct experiences of adult survivors of intra-familial child sexual assault. Findings will be disseminated to the participants and to relevant stakeholder bodies. It is anticipated that findings will inform relevant social and criminal justice policy.

Critically engaging feminist research epistemology

Some feminist research and models such as the one posited above, have warranted significant scrutiny from post-structuralist feminists and other researchers due to its reliance on women's experiences as truth. Privileging experience above all else can be dangerous, as Scott suggests, with reference to marginalized groups:

Making visible the experience of a different group exposes the existence of repressive mechanisms, but not their inner workings or logics... For this, we need to attend to the historical processes that through discourse, position subjects and produce their experiences. It is not individuals who have experience, but subjects who are

constituted through experience. Experience...becomes that which we seek to explain (Scott, 1991:772-3).

From this, it can be argued that experience can be used as a first step in analysis, but not the final step. Rather than subsume experience with discursive relativism, experience can be a catalyst for further analyses of the discursive processes that construct subjects. This enables survivors to be given a voice, and avoids the researcher-participant power dynamic which can parallel the invalidation survivors feel in their lives. Perpetrators often use invalidation as a strategy to maintain power over both the survivor and her conception of reality (Salter, 2010). As a researcher, one must not replicate this power differential relativising women's experiences to such an extent that their lived experiences of violence, terror and degradation are silenced. Rather, it involves recognizing that such lived experiences can be contextualized within broader political and social processes that help survivors construct their experiences according to various discourses surrounding child sexual assault.

Mason and Stubbs (2012) also suggest that due to some feminist work that has focused predominately on the victimization of women, there is often the unintended effect of denying survivors' capacity for agency and resistance. This is a particularly relevant concern, given that the research participants of this study are adult survivors of child sexual assault, who have acquired a range of tools and strategies to cope with their early experiences. The theory of resistance discussed in the previous chapter is essential for viewing survivors from this more nuanced perspective, and underpins the rationale of the second research question. Notwithstanding, one must also take care to not descend into 'idealization of the victim' (Mason and Stubbs, 2012:492), creating a bifurcated analysis where survivors who have actively resisted their victimization are portrayed in a more favourable manner.

Feminist methodology and social constructivism

A solution to the possible pitfalls of some feminist approaches to research is to adopt a feminist approach that incorporates social constructivist sympathies within the research design and data analyses phases. *Social Constructivism* is an approach where it is argued that human beings construct meaning as they engage and interact in the world. This process of meaning creation is contingent on the social and historical context in which the participants

are living (Creswell, 2003:7). In addition, constructivism has the potential to facilitate or foster a sense of self awareness and critical examination of the participants' own circumstances, thus having the potential to create a sense of self empowerment (Kezar, 2003:395).

It is possible to interpret later feminist developments such as post-structural feminism as compatible with social constructivism. For instance, the tendency to deconstruct the "binary oppositions" which endow women with a prima facie victim status, and conversely, men with prima facie offender status, traditionally located in standpoint feminism, a strand of feminism which locates knowledge purely in the truth of women's experiences (Mason and Stubbs, 2012). Thus in relation to the current research project, the feminist principles of experience, participation, reflexivity and action will be embodied in the research design.

Research Design

Observing the tenets of feminist research, the methods of data collection were designed to give voice to the multiplicity of survivors' experiences as well as generate sufficient data to analyse discursive constructions of subjectivity, drawing upon post-structural feminism and constructivism. Three methods of inquiry were used: the first was a questionnaire, designed to provide a broad overview of survivors' experiences of disclosure and the CJS, as well as recruit adult-survivors in a sensitive manner to engage in longer in-depth narrative interviewing. The second was in-depth narrative interviewing of adult survivors, designed to gather survivors' detailed experiences of their experiences of victimisation, the CJS and resistance. Lastly, the third was semi-structured interviews with stakeholders, designed to contextualise survivors' experiences of the CJS within the broader structures of policy making and reform. Together, this mixed method approach had a greater capacity to paint a more detailed picture of the needs of adult survivors of intra-familial CSA than any one method would allow.

Step 1. Sampling and Recruitment for victim-survivors

Sample Population

The sample was drawn from rape crisis centres, women's health centres and community health centres in the Sydney/Illawarra region of New South Wales, as well as the national organization Advocates for Survivors of Child Abuse (ASCA). There are 27 relevant agencies listed in the Sydney/Illawarra region, which spans from the Northern areas of Sydney down to Nowra. This population was chosen due to the ease of access of participants, the heavy concentration of people in this region, and because there were adequate support centres in this area, in case a participant suffered unintended distress from the interviews. The researcher had no affiliation and thus no conflict of interest with these organizations. The population was limited to those who had accessed support or advocacy services. This was due to the limitations of doctoral research in terms of funding and maintaining survivor safety. Support services were limited to the metropolitan and coastal areas of NSW, because as a researcher, I had to be able to make contact with the managers of each service and gain permission. This required my physical presence and the development of a working relationship with each agency. Such limitations placed geographical boundaries around the services I could access. To mitigate the geographical limitations, recruitment also took place through ASCA, which allowed survivors from regional/rural areas to be counted in the study.

Recruitment

Participants were recruited by placing advertisements within the agencies listed in Appendix 3 and placing an advertisement in ASCA's national newsletter. Letters were sent to agencies to ask permission for advertisements to be placed within women's health centres. Some agencies were very supportive and agreed to display advertisements in the waiting room and offer a space for the interviews. Other agencies were more reticent, with some agencies feeling ill-equipped to assist with the research process. A couple of agencies in particular did not have regular counsellors employed and therefore did not feel able to

support the research in their centre. Two-thirds of the interview participants were recruited through ASCA, while one third were recruited through the women's health agencies.

A purposive criterion sampling was used in this study in order to recruit participants who were emotionally resilient enough to participate, as well as female survivors who had experience intra-familial abuse. Participants were:

- Over the age of 18
- Female
- Adult survivors of intra-familial child sexual assault
- Not currently experiencing severe psychological distress (based on self report).
- Currently in contact with a support agency

This approach was effective as it provided an effective screening process to ensure survivors had sufficient social and psychological support, and assisted in recruiting a difficult to access population.

Venue of Interview for victim-survivors

For the security of participants and the researcher, the interviews took place in neutral spaces. These included a room booked at the ASCA office in Sydney, or the aforementioned women's health centres. The rooms in which the interviews were conducted were inspected by the researcher to ensure that the rooms were not cramped, threatening or otherwise intimidating for the participant. Participants chose which venue they felt most comfortable attending. Counselling was available post participation through either ASCA or the aforementioned women's health centres, in case the participant needed debriefing or became distressed during the interview.

A relaxed atmosphere was provided to facilitate the participant's concentration and minimize anxiety. Rapport was established through the use of interpersonal communication skills and personal space was also maintained with the researcher sitting at a respectful distance from the participant. In addition, the researcher attended interview training during

her employment at the Australian Bureau of Statistics (2009) to develop appropriate communication and interviewing skills. To prevent participants from providing answers they believed the researcher would like to hear, the researcher assumed an interested but neutral stance in her attitudes towards the idea of justice and the legal system (De Vaus, 1996).

Incentives

Participants were provided with a contact list of agencies that provide counselling and support groups. They were given the opportunity to have their stories heard and be recognized as active agents whose lives are recognized in the public arena. Participants were also financially compensated for travel expenses that they incurred as a result of participating in the study.

Method 1. Questionnaires

The first step of the research was recruitment to complete a questionnaire. Participants were invited to complete a questionnaire via pamphlets placed in women's health agency waiting rooms as well as through an ASCA newsletter advertisement. This initial questionnaire also operated as a screening process which identified potential participants for in-depth interviewing and provided potential interviewees some insight into the topics the narrative interview would cover. The rationale underlying the use of questionnaires is wholly pragmatic. Due to the sensitive nature of this research topic, and its attendant feminist principles, it is essential to create a recruitment strategy that observes survivors' needs for trust and safety. This protects the survivor from undue distress as they are able to 'opt in' for further participation, or choose to forgo interviewing but include information on the questionnaire in written form.

The design of the questionnaire was informed by research on survey design (ABS Internal Survey Design Manual, 1999) that combined both qualitative and quantitative items. Items were developed to answer a number of dimensions within 3 research questions, "experiences of the criminal justice system", "perceptions of justice" and "pathways to resistance." Other questions included "experiences of child sexual assault." The questionnaire

(see Appendix Five) was divided into five sections: selection criteria; general information; experiences with the police; court experience; perceptions of justice and in an optional sensitive section at the back, experiences of abuse such as relationship to the perpetrator, perceived severity, age of onset and duration. The final page is a detached page where participants can opt for interviewing and indicate a preferred contact mode and time.

Pathways to resistance were measured first, operationalised through questions 6a and 6b of Part B which asked survivors how they coped with the experience of intra-familial CSA, using a closed answer checklist, followed by an open ended question, for ease of response. As the dimension of resistance and empowerment was more of a focus in the narrative interviews, only two items in the questionnaire were devoted to this dimension.

Experiences of the criminal justice system were measured through items pertaining to the police reporting process (Part C) and experiences with the court process (Part D). Survivors who had not engaged with the CJS were routed to Part E. Within Part C, experience with the police was measured through selecting satisfaction levels with statement giving, satisfaction with duration of interview, whether the police laid charges and satisfaction with their decision as well as satisfaction with police behaviour throughout the process. Within Part D, court experiences were measured through length of time it took for the matter to be heard in court, length of the trial, outcome of the trial, court procedure, whether expectations were met, treatment by legal stakeholders and court staff, and whether survivors would recommend others undergo the same process.

Perceptions of justice were measured in Part E. Justice was divided into formal legal processes as well as broader conceptions of justice, measured through open ended questions. The first item to be measured was the importance of justice to survivors, followed by an open ended item whereby survivors were asked to define justice. This was followed by formal legal processes, including perceptions of appropriate punishment and trial outcomes, using principles drawn from restorative justice (offender apology, making amends, survivor facing the offender), retributivist principles (proportionality of punishment through prison sentence), rehabilitative principles (rehabilitation programs for prisoners) as well as compensation. This section ended with an open-ended question that asked survivors about their broader justice needs.

Part F was an optional section, as survivors were asked to describe characteristics of their abuse. The dimension “experiences of intra-familial child sexual assault” was measured through items pertaining to duration of abuse, age of onset, time and feelings surrounding disclosure, followed by an open ended question regarding the effects the abuse has had on their lives. An additional item which asked survivors to specify their relationship to the perpetrator was removed as a condition of UNSW Ethics Committee approval of the research.

The questionnaire consists of open and closed questions, with closed response questions consisting of dichotomous variables (yes/no questions), nominal variables and five point likert scales for participant ease of response. Open ended questions have also been included for survivors to include a descriptive response of their experiences. Cognitive interview testing was used to eliminate redundant items, potentially distressing items, complicated question routing, usability of the instrument and excessive respondent burden. To increased validity and reliability, the pilot test also eliminated double barrelled, loaded and leading questions.

A pilot testing phase was conducted to examine the qualitative validity of the research instruments, that is, whether the research instruments measured what they were intended to measure. Cognitive interview testing was conducted to test the questionnaire and narrative interview schedule (see below) as these were the instruments that had the potential to carry large respondent burden and elicit distress from participants.

Method 2. Narrative Interview

Narrative Interviewing

At the end of the questionnaire, those respondents who agreed to participate were contacted via email and then telephone. Participants were given the opportunity to ask questions about the interview and the time and data required of them. Then an interview time and location was organized. Interviews spanned between 1-2 hours in duration, with a break offered in between. The format used was narrative interviewing. These interviews provided data to answer all three research questions.

Narrative interviewing is commensurate with an underlying feminist research methodology is an approach that gives voice to survivors' experiences in a way that does not invalidate or colonise their perspectives. A narrative interview design is focused upon eliciting and inducing narration and retelling one's story (Wengraf, 2001:111). As Maynes contends, personal narratives provide insightful accounts of lived experiences, from the perspective of narrators whose stories are situated in both their lived experiences over time and in particular social, historical and cultural settings, [thus] offering insight into human agency from inside-out..." (Maynes, 2008:16). Narrative interviewing is thus a powerful way in which to elicit the rich detail from a person's life experience.

Narrative interviewing is also intrinsically connected to the social constructivist approach as it based on the premise that people construct their own realities through narration (Marshall, 2006:117). Arguably, stories exist as a "form of knowledge creation" (Etherington, 2007:604) which "reflect history as well as create history" (Kezar, 2003:395). Indeed, an integral characteristic of this approach is the acknowledgement that those who are being interviewed are experts in their own lives. Similarly, the notion that "people who have experienced stigmatization, isolation and oppression have the most potential for analyzing their experiences" is pertinent here (Wahab, 2003:625). Thus, the potential for liberation through self exploration is raised, through the use of narrative interviewing.

In depth interviewing, of which narrative interviewing is a subset, is characteristic of feminist research in its potential to access subjugated voices (Hesse Biber and Leavy, 2006:123). Indeed, it has been asserted that narrative inquiry has "been especially useful in developing feminist and critical theory" (Eisner, 1988 in Marshall). This is interrelated with feminist standpoint research, which places emphasis on views arrived at by studying the particularity of women's experiences (Denzin and Lincoln, 1998). Certainly, here the emphasis is on what has been experienced by the participants, allowing for an emergent voice with minimal intervention from the researcher. Through narratives, researchers are able to gain access to both individual constructions of reality and cultural constructions of reality.

Narrative conveys tacit and unconscious assumptions and norms of the individual ... they are valuable instrumentsbecause they present to the researcher embedded and tacit assumptions, meanings, reasonings and patterns of inaction (Weingraf, 2001:116).

Here, there is the capacity for the participant to be an expert of her own experience and control the flow of information that is disclosed. This is important as much has been written with regards to the inherent power imbalance between researcher and participant. A structured interview endows the researcher with a level of control which can result in an unbalanced power dynamic between the researcher and participant. Similarly, narratives eschew claims to the “universality of experience” (Kezar, 2003:395) allowing the researcher to view these stories as both grounded in contextual history while simultaneously constructing history.

Yet, as discussed earlier in this chapter, caution must be undertaken in sanctifying experience above all else. As Scott (1991) cautions that in examining experience, researchers must also examine the historical processes in which experiences are situated, attention will be given in data analysis to the discursive construction of survivors’ experiences. This will be discussed later in this chapter.

In this study two designs were amalgamated (Riemann et al, 2006, Weingraf, 2001), due to Weingraf’s temporally linear structure and Reiman’s dialectical approach. In Riemann et al’s model, this generally can be divided into three sections, or interviews. The interview is often commenced with the use of a “generative narrative question” (Riemann and Schutz in Flick, 2006:173). The generative narrative question originates from the research question and aims at facilitating the disclosure of the participant’s main narrative. The second section is generally the time for “narrative probing” where more detailed information is elicited. The last section is labeled the “balancing stage”. This is where the participant may also be asked questions to gather their theoretical accounts of what has happened and at clarifying aspects of the narrative (Hermans in Flick, 2006:173). A similar research design is the Dobleare-Schuman-Seidman Narrative Interview Design (Weingraf, 2001:147). This Dobleare-Schuman-Seidman design separates the narrative interview into three main components:

Part 1: Focused Life History

In this interview, the researcher’s role was to put the participant’s experience in context by asking him/her to provide as much information about her in light of the topic. This has been adapted for the current research through phrasing a series of prompts that help survivors conceptualise their lives in terms of how they have dealt with their experiences as

adults, and their process of gaining agency and subjectivity. Questions were open ended and used to generate survivors' narratives. The items in this section aims were designed to answer the first and second research questions.

This part included Question 1 and accompanying probes.

Part 2: The Details of Experience

The aim of the second part was to focus upon key details of the participant's experience in the topic area of study. This examined survivors' experiences of engagement with the criminal justice system and help seeking decisions. Survivors who had not reported their case to the police were simply asked to discuss their decision making process regarding not reporting to the police.

This part included Question 2 and accompanying probes.

Part 3: Reflection on the Meaning

In the third parts, participants are asked to reflect on the meaning of their experiences. Connections are established through "exploring the past to clarify the events that led participants to where they are now, and concrete details of their present experience." (Seidman, 1998:12). This part examined survivors' perceptions of justice and their responses to alternative justice approaches to sexual assault, particularly specialist courts and restorative justice. This part included Question 3 and accompanying probes.

The narrative research design for the purposes of answering the first question of the study drew on both the aforementioned designs: the generative narrative design format and the Dobleare-Schuman-Seidman Narrative Design. Drawing on the first model, generative narrative questions were used to elicit participants' stories. The interview schedule was designed to mirror the questionnaire in content, with the added difference of gaining a richer quality of data from the interviews.

Participants were given a written copy of the generative narrative questions, to refer to while they were speaking. Each section took 15-20 minutes, with a break offered in between each section. See Appendix 4.

Method 3. Semi-structured ‘expert’ interviews – Stakeholders

The third approach in the research process was to also examine the justice and therapeutic needs of adult survivors of intra-familial CSA from the perspective of professionals who work closely with adult survivors themselves, or policy matters related to sexual violence. This data was seen as secondary to the data generated by the participants, but was nonetheless essential in helping to contextualize survivors’ experiences in the broader welfare policy and legislative climate. While this research aims to give voice to survivors’ experiences, it is also vital to analyse survivors’ individual experiences in the context of law and policy initiatives, and from a structural vantage point. In order to access this vantage point, other stakeholders should be interviewed. Using expert interviews then allows us to view survivors’ experiences within a broader context, enhancing claims to truth with broader policy knowledge. See Appendix 5 for a copy of the interview schedule.

Sample

A purposive sample of stakeholders from key organizations was selected. These stakeholders were recruited because of their experience with the law reform process, child sexual assault and restorative justice advocates, and those who work in the area of child sexual assault prosecution. Importantly, some of these stakeholder groups were not mutually exclusive as some participants represented more than one stakeholder group. Those stakeholders in the final sample were self selected according to their availability, willingness to be interviewed and interest in this research project.

Stakeholders were drawn from the following agencies:

- NSW Office of the Director of Public Prosecutions (Sexual Assault Liaison Officer)
- NSW Rape Crisis Centre
- Women’s Legal Centre
- Aboriginal women’s legal centre (Wirringa Baiya)

- Feminist child sexual assault services
- Cedar Cottage services (Diversionary and rehabilitation service for intra-familial sex offenders convicted of offences that carry a prison term of two years or less)
- Sexual assault counsellors

Recruitment

A representative from each stakeholder group was contacted by email, mail and by telephone and invited to participate in this study. The research study was explained and consent sought according to University of New South Wales Human Research Ethics Committee guidelines.

Venue of Interview for stakeholders

The interview took approximately 30 minutes to 1 hour and participants had the option of being interviewed over the phone or in person, to minimise participant burden. Face to face interviews took place at the interviewer's workplace or at a public venue nominated at the participant's request. This again operated to minimize the burden placed on the participant.

Semi-structured interviews are characterized by an open interviewing technique, which is based on the premise that participants' perspectives have the potential to be expressed more freely in an "openly designed interview situation than in a standardized interview." (Flick, 2006:149). The semi standardized interview is a more specific example of the semi structured interview outlined by Scheele and Groeber (1988), is. The semi standardized interview is a way of studying "subjective theories as a special model for studying everyday knowledge" (Flick, 2006:155). The notion of "subjective theory" refers to the belief that participants possess detailed knowledge about the topic which is being studied. The knowledge is comprised of explicit and implicit assumptions which can be elicited through open questioning (Flick, 2006:155).

Expert Interviews

The type of semi-structured interview used was the ‘expert interview’ (Meuser and Nagel, 2002). Unlike biographical interviews (or other interviews in that vein) the interviewees are not of interest as individual people in their own right. Rather, they are of interest because they possess expert knowledge or expertise in the researcher’s area of interest (Flick, 2006: 165). Similarly, they are seen as being representative of a particular group of specific experts.

The interview schedule (see Appendix Five) was designed to help answer research questions 1 and 3. Thus questions include the experts’ experience with survivor issues, their perceptions of survivor needs, justice system responses and alternatives to mainstream criminal justice reform. Items on the interview schedule were designed to firstly ascertain the extent and nature of the stakeholders’ experience with survivor issues, in order contextualize their perception of survivor needs and criminal justice systems. A legal stakeholder is likely to have different perceptions to that of a welfare stakeholder, including the capacity to draw on their experiences with multiple cases.

Benefits/Limitations to Semi-Structured Interviewing

The benefits of this approach relate to the structured and logical planning that goes into preparation. This allows for a more focused interview and eliminates extraneous, private information while ensuring in-depth information on the particular topic. Researchers (Meuser and Nigel in Flick, 2006:165) contend “the work which goes into developing an interview guide ensures that researchers do not present themselves as incompetent interlocutors.” An interview guide also prevents the interview from digressing into topics that are irrelevant (2002, p 77). This sample also allows for a cross section of a variety of stakeholders who are leading actors/thinkers in the area of child sexual assault law reform.

Limitations of the research design

Despite the aforementioned merits the mixed method approach adopted in this study there are a number of limitations to this approach. The first relates to narrative interviews.

Maynes suggests that all narratives are subject to the generic and cultural conventions of story telling/narrative construction and consequently, many researchers neglect to examine these conventions through this lens (Maynes, 2008:71). The implication of this is that regardless of how open a participant is about their experiences, their stories will remain bound by narrative generic conventions, which will influence the type of data collected. Similarly, it is also important to recognize that narratives, particularly oral histories, embody the “learned quality of acts of communication,” specifically that of culture and gender (Maynes, 2008: 31). Thus, women who are traditionally socialized to not express anger or unpleasant emotions may be self censoring in their communication of information. This is manifested through the gendered forms of communication and the way in which women and men are socialized to display different forms of socially acceptable emotions. This impacts on the level of honest disclosure that occurs.

Flick makes the salient point that not all interviewees have the capacity to provide “narrative presentations of their lives” (Flick, 2006). This can be attributed to the personal disposition of the narrator, the sensitive nature of the topic, the cultural background of the participant, or the language limitations of the participant. Conversely, the narrator may have “multiple agendas” in deciding to participate in the narrative interview (Maynes, 2008: 111). The capacity to fabricate or remain silent on certain issues is also present, due to the intimate nature of the method and the sensitive nature of the topic. Issues of social desirability also factor into the consideration, where the participant may feel less inclined to reveal less socially desirable answers and more inclined to “present a self image designed to protect identity” (Weingraf, 2001:117). Similarly, the participant may not feel comfortable with the researcher, due to the researcher’s innate characteristics, and may feel less inclined to divulge accurate information. In this study, some survivors desired to deviate from the interview schedule and felt the need to describe and focus extensively on their experiences of childhood victimisation. As a researcher, I felt compelled to allow a level of diversion, in the spirit of not imposing my own agenda on the narrative process. Consequently, some survivors did not desire to speak extensively about the criminal justice process or their visions of justice, and this is reflected later in the thesis when discussing survivors’ responses to CJS reforms. Nonetheless, the data gathered was valuable, and initiated a process where additional, but relevant themes have been included in the findings. As will be shown later, survivors discussed bystander complicity and the search for agency quite extensively, despite the absence of direct questioning.

The use of the ‘expert’ interview also raises a number of potential concerns. While this is an advantageous way of gathering data, a number of problems could occur (Flick, 2006). Firstly, there is the possibility that the expert is not the expert s/he was assumed to be and is not able to provide accurate information. There is also the possibility that the expert might engage in the interview in the conflicts and personal politics of the field, as opposed to providing the necessary information. Finally, the expert may not separate the roles of expert and private person and may subsequently divulge inappropriate and irrelevant information. It may also be important to ensure that the experts interviewed are representative of their stakeholder organization. (Flick, 2006:165). This was only problematic in relation to the legal stakeholders. While these legal stakeholders were key figures and experts in sexual assault law reform, their initiatives did not necessarily conform with the views of their broader organisation. Subsequently, some data could not be used as extensively in the final research findings, particularly as stakeholder perspectives played a subordinate role to survivor perspectives.

Generalisability

Validity issues have been raised in relation to narrative interview design. Indeed, the issue of generalisability has been raised as to whether “sociological generalizations based on interpretive personal narrative analysis” can be made (Maynes, 2008: 129). However, it can be contended that the richness of the data gathered from narrative analysis somewhat compensates for the inability to adequately generalize about large populations. Case studies have also been criticized for their lack of generalisability. Yet as Bryman (2004) contends, this is not the intention of the case study. The lack of generalisability is mitigated by the mixed method design.

Respondent Burden

This study places what is traditionally known as a large amount of “respondent burden” on the participant. The participant is required to provide information that is potentially upsetting and deeply personal. Also, this is a time consuming process and requires participants to give up at least an hour of their day, for a research project that does not

provide them with substantial material benefits. However, this burden on the participant may be compensated through the ability to break one's silence about the topic and share their experiences which may be empowering and cathartic.

Ethical sensitivity

This was an extremely sensitive and potentially traumatising topic and there was the potential to inadvertently re-traumatise the participant. A number of precautions were taken to avoid psychological harm. As a survivor, I am especially cognizant of not unduly bringing up issues or topics that may be upsetting. It is important to note here that at no point was the participant asked to recount memories, or incidents of abuse as this was not the focus of the study. However, in a few cases, the participant did find it therapeutic or beneficial to make reference to specific instances of childhood abuse, and they were not prevented from discussing these issues.

I have had experience dealing with marginalized members of the community, as well as interviewer training through my work with a government agency, and thus I attempted to demonstrate a level of sensitivity that assisted in treating the participants with dignity and respect.

The day prior to the interview, participants were contacted to ensure that participants are in a stable psychological state to be interviewed. Participants were informed that they could terminate the interview at any time. They were provided with a list of community funded counselling services should the interview trigger personal issues of distress, and had access to counselling through the health centre or the ASCA counselling helpline. The researcher also performed follow up phone calls/emails to ensure that the participant has not been adversely affected by the interview, and to inform them of the progress of the study.

Researcher Debriefing

The researcher scheduled the interviews so as to prevent emotional fatigue from the content of the interview. The researcher also drew upon her own personal support network

when distressed by the content of the interviews. A research journal was kept throughout the process, to process my emotional reactions generated by the interviews.

Data collection

Questionnaires were self completed and then mailed back to the researcher. Data was coded using Microsoft Excel and SPSS. Interviews were recorded by a tape recorder, and later transcribed word for word after the interview. This device was used instead of “on the spot” transcribing of notes, so that the participant’s narrative was not interfered with in the interview process. Notes were written during the interview to assist with later questions that may arise, but the use of notes was peripheral during the interview. While transcribing, Wengraf states that it is important to document the flood of thoughts and impressions which often emerge from listening to an audio-tape for the first time (Wengraf, 2001:209). The transcripts were recorded verbatim, on Microsoft Word. Additional thoughts and impressions were also recorded¹⁵.

Coding and Analysis

Narrative Interviews

Brude (1984) in Flick (2006:331) argues that narrative analysis is the “reconstruction of life constructions.” Essentially this means that narratives are comprised of both subjective and social constructions. Thus, in addition to examining the factual information in the text it is also important to examine the constructive processes at play. This is not to suggest that the researcher believes that participants deliberately fabricate their experiences. Rather, participants construct and retell their events through their own perceptual lens. Again, Scott’s (1991) work highlights the way in which experience as well as discursive and historical context of one’s experiences can be analysed.

¹⁵ The data has been stored on the researcher’s private computer and private drives where it can only be accessed by the researcher. All data has been stored according to the University of New South Wales Human Research Ethics Committee guidelines.

There is limited consensus to what narrative analysis entails, as there are numerous and varying approaches (Bryman, 2004:412). The approach to be used in this instance is that of both a thematic and structural analysis of each narrative, examining not merely what is said but how the text is constructed by the participant. As Coffey and Atkinson (1996) argue, ~~a~~ narrative analysis [should] then entail a seeking out of the forms and function of narrative” (Bryman, 2004:413).

In this study, the thematic analysis of the narrative enlisted Rosenthal’s notion of thematic field analysis’ (Rosenthal, 1993:61) which involved ~~re~~constructing the subject’s system of knowledge, their interpretations of their lives and their classifications of experiences into thematic fields. [The] aim is to reconstruct the interactional significance of the subject’s actions [and] the underlying structure of the subject’s interpretations.” The emergent themes from each narrative were compared and contrasted, in addition to deconstructing the structural forms and discourses within the narrative.

In keeping with the post-structural feminist affinity expressed earlier in this chapter a post-structural feminist interpretive style was adopted. Lather (in Denzin and Lincoln, 1994) contends that a feminist interpretive approach undermines ~~narrative realism~~” as there is ~~now~~ uncertainty about what constitutes an adequate depiction of reality” (p 91). Denzin and Lincoln interpret this to mean that the social text is essentially a stage, a site in which power and knowledge are fought over and contested. Thus alternative and subversive means by which to authorise’ and present’ texts have been examined. This means that in analysis and discussion, survivors’ accounts will be examined according to discourse and subjectivity, with language viewed as a mechanism that reveals discursive and ideological positioning, rather than a priori truth. For example, when examining survivors’ accounts of resistance and agency, survivors’ narrative structure and discourse will be examined, that is, how survivors describe their story will be intertwined with what they describe. Thus when transcripts were examined and re-examined, emergent themes as well as the discursive construction of such themes were analysed, and formed the basis of the major themes and sub-themes discussed in response to each of the three questions in Chapters 5, 6 and 7 respectively. A social constructivist approach underpinned this analysis, which recognised the way in which discourse and disciplinary knowledge informed survivors’ reflections of their experiences. This was also addressed in the data analysis section.

Questionnaires

Closed ended questions were entered into SPSS Version 19 and Microsoft Word 2007, and coded to produce descriptive statistics on reporting rates, disclosure patterns and characteristics of early victimisation. Following this, open ended questions were coded using the aforementioned model of thematic field analysis and have been discussed in conjunction with the themes that emerged from the narrative interviews.

Stakeholder Interviews:

Stakeholder interviews were analysed using a similar mode of thematic field analysis. As it was important to gather stakeholders' opinions on justice reforms, with passing acknowledgement of the disciplinary fields that informed their knowledge (Foucault, 1978), thematic field analysis was utilised. This involved examining individual stakeholder transcripts where each transcript was examined a number of times for emerging themes and patterns of discourse. Then interviews transcripts were grouped into three stakeholder categories: welfare, advocacy and legal stakeholders, with common themes identified within these stakeholder categories.

Sample Characteristics

Table 1: Overview of Methods

Method	Number
Questionnaires	22
Interviews	14
Stakeholder Groups	9
Stakeholder Interviews	13

Table 1 illustrates the number of people who participated via each method. Of the twenty five women who expressed interest in the study, twenty two women completed the questionnaire and returned it. This high completion rate can possibly be attributed to the fact that advertising was strategically placed in areas such as women's health centres and the ASCA newsletter, where women are often committed to healing and advocacy. The questionnaire was also designed using Australian Bureau of Statistics best practice design (due to my employment at the ABS) to maximise completion rates. Fourteen women who completed the questionnaire chose to be interviewed. One participant did not complete the questionnaire but did complete a narrative interview. This participant was a child sexual assault counsellor at one of the centres where recruitment was to take place. Following notification of my study by the centre manager, the participant contacted me and volunteered herself to be interviewed 5 times during the police reporting process. Nine stakeholder groups were selected, with thirteen participants being interviewed. As described in Table 4, in a few stakeholder organizations, more than one participant was present at the interview due to their interest in the research.

Table 2a: Questionnaire Overview: victim survivors

Age Group	Number
18-25	2
26-35	2
36-45	7
46-55	4
56+	7
Total	22

Table 2b: Questionnaire Overview: Number of participants by educational background

Educational Background	Number
Did not finish HS	4
High School	4
Trade cert/diploma	4
University	9
Did not specify	1
Total	22

Table 2c: Number of participants by participation in the Criminal Justice System (both police reporting and court involvement)

Participation in the CJS	Number
Yes	11
No	11

Table 2d: Age of abuse onset

Age of onset	Number
Under 5	10
5-8 years old	6
9-12 years old	4
13-16 years p;d	1
Did not specify	1
Total	22

Table 2e: Duration of Abuse

Duration of abuse	Number
Single Incident	1
Under 12 months	0
1-2 years	0
3-5 years	7
6-8 years	5
9-11 years	2
11+ years	6
Did not specify	1
Total	22

The above tables 2c to 2e illustrate characteristics of participants who completed the questionnaire, including age, educational background, participation in the criminal justice system, age of onset of abuse and duration of abuse.

Of note is the concentrated age range of participants, as shown in Table 2a. Half (11 of 22) of the participants were aged 46 and over, with only 18% (4 of 22) participants aged between 18-25. The heavy concentration of middle aged or older survivors may suggest that the recruitment method (advertisements through women's health centres and the national ASCA newsletter) targeted spaces frequented by older women, or that older survivors may be more willing to speak about their experiences. There was a wide range of educational

background among survivors; 9 out of 22 survivors had completed higher education, 8 survivors had completed high school and/or technical schooling, and 4 had not completed high school.

As demonstrated in Table 2c, 50% of survivors had experiences with the criminal justice system, either through reporting their experiences of CSA to the police alone or reporting their experiences and going to court. Tables 2d and 2e highlight the age of onset and duration of abuse. Sixteen survivors experienced abuse that began before the age of 8 years, with 10 of these having experienced abuse before the age of 5 years old. Eight survivors experienced abuse that occurred for 9 years and longer. These figures demonstrate that within this sample, there is a high concentration of survivors suffering lengthy abuse, limiting the generalisability of this data.

Table 3 describes the characteristics of survivors who chose to be interviewed, and includes their age, state and therefore jurisdiction of origin, ethnicity, education, duration of abuse, their relationship with the perpetrator and their experience with the CJS.

Table 3: Characteristics of adult-survivor interview participants

Pseudonym	Age	State	Reporting state	Ethnicity	Education	Duration	Perpetrator	Experience with CJS
Janet	55+	NSW	NSW	Anglo-Australian	High school	5-9years	Father	Yes
Felicity	55+	NSW	NSW	Anglo-Australian	University	5-9years	Brother	No
Sinead	55+	NSW	NSW	Anglo-Australian	University	5-9years	Brother	No
Sue	46-55	NSW	NSW	Indigenous-Australian	High school	5-9years	Mother	Yes
Linda	36-45	NSW	NSW	Anglo-Australian	University	5-9years	Father	No
Nola	55+	VIC	VIC	Anglo-Australian	High school	5-9 years	Father; Brother	Yes
Irena	55+	NSW	NSW	CALD	High school	10+	Father	Yes
Eva	36-45	VIC	WA	CALD	Technical	5-9years	Brother	No
Diane	55+	NSW	QLD	Anglo-Australian	University	5-9years	Father	No
Mary	55+	NSW	SA	Anglo-Australian	University	10+	Father	Yes
Tanya	36-45	VIC	VIC	Anglo-Australian	Technical	Single Incident	Uncle	No
Jennifer	36-45	ACT	ACT	Anglo-Australian	University	10+	Father	Yes
Prue	46-55	SA	SA	Anglo-Australian	High school	5-9years	Uncle; Brother	Yes
Liz	46-55	NSW	NSW	Anglo-Australian	University	1-4years	Cousin	No
Tessa	36-45	NSW	NSW	CALD	University	10+	Father	Yes

Some salient observations can be made with regard to the characteristics of the participants who chose to be interviewed. Firstly, 6/15 participants were aged over 55, with 4/15 participants aged 46-55, highlighting the heavy concentration (66%) of older survivors. The absence of survivors under 36 must be noted, and is clearly one limitation of this data. The sample also includes a high concentration of university educated participants, with 8/15 survivors having completed tertiary studies. Given that 9 out of 22 survivors who completed the questionnaire had completed tertiary studies, one inference that can be drawn is that survivors with a higher level of education were more willing to participate in the interview process, possibly due to level of ease and awareness of the nature of university research. Survivors who participated in interviews were largely recruited through ASCA (Advocates for Survivors of Child Abuse), the nation-wide advocacy organisation and women's health centres around Sydney. As such, participants originated from a range of locations, including NSW (Sydney and the Blue Mountains), Victoria and country South Australia.

Another key pattern evident from Table 3 is the duration of abuse experienced by these participants. 4 survivors experienced CSA for longer than 10 years, with 9 survivors experiencing between 5 to 9 years of CSA. The most common perpetrators were fathers (8 out of 15), followed by brothers (5 out of 15). Two survivors experienced abuse from more than one perpetrator, while one survivor experienced abuse from her mother¹⁶. This data indicates that most of the survivors who chose to be interviewed had experienced long term CSA at the hands of close family members. Subsequently, this data can be said to be skewed towards representing survivors whose experiences of CSA are at the severe end of the sexual abuse spectrum, based on the duration of abuse and relationship with perpetrator.

¹⁶ While ethics approval precluded asking survivors of their relationship to the perpetrator, all survivors volunteered this information in the course of their narratives, referring without prompting to the perpetrator's identity while discussing their experiences.

Table 4: Stakeholder participants

Stakeholder		
Group	Centre	Number
Advocacy	NSW Rape Crisis	1
Advocacy	ASCA	1
Welfare	Cedar Cottage	1
	Child Sexual Assault	
Welfare	officer	1
Welfare	Sexual Assault Counsellors	2
Welfare	CSA Centre	1
Legal	DPP Sexual Assault Liaison	2
	Aboriginal women's legal	
Legal	service	3
	NSW Women's Legal	
Legal	Centre	1

Stakeholder groups were categorised into advocacy, welfare and legal groups. Advocacy groups were characterised by their public remit to advance awareness of the needs of survivors. Although the NSW Rape Crisis Centre offers counselling, representatives from this service were interviewing in terms of their advocacy role. Welfare stakeholders were characterised by their counselling and health services offered to survivors, and in one case, perpetrators. Lastly, legal stakeholders were characterised by both their role as solicitors/lawyers and their interest and advocacy of sexual assault survivors. Two participants from the NSW DPP (Director of Public Prosecutions) participated in a group interview, with three participants from an Aboriginal Women's Legal Service participated in a group interview, with participants taking turns to answer questions. Of note is also the fact that two women who participated in the survivor interviews were also sexual assault counsellors, and they participated in an additional interview with regards to their stakeholder status.

Conclusion

The mixed methods approach used in this thesis is reflected in the subsequent chapters. Chapter Five addresses Research Question One: *What is the impact of intra-familial child sexual assault on women survivors? How does this affect decision-making around disclosure?* using data from survivor narratives and questionnaires. The mode of analysis used was largely thematic analysis, as the aim was to explore survivors' experiences of victimisation and help-seeking. Chapter Six addresses Research Question Two: *What pathways of resistance have these women survivors taken?* and uses data from survivor narratives and questionnaires. This chapter examines the way in which survivors conceptualised resistance, thus utilises both thematic and discursive analysis. The final data analysis chapter is Chapter Seven, which answers Research Question Three: *What are the needs and visions of survivors of intra-familial CSA of a justice system?* and utilises data from all the mixed-methods-narratives, questionnaire responses and stakeholder interviews, and utilises thematic analysis.

Chapter 5: Disclosure and Denial

Introduction

Much of the sociological research on intra-familial child sexual assault has concentrated on contextualising child sexual assault (CSA) within the framework of gendered violence. Certainly, it has long been elucidated that intra-familial child sexual assault is largely a consequence of gendered enactment of power (Herman, 1977; Herman and Hirshman, 1981; Ward 1984; Driver, 1989; LaFontaine, 1990; Armstrong, 1994). Others extend this argument to suggest that it is a manifestation of the performance of hyperbolised forms of hegemonic masculinity (Dominelli, 2001; Collier, 1995; Cossins, 2000; Connell and Messerschmidt, 2005). This aforementioned feminist framework is the foundation upon which this analysis in this thesis is built. However, this chapter extends this feminist analysis by examining the micro-analytic operation of power which perpetuates long term sexual assault. This is achieved by drawing on post-structural analyses (Weedon, 1987), which invariably examine the use of language to construct power relations. Cohen's denial strategies were adapted from Biderman's coercion tactics (1956), and bystander research conducted by Skykes and Matza (1957) and Darley and Latane (1969). These strategies will be utilised to explore the techniques used by perpetrators to maintain power, and by bystanders to maintain secrecy surrounding the abuse. It is thus my contention that in order to understand survivors' disclosure patterns, we must first understand the institutional operation of power within which CSA is embedded and manifested discursively by both perpetrator and complicit bystander.

This chapter explores factors that shape survivors' capacity and choices about disclosure and official reporting to the CJS. Intrinsic to this is an exploration of the factors that both contribute to silencing and denial, and prevent survivors' attempts at early disclosure. From this, the chapter will explore the nexus between patterns of initial disclosure and the decision-making process that has led survivors to report historical intra-familial CSA, sometimes twenty or thirty years after its cessation. This will be followed by an examination of the criminal justice system's response to historical survivors of CSA.

Disclosure

A majority of the survivors interviewed stated that at the time of the abuse, significant adults in their lives were aware that they were suffering or had suffered intra-familial CSA. Ten out of fifteen¹⁷ survivors stated that, as children, a family member and/or significant adult such as teacher, priest or doctor had become aware of the fact that they were being abused. “Awareness” was mostly facilitated through direct disclosure, as reported by Jennifer, Diane, Tanya, Irena, Janet, Felicity and Sinead. It was also facilitated through non-offending parents who accidentally witnessed the abuse, as in the cases of Nola and Eva. In Mary’s case, medical staff became aware of the abuse after they treated her for a venereal disease in early childhood. Sue and Pam also stated that neighbours had been aware that they and their siblings were suffering from ongoing CSA. Out of the survivors who disclosed as children, only two survivors disclosed to adults who notified official agencies such as the police or statutory welfare bodies, such as Community Services. These survivors were Irena, whose mother reported the abuse to the police, and Janet, who was removed from her home by the statutory welfare body, known now in New South Wales as Community Services. The fact that only two cases were actually reported to official agencies reflects other research findings (Lyon, 2011; Lyon et al, 2011) on intra-familial CSA disclosure patterns.

Reasons for disclosure

There have been few prior studies that have addressed official disclosure patterns amongst adult survivors of intra-familial CSA. As adults, Jennifer, Pam, Mary, Tessa and Sue made official disclosures to the police, while Nola made an official disclosure in her late adolescence. Out of the aforementioned six survivors, only one survivor, Tessa, had not disclosed during childhood. Pam and Mary, both from South Australia, were motivated to disclose to the police after the Statute of Limitations were lifted, leading to/allowing legislative changes in 2004. Both felt that the state’s willingness to recognise historical CSA would enable them to gain official validation from a social authority: the police.

¹⁷ Two survivors, Sinead and Linda were interviewed as both survivors and welfare stakeholders. They were given extended interview questions combining both interview schedules.

For similar reasons, Jennifer and Tessa were motivated to disclose the abuse to the police in order to gain official recognition of the abuse they had suffered, and in turn to prove to their families that they had been telling the truth about the abuse. In a sense, they viewed the CJS as a proxy institution that could provide validation and perpetrator accountability that their families were unwilling to provide.

If it's not your problem, and it's mine, then I'm doing what I need to do. If you've just made it your problem, then maybe you would have been involved and I wouldn't have needed to go to the police, you know because I truly have some family (Tessa, Interview 2/4).¹⁸

I think... the very end catalyst was my family's reaction when I disclosed and I think that was the final straw on the camel so to speak where I thought no if you're not going to believe me then I'm going to go through this process and this process is going to reveal something to you (Jennifer).

As an adolescent, Nola reported the abuse to the police to “get [her] mother off her back”; her mother wanted her to return to the family home, where she had been abused by both her brother and father for eight years.

She knew about the abuse, I didn't realise that she knew-but she didn't want that. She wanted her life but me in place. And to get her off my back I did my lolly and went to the police and made a complaint about incest. And they questioned them well I presume they did-they said they couldn't do anything because they wouldn't believe the uncorroborated evidence of a female witness (Nola).

Protection from the perpetrator was also a motivating factor for Sue, who reported her own daughter's abuse to the police. Sue desired validation from the CJS, to protect both her daughter and other children from the perpetrator, and to see the perpetrator held accountable for his actions. Thus, common motivations for official disclosure included validation from an external authority, protection from the perpetrator's potential actions in the future, that is, harm minimisation and perpetrator accountability. These motivations will be explored in greater detail in the latter half of this chapter.

¹⁸ Tessa volunteered to be interviewed four times over a six month period to capture her reactions throughout the police reporting and investigation period.

Survivors discussed the importance of additional strengths they possessed, which aided them in the reporting process.

And once I suppose, the motivation of my relationship helped because I wasn't alone, and I could feel the support network I'd never had before and realised what actual support was. The illusion of family and the illusion of support (Tessa, Interview 1/4).

So I walked away and that was huge ...by then I had the strength to do it. I was very lucky I had a very supportive husband and he's been great (Pam).

For Tessa and Pam, this involved establishing safe relationships external to the family, a factor commensurate with Herman's (1997) assertion that healing can only take place in the context of safe relationships, whether they are of a therapeutic, intimate, or platonic, mutually supportive nature.

Reasons for non-disclosure

Clearly, a greater proportion of survivors did not officially disclose to the police. A number of intersecting factors were raised. These included perceptions that the criminal justice system would be re-traumatising and that their memories of the abuse were too non linear/fragmented¹⁹ to withstand the rigours of cross-examination.

I can't do the court stuff, because I don't have dates I just know it happened between the age of 8 and 14...They'll take a statement from you but nothing's going to happen so why distress myself doing a statement? (Felicity)

I guess primarily because it's so long after the event. I thought that I was able to deal with it. And that thing with time and all your memories and whatever, to the point where I couldn't recall a major incident happening... So I told myself if I'm going to put myself through the justice system, how am I going to stand up? Because one, I don't want to remember things and I don't think it's all that helpful. And two I clearly couldn't remember such a major incident where my sister had witnessed and other people had witnessed and they actually told me. And it wasn't until I was told that I

¹⁹ The literature on historical CSA memories also suggests that memories can be encoded in such a way that defies the linearity demanded by evidentiary law (Terr, 1991; Goodman et al, 2003).

started getting flashbacks of that incident. So I believe the time factor-the time factor which has affected memories where I had slotted things in. Through the justice system there's facts and you see those shows where you get grilled and I'd rather not go there (Eva).

The primary reason for not proceeding was my own self protection. I did not want to jeopardise my mental health with police investigations (Mary).

Um...I didn't choose to um...seek justice within the justice system, for a number of reasons. So I didn't go down that path. That was for my own survival [...] (Linda).

Other factors that prevented disclosure included fear of family or perpetrator reprisals, and fear that disclosure may adversely affect their family's health or reputation. Below, Tanya described the fear she had of her perpetrator, even as an adult.

And it was so terrifying to confront my uncle even in that way it wasn't even face to face or by the telephone, it was just by letter-that I felt like I probably wasn't strong enough to go through the court system even though I would have liked more justice(Tanya).

Linda and Felicity feared that disclosure may eventuate in their elderly parent's deaths.

I didn't feel that it was possible for me. Um, just in terms of...well I could have gone down that path. Um, when I spoke out about my sexual abuse, um-no one in my family really believed me. And when I did disclose the sexual abuse from my father, he collapsed and went to hospital...and I guess probably my parents' age is a factor in it. Like they're both, you know sort of...round about 80. Um, you know I have great fears that you know to pursue it further would mean maybe one of their deaths [...](Linda).

My sister and I, we did talk about making statements against my brother because we were also worried about his children and there were other-were overseas students staying with them and it just got...if my parents were dead I might. Look I don't want to hurt them [...] (Felicity).

It is also important to note that health concerns were not the only familial factor that affected non-reporting. A number of survivors expressed concern about the impact reporting would have on their immediate and extended families.

I don't. When I knew that was an option in older life, I didn't do it because of the family. It's not just my life. It's a bit ambivalent, but once you have it out there in the public domain that your father's a criminal and the effect that has, and the effect it has on people's lives and careers and the perceptions of who they are, it's somehow a little scary. And I know just from the family modus operandi that they wouldn't have wanted it. So no I never did. I thought about it at one stage but I thought it through and probably thought that it would be too hard. Too hard (Diane).

I also had the guilt of initiating that and what that could mean for the rest of the family-my cousins, my aunties and I felt like that would be my fault if they had to go through that and see their father go to prison.(Tanya).

My decision could potentially destroy whatever 'family' I had; to admit it was to admit I was not loved [...] (Questionnaire response).

I can't report it to the police because I have not told any of my family about it and I am worried about the consequences of them knowing (Questionnaire response).

These excerpts raise questions about the barriers created by the institution of the family, particularly about familial loyalties where the wellbeing of the family superseded the survivor's wellbeing. Many survivors felt responsible for their family's "intactness", and that their family's continued intactness superseded their own needs for disclosure. As the responsibility for the family's wellbeing is often displaced onto the child by the perpetrator through their use of grooming strategies, it is therefore important to examine the context in which intra-familial CSA is perpetrated and perpetuated.

Only by examining both perpetrator grooming and bystander complicity can we have a better understanding of the barriers survivors faced. Research has long established the complex strategies that the perpetrator enlists in order to groom a child and maintain their continued silence (McAlinden, 2005; Salter, 2003). In situations of intra-familial child sexual abuse, an abusive relationship is typically established and maintained over an extended period of time. To sustain this relationship a number of preconditions must be satisfied: the child must remain silent about the abuse; should the child disclose the abuse, the child must be disbelieved; or should the child be believed, the informed bystander must not take action to either stop the abuse or enlist the assistance of criminal justice authorities. As Ann Salter (1995; 2003) has shown through her research with sexual assault perpetrators, there is a

considerable degree of planning and preparation required, or ~~grooming~~” of both the child and surrounding family members, in order to sustain the abusive relationship. While this research is invaluable, this chapter will build on her work to also examine the way the institution of the family shapes grooming practices.

I propose that the family be conceptualised as an institution that operates on the basis of discursive techniques and unequal power relations through the use of coercion and compliance. Previous studies have tried to ascertain the causes of intra-familial CSA, exploring models of pedophilia in the clinical literature, as well as models of hegemonic masculinity (Cossins, 2000) and patriarchal privilege (Herman and Hirschman, 1977; Driver, 1990). While these studies have been useful in identifying who is responsible for the abuse, such studies do not adequately explain how abuse is perpetuated, nor do they explain how long-term abuse is perpetuated for many years. In order to examine these factors, an analysis such as that utilised by Bell (1993)²⁰ is important. Bell’s (1993) use of Foucault’s concept/notion of governmentality as a tool to explore intra-familial CSA refocuses our attention on the discursive strategies perpetrators use. This allows us to examine ~~how~~” abuse is perpetrated. Thus, if we examine intra-familial CSA through the lens of family as an institution, we are able to avoid the tendency to romanticise the family and draw parallels between abuse of power within macro-scale institutions and the institution of the family.

I have thus chosen to adopt the typologies elucidated by Bidderman (1956) and Cohen (2001) who draws upon Sykes and Matza (1957) and Darley and Latane’s (1968) social psychology models. While these typologies have been used to describe the perpetration of atrocities on a larger scale, such as in prisoner of war camps, or state-based atrocities, their application to conceptualising CSA dynamics should not be understated. Often abuse within the family becomes obscured due to discourses that mythologise and idealise the family as a benevolent institution. While feminists have attempted to problematise the family as a social institution, other critical interrogation of the family as a social institution, replete with conflicting loyalties, hierarchical and often capricious use of power and discursive rules, has been absent. Subsequently, in order to theorise disclosure, it is important to examine, firstly, the context in which abuse occurs, secondly, the strategies that are used to maintain silence and secrecy, as well as the discursive tactics that are used by both perpetrators and bystanders.

²⁰ Through utilising a Foucauldian governmentality analysis of the micro-strategies of power, Bell (1993) was able to examine the way in which the perpetrator’s use of “disciplinary” strategies inculcated a sense of self-surveillance and internalised shame.

Theorising the context of disclosure

Biderman's (1956) typology: intra-familial CSA as captivity

The nature of prolonged abuse is one factor that contributed to failure to report at the time of the abuse. Previous literature has examined factors linked to the prolonged nature of abuse, such as the Stockholm Syndrome (Jülich 2001) and relationships to the offender that are less likely to eventuate in disclosure, like a parental-child relationship (Hanson et al, 1999). However, it is also important to also examine the strategies of coercion that co-exist in institutional situations which appear more akin to captivity (Herman, 1992).

The narrative interview data illustrates that fourteen out of fifteen historical survivors of intra-familial child sexual abuse experienced chronic, prolonged and repeated abuse. For twelve out of fifteen survivors, abuse was perpetrated by family members living in the same home, thus predisposing them to have regular and unfettered access to the victim-survivor. Herman (1992:377) suggests that prolonged and repeated trauma can “occur only where the victim is in a state of captivity, under the control of the perpetrator”. As such, she likens the relationship between the victim-survivor and perpetrator, to one of being in a state of captivity, where the victim-survivor is unable to escape. While the victim-survivor may not have been physically detained or restrained, by virtue of being a young child and dependent on adult caregivers (in ten out of fifteen cases, this refers to the perpetrator) it is not too extreme to suggest that the dynamics of such a relationship mirror other relationships of captivity (such as prisoners of war or conscience; slavery and imprisonment). Herman contends:

In situations of captivity, the perpetrator becomes the most powerful person in the life of the victim, and the psychology of the victim is shaped over time by the actions and beliefs of the perpetrator. The methods which enable one human being to control another are remarkably consistent [...]. The methods of establishing control over another person are based upon the systematic, repetitive infliction of psychological trauma. These methods are designed to instil terror and helplessness, to destroy the victim's sense of self in relation to others, and to foster pathological attachment to the perpetrator. (Herman, 1992:383)

Many survivors in the interview sample described experiences that reflect the relationship of captivity elucidated by Herman (1992; 1997). Survivors described feelings of terror related to the degree of force and coercion employed by the perpetrator. This is succinctly captured in one survivor's comparison between horror tales and her own life:

Brothers Grimm was my favourite book as a child. Absolutely scary but my life was bloody scary anyway so I mean...Brother's Grimm so what? The reality of my life was far scarier. Brothers Grimm was nothing. (Irena)

My father was brutal and so, you know there's a bit of fear--none of them would admit it. But there's fear within each of us I believe, and some of us have dealt with it better than others so my eldest brother I think is a bit fearful. (Diane)

Herman (1992) also details the psychological reactions to extreme abuse, including complex PTSD,²¹ under which can be observed somatisation, depression, general and phobic anxiety, interpersonal sensitivity, paranoia, hyper-arousal and dissociation. Dissociation as a response to extreme abuse was described by a number of survivors, a finding which reflects previous research (Johnson, Pike and Chard, 2000). Nola described leaving her body and watching it from above while she was being raped by her brother. Mary also described the fragmentation of memories, such that she only uncovered her memories when she was 40 years old, and where she later identified the presence of different identities. This extreme manifestation of dissociation is the development of dissociative identity disorder, where the self "fragments into dissociated identities" (Herman, 1992:386). More common amongst survivors was the process of dissociation of experience from feeling, such that survivors were able to compartmentalise aspects of their lives and achieve a degree of success for example in education or employment, yet not in other aspects of their lives.

Um yeah looking back to me on the carpet runner in the hall, and how I would go to the corner of the walls near the ceiling-I was the rag body I wasn't in my body (Nola).

You know I disassociated a lot but I didn't take on another personality. I don't know where I went. To everybody else I was there but I wasn't(Pam).

The aforementioned psychological reactions were also captured in the questionnaire data, in response to questions regarding the perceived consequences of the abuse.

I've tried suiciding countless times, drug overdoses--played around with dangerous drugs, drunk myself stupid trying to think that if I drank enough I'd die (Sue).

The violence of my childhood has shaped my life (Questionnaire response).

Where do I start...it has affected EVERY detail of my life! It affects how I perceive the world. How I interact with other people, especially those close to me. I ran away from home when I was 15 and was raped twice because I was basically at the mercy of anyone I met. I am very hyper-aware. I struggle trusting those I love and this has a direct impact on the quality of these relationships (Questionnaire response).

I could not function as a normal —human being". I went completely numb for many, many years. I had great difficulty learning, mixing with people and always felt I never belonged. I suffered from depression and many times tried to take my own life (Questionnaire response).

Two survivors also drew analogies between living with sexual abuse and living in a war zone:

I say the impact is like we're put in a warzone. Adult men--well they're still boys are sent to war and they have huge problems dealing with the whole war stuff but they've got people they can talk to, they're with other people. This is happening to children who have no one to talk to and can't even verbalise because they don't even know what's happening. And don't think they're going to forget it. Children remember everything. Even though they block it out they remember it. So it's worse than any warzone because they've got no one (Pam).

I'm a war widow and I get a war widow's pension, because I happened to be married to a Vietnam veteran...I think adult survivors should have that (Felicity).

Analogies which compare chronic intra-familial CSA to life in a warzone allow us to make use of typologies used to describe totalitarian environments. Herman (1992:383) used Biderman's (1956) typology of "Communist coercive methods for eliciting individual compliance" developed to describe the way in which prisoners of war acquiesce to the desires of their captors. These methods were observed in the data presented by survivors in this

study. The following table is my own adaptation of Biderman's compliance chart, which has previously been adapted to describe the experiences of domestic violence survivors. Column three was derived through thematic analysis, identifying accounts in the interview narratives that corresponded with the methods listed in the first two columns. The resulting typology will be used to examine survivors' experiences of intra-familial abuse, as well as their responses to the abuse.

Table 1. Adapted Biderman Compliance Chart, based on current data

General Method	Effects	Adaptation for long term sexual abuse
1. Isolation	Deprives victim of all social support Makes victim dependent on Interrogator	For survivors, this means isolating the victim from other family members and outside support. The victim is often dependent on offender due to their age. Seven survivors spoke explicitly about being isolated from those outside their family, while being ostracised within their family.
2. Monopolisation of perception	Fixes attention upon immediate predicament, fosters introspection, eliminates stimuli competing with those controlled by captor. Frustrates all actions not consistent with compliance	–Monopolisation of perception” is paralleled with the strategies of normalisation and the Foucauldian hierarchical gaze. Survivors felt they were always being watched. Almost all survivors in the study internalised self blame.
3. Induced debilitation; exhaustion	Weakens mental and physical ability to resist	During the abuse, survivors were sleep deprived, due to constant hypervigilance, were beaten for being non-compliant, were subject to hospitalisations (one survivor) and intrusive procedures such as abortions as a result of the abuse (two survivors).
4. Threats	Cultivates anxiety and despair	Threats such as attempted murder, the threat of being sent away if the survivor disclosed, or the threat of being blamed. Four survivors discussed the offender's use of explicitly violent threats to elicit their compliance.

5. Occasional Indulgences	Provides positive motivation for compliance, Hinders adjustment to deprivation	Not discussed entirely in the research, but corresponds to literature on grooming. Buying survivors presents or making them feel grateful for ordinary parental gestures to maintain silence. Two survivors expressly discussed the use of indulgences as a particular strategy.
6. Demonstrating ‘_omnipotence’ and ‘_omniscience’	Suggests futility of resistance	Surveillance, voyeurism and the subjective feeling that the abuse was inevitable. Almost all survivors discussed this to varying degrees.
7. Degradation	Makes costs of resistance appear more damaging to self-esteem than capitulation. Reduces prisoner to “ an animal level” concerns	Degrading acts after sexual abuse--smearing semen on victim, stripping victim naked and forcing her to walk home. Three survivors spoke about explicit acts of degradation and inhuman acts perpetrated against them.
8. Enforcing trivial demands	Develops Habit of Compliance.	Trivial rules that survivors had to adhere to, often under the guise of parental discipline. A majority of survivors (who were abused by their fathers) discussed the enforcement of arbitrary discipline for trivial acts.

1. Isolation:

Many interview survivors described being isolated, either by their perpetrator, or by living within a family system that isolated itself from the rest of the community. Survivors commonly described being isolated on both a physical and psychological level so that the perpetrator can exert greater power over his victims. Both Irena and Nola described being removed from school resulting in a situation where the perpetrator had sole power over them.

I was going to TAFE at the time, because my father dragged me out of school...and he was raping me every day because, where I was working was an admin office and he was on the next level so he had ready access to me (Irena).

Isolation was also facilitated through the act of sexual abuse itself, and the taboo surrounding open sexual talk. As a result, some victim-survivors believed that they were the only person experiencing the abuse and that the abuse was result of their intrinsic

worthlessness. This sense of self-blame is discussed extensively in the literature on CSA (Feiring and Cleeland, 2007; Filipas and Ullman, 2006; Barker-Collo, 2001). This is compounded by incorrect knowledge about one's body and adult sexuality.

I thought it was only me. I didn't know that it was one in three women who are assaulted by the time they're eighteen[...] I just didn't have any information. I was totally alone in that torture and in that secret (Tessa, Interview 1/4).

When it's occurring you feel isolated and you feel like you're the only one and all that sort of stuff. I do recall that when I got my periods quite young—we had no sexual ed back in those days! (laughs) And I do remember thinking oh I've got my periods because this is occurring to me and then there was like three other girls I knew in primary school who had it and I looked at them and went oh yeah, they've got a brother, they've got a dad-this is happening to them (Eva).

Survivors' responses indicated a sense of isolation as a bi-product of the abuse. Thus while isolation, in this sense, was not always a deliberate aim of the perpetrator, control of the information available to the survivor, silencing and denial contributed to her sense of isolation. Many survivors felt that they could not speak about the abuse they were suffering, and felt further isolated.

So finding myself in a world that I felt so different from everybody else and not being able to communicate anything--and the hardest part was not being able to articulate it because I didn't know what was--what the hell was going on inside of me (Prue).

Isolation as a strategy of compliance can thus be a deliberate act on the part of the perpetrator, as in the extreme cases of abuse described by Nola and Irena, or it can be a corollary of the discursive grooming strategies perpetrators use, where survivors are compelled to remain silent about the abuse.

2. Monopolisation of perception

The technique of psychological isolation, of “stigmatised separateness”, is interconnected with the “monopolisation of perception”. Through the process of grooming the perpetrator leads the survivor to believe a number of fallacies or patriarchal myths related to the abuse:

that she is responsible for the abuse and responsible for controlling the man's actions; that the abuse is a normal expression of affection between father and daughter.

And you feel guilty because it's your fault, you shouldn't have let that happen (Nola).

I mean, the thing is when someone's telling you they're in love with you there's this gentle stuff and yet the abuse is a violation in the extreme. So there's great confusion (Diane).

Ultimately, Diane above describes the confusion or 'doublethink' where the perpetrator as authority figure or caregiver's perception becomes superimposed over one's own reaction to her experiences, such that the survivor comes to doubt her own experiences. The CSA literature has also discussed the way the perpetrator manages to groom other members of the family (McAlinden, 2005; Salter, 2003) to disbelieve the victim-survivor. This is heightened when the perpetrator is themselves a family member.

But anyway he um, he can't entertain the thought of it at all so he's convinced that our father is a good, loving man and wants me to be friends with him (Mary).

And I certainly –and I think that is a huge dilemma for people who suffer abuse. Because the father has normal relationships with other people within the family and...but they're not normal with you... because the others see the goodness in him and don't see what you suffer then they think you're exaggerating or it's not accurate (Diane).

My sister has been trained from the day I was born to not believe me, so it's no surprise. I've been the ~~over~~ "over-emotional" one-all the little labels (Tessa, Interview 2/4).

In the above excerpts, survivors discussed the way in which non-abused family members are also manipulated by the perpetrators to view the perpetrator as loving and 'normal', and conversely, the survivor as 'overemotional' or 'exaggerating'.

I think it's very, very crazy-making, when you...particularly with CSA, when you have all these other people in your family or you know friends or community saying you know, –You're making this up, it's not true. You're making more out of it than it is (Linda).

Such monopolisation of perception can be, as one survivor described it, ‘crazy-making’, leading the survivor to doubt the reality of her own experience.

3. Induced debilitation; exhaustion

The strategy of “induced debilitation” was often either disguised as parental discipline or a by-product of sexual violence perpetrated upon pre-adolescent or adolescent bodies. Two survivors, Mary and Nola, required direct medical treatment as a result of their sexual abuse, while three survivors--Irena, Sinead and Nola--fell pregnant to their abusers. Irena was forced to give birth to the baby and then give it up for adoption, while Nola had a forced abortion at the age of twelve.

And I had twelve days off school when I was twelve in the middle of the term. I went to a lady’s college and you couldn’t have anyone haemorrhaging at a lady’s college could you and I assume that I had an abortion (Nola).

Such induced debilitation illustrates impunity on the part of perpetrators, and effectively dehumanises and objectifies the victim-survivors.

4. Threats

Some survivors stated that threats were used by perpetrators to instil fear, maintain the survivor’s silence and to ultimately ensure compliance for ongoing abuse. In circumstances where the perpetrator was the father, threats often coincided with physical abuse disguised as corporal punishment.

And dad was pretty scary--we’d be beaten with the buckle end of the belt [...]clipped the nails below the dirt line if we scratched and we looked like a normal family lining up to have our nails cut or whatever, morning in the sunshine--anyone passing would think he was a caring father but he was torturing us (Diane).

Other threats involved threatening to send the victim-survivor away if she disclosed the abuse, or suggesting that the family would disintegrate if the victim-survivor revealed the abuse.

My brother said to me, “Don’t cry or mum will put you in the convent” (Nola).

Other threats included emotional manipulation in the form of the perpetrator’s threats to take their own life, feigned depression or ill-health. Survivors reported that threats were still used after the abuse had ceased to maintain the survivors’ continued silence.

And when I did disclose the sexual abuse from my father, he collapsed [...] (Linda).

So my father’s put on the victim, “I’m going to kill myself,” and that’s what he’s playing with [granddaughter] as well. She goes “well what am I supposed to do?” she goes “I believe you I believe you 100%, —she goes —but the minute I say that to the police, I’m scared that my grandfather’s going to kill himself” (Tessa, Interview 4/4).

In the above excerpts, the perpetrators used threats of self-harm after their offending behaviour had been publically exposed.

5. Occasional Indulgences

Diane describes her father’s occasional indulgences towards her sister, who was also abused, in order to maintain her compliance.

I remember my father offering...my twin sister a bird, because we had an aviary-and he never got involved in these warm, fuzzy experiences. In fact, we rarely had them but I remember him offering her a bird because she was crying hysterically and she was hitting herself (Diane).

Other manifestations of “occasional indulgences” include performing routine caregiving acts under the guise of generosity or altruism. For Nola, this included her father singing her night-time lullabies and bedtime stories.

But all the years I’ve said, “No, my father used to sing me to sleep, he hasn’t touched me” (Nola).

Such occasional indulgences have effects that are commensurate with the strategies that facilitate the Stockholm Syndrome, where perpetrators also attempt to stimulate positive emotions in the victim-survivor (Jülich, 2001). As seen above, the indulgence of her father’s “normal fatherly behaviour” becomes a positive set of memories that were juxtaposed against the reality of his sexual abuse. Survivors have a survival need to see their parents as loving

and benevolent (Barth, 2010), and will focus on the occasional indulgence at the expense of remembering the sexual abuse.

6. Demonstrating ‘omnipotence’, and ‘omniscience’

In this study perpetrators also demonstrated the futility of their victim’s resistance through performances of omnipotence, that is, of being “all-powerful” and ever present. Some perpetrators demonstrated their power over the victim, thus illustrating the fact that CSA is first and foremost, a performance of power (Driver, 1989). Irena describes her father’s actions after he was gaoled for raping her:

I understand that he even had me raped while he was in gaol so he owed someone and he had this bikie gang member pick me up (Irena).

The above excerpt captures Irena’s ultimate objectification as sexual pawn used by her father as a bargaining tool.

I would get into the shower of the morning and it had a shower screen--it had a shower like a cubicle you had (in) those days. And I’d get out of the shower and my brother would be standing there masturbating (Nola).

Nola also described her second perpetrator’s (her brother’s) omnipotence, where he is the ever present voyeur. Her brother occupied the victim’s physical space, and she became the object of his constant sexual surveillance. The use of patriarchal omnipotent to objectify and inhabit the personal spaces of survivors reflects prior feminist research on the occupation of space by patriarchal privilege and hegemonic masculinity (Hearn, 2004).

7. Degradation

One of the most extreme coercion strategies utilised was that of degradation. A few survivors described extreme acts of degradation as intrinsic to the sexual violence they experienced. Below Nola describes her perpetrator’s ritual of “marking” her with his semen, an act of desecration and supreme objectification.

And I'll tell you one instance-I don't talk about it now. But he always withdrew and he put the semen on the right side of my body... then he'd get the handkerchief and he'd smear it, right across my stomach. [...] Um...and... I would scrub, even when I was 60, I would scrub my stomach...ah...it...the dirt that you felt that was there as well. And you can say you feel dirty when you're clean, but this this stayed [...] (Nola).

Intrinsic to degradation is the act of humiliation and shaming. Irena describes being publically shamed by being made to walk home naked after being raped.

Anyway, I had a brand new dress on and he tore it off me and he raped me in the bushes and I had to walk home naked. So I arrived home black and blue and naked (Irena).

In this sense, degradation is the ultimate form of objectification. Irena, stripped of her clothing, is also stripped of her humanity, a process that ensures other basic human rights were also eradicated.

8. Enforcing trivial demands

Some survivors discussed the way in which perpetrators enforced trivial demands as a manifestation of their sexual control over the victim-survivors. Nola described being made to lie on a particular carpet runner, in a particular direction whenever her brother raped her. Such trivial demands, to 'develop habits of compliance' also existed to demonstrate the perpetrator's ultimate power over his victim; by showing that he could control the smallest of details, the perpetrator was able to re-establish his sense of supreme control, and the victim's agency over her body was rendered void.

So I don't know how he explained it to my mother, ok so and then he told her that I wasn't to go anywhere unescorted (Irena).

As described above, other trivial demands involved the petty rules that operated in conjunction with the sexual abuse. For Irena, the trivial demand was instrumental insofar as it maximised the perpetrator's power over his victim.

It is important to note that Biderman's strategies of monopolisation of perception and isolation operate to create cognitive schemas in survivors that perpetuate silencing and denial, thereby reducing the possibility of disclosure. Often ignored is the fact that survivors as children are cognitively developing, and they develop schemas of the world through authority figures such as parents, older siblings, and later school and peers. When such a figure is a perpetrator, the ability to use discursive strategies to shape the child's understanding of what is happening to her, is particularly heightened. Thus the data in this study highlights not simply the strategies used by perpetrators to elicit victim compliant, but the developmental impact such strategies may have on children.

While Biderman's (1956) typology is an effective model when used to examine the experiences of survivors, his model is ultimately limited. It accurately describes the most severe experiences of intra-familial CSA, but falls short in exploring some of the less coercive experiences that arose in this study. In order to rectify this shortcoming, an examination of the discursive strategies used by perpetrators to prevent survivor disclosure will be explored.

Sykes and Matza's discursive techniques of denial (adopted by Stanley Cohen)

This section isolates the discursive techniques of neutralisation (Sykes and Matza in Cohen, 2001:60) used by perpetrators in general, to "neutralise their acts", eschew culpability and create a "shared vocabulary of denial" or "meta-rules". Through these techniques of neutralisation, the facts are refashioned to create a place of "silent witnessing" (Cohen, 2001:75). While Cohen's work has not been used to explicitly deal with intra-familial CSA, his model is effective in exploring the discursive techniques that perpetrators use. Indeed, the survivors in this study discussed the way in which their perpetrators neutralised their abuse through the techniques of denial of responsibility, denial of injury, denial of the victim, condemnation of the condemners and appeal to higher loyalties. The effect of these techniques discouraged disclosure in survivors, and, in the cases where survivors did disclose, make them less believable in the eyes of bystanders.

Denial of Responsibility

In the context of nation-state denial, Cohen contends that “denial of responsibility” is the most pervasive and popularly mobilised rationales for committing atrocities. Utilising Bauman’s notion of “unanchored responsibility,” where “free floating responsibility means in practise, that moral authority as such has been incapacitated without having been openly challenged or denied,” Cohen explores the popular accounts for self-exoneration (Cohen, 2001:88) and in the present study, ‘denial of responsibility’ was seen amongst survivors’ accounts of their perpetrators’ justifications, when confronted by the survivor or other family members. The denial of self-agency was most common, that is, the justification that the perpetrator had no control over his actions. As we will see with other discursive techniques, ‘denial of responsibility’ draws heavily upon psychoanalytic discourses of sexually provocative children enticing their fathers or older male relatives into sexual activity. The excerpt below described Diane’s attempt to hold her father to account. Diane’s father had abused both her and her twin sister for a number of years. When, as an adult, she demanded to know why he had abused them, he responded with:

I don’t know why. I guess because you were just so pretty (Diane).

Such a response dismisses the degree of harm that the perpetrator has caused. In being so dismissive, he is able to deny responsibility as he constructs the abuse to be so minimal that there is nothing for which he is responsible. For other survivors, denial of responsibility was manifested in behaviour rather than through overt denial. Nola, who was sexually abused by both her brother and her father, described such an incident with her father.

Now [father] he came home and asked me did I have my period--and I looked at him and said no, but apparently I was ten days overdue. And he started to cry [...] he said to me now, you’ll be asked questions but don’t say it was me. And I felt sorry for the poor bugger! And I said you don’t need to worry because my brother’s been doing it too. He said, “Well say it was him I can get him off (Nola).

Both Nola and Diane’s descriptions relate to the “naturalised discourse of male sexuality” (Dominelli in Collier, 1995: 246), a discourse which dictates that women and children must be held responsible for the sexual arousal of male relatives (Laing, 1999). This double bind wherein survivors are endowed with all the responsibility, yet possess no power to change their circumstances, places the victim-survivor in an untenable position. This sense of

responsibility for one's victimisation can create an added barrier to disclosure and to seeking external assistance.

Another way that the denial of responsibility is transferred to the child is through allowing the child to feel responsible for any consequences that may transpire if they disclose the abuse. The most common consequence for which they are often made to feel responsible is the 'breakdown of the family' seen through not just Nola's excerpt above, but in others survivors' accounts as well. This variation on the 'denial of responsibility' technique operates with patriarchal discourses which places/forces upon women the sole responsibility of maintaining the family's cohesion (Driver, 1989; Di Leonardo, 1987).

I confronted my abuser. And it caused a really deep rift in the family when I went and did that [...] my father asked why I couldn't ~~let~~ sleeping dogs lie (Tanya).

In such situations, the family is endowed with greater cultural value, transforming from one of many socialising institutions, or, as La Fontaine suggests, ~~to~~ a cluster of moral values that leaves out the reality of inequalities from the picture" (LaFontaine, 1990:187) to an entity replete with privileges akin to a human being.

I feel responsible for the dysfunction in the family because none of them can cope. You've revealed something socially inappropriate, they're not thinking of you, they're thinking of the family. So you become the guilty party. And to some extent as a child you embrace that--there's--here I was again trying to do away with secrecy--I tried very hard. And I think I succeeded in avoiding that continuity of secrecy within the family, but there are costs (Diane).

Thus, the right of a child to bodily integrity and to be free from abuse is weighed up against the preservation of the family, which must be achieved at all costs. Indeed, such a message was communicated to a number of survivors, not just by the perpetrators, but by familial bystanders.

Denial of injury

Survivors' narratives indicated that 'denial of injury' was the most frequent discourse utilised to neutralise the severity of the abuse. This is done through enlisting the myth of ~~to~~ "benign experimentation" (LaFontaine, 1990:270), often reflected through the minimisation

of sibling abuse, though not confined to it (Adler and Schutz, 1995; Nisbet and Rayment McHugh, 2003). Invalidation of survivors' experiences is seen in the following examples:

~~He~~ said, ~~oh~~ no, we were just playing doctors and nurses, which is what he told me to say, if anyone asked what ~~we~~ were doing" rather than what ~~he~~ was doing" (Tanya).

~~My~~ brother actually abused the three girls and other people and it was interesting because my sister-my sister got drunk one night and rang my brother. And he shocked everyone by ringing my mum and dad and confessing to the minor details, which--and now I know but back then I had no idea that's what perpetrators do and it gave him the power straight away and our parents summoned the girls down to see them" (Felicity).

Such minimisation or denial of injury is compounded by the phallocentric myth surrounding child sexual abuse: that it is not ~~real~~ child sexual abuse if it does not entail vaginal-penile intercourse. Feminist research has contended that such a phallocentric emphasis on vaginal-penile intercourse maintains a masculinist interpretation of child sexual assault, consequently obscuring the multiple harms and immediate consequences stemming from child sexual abuse, including objectification, traumatic sexualisation, emotional distress stemming from betrayal, physical pain resulting from other sexual acts, and confusion, fear and shame. For example, Tessa, whose father sexually abused her from the age of three to the age of fifteen, by perpetrating numerous sexual acts upon her, denied he was causing harm because he had not, ~~aken~~ her virginity."

~~He~~ said I wouldn't do that to you, I wouldn't take your virginity away from you. Then nobody would want you" (Tessa, Interview 3/4).

The phrase, ~~then~~ nobody would want you," emphasises the extreme objectification which facilitates denial of injury. Such objectification is common to all situations where there has been a denial of injury. The objectification that occurs through the denial of injury invariably embodies *instrumentality*: which is the use of the child for one's own sexual gratification, *violability*: where the child's bodily integrity can be traversed, *ownership*: where, particularly in Tessa's case, she is viewed as a commodity, whose virginity amplifies her value, and *denial of subjectivity*, where the child's distress and injury are minimised (Nussbaum, 1999: 213).

Denial of the victim

This technique occurs when the perpetrator argues that “injury is not wrong in the circumstances”, insofar as they argue that the victim received “what was coming to them” (Cohen, 2001:61). In this analysis, it is argued that denial of the victim is inherently linked to denial of injury. If what occurred was so minimal as to render it negligible, then there can be no victim. Contradictions also arise when a perpetrator utilises the two techniques in a paradoxical manner, that is, by stating “nothing really happened” and yet states that “she wanted it, and she seduced me” (as in Tessa’s case) in a single defence of his actions. Nola describes a situation, however, where the denial of the victim rhetoric enabled her brother to begin raping her, in retaliation for a childhood game whereupon she damaged one of his toys.

Denial of the victim is a particularly insidious technique, which is also used by bystanders, and it draws on the ideology of familialism, which suggests that violence that occurs within the family is unlikely to affect the victim. The family’s status as a protected entity, whose needs supersede the needs of individual family members, was evident in the cases of Tessa, Felicity, Tanya, Jennifer, Eva, Irena and Nola.

And I said you don’t need to worry because my brother’s been doing it too. He said, “Well say it was him I can get him off”(Nola).

The above quote (used earlier) illustrates the perpetrator’s denial of the harm that he and his son had caused the victim, and the implicit indifference towards her suffering. While the quote was used earlier, it highlights the fact that two denial strategies can be inter-related, and that denial of the victim can be on strategy that facilitates denial of responsibility. After all, if there is no victim, there is nothing for which one should be responsible.

Condemnation of the condemners

Condemnation of the condemners is a strategy also known as deflection or projection. Cohen (2001:61) suggests that this strategy allows the offender to “deflect attention from their own offence to the motives and character of their critics, who are presented as hypocrites or disguised deviants.” This strategy is particularly effective due to the resonance of such deflection with psychoanalytic myth regarding child sexual assault, specifically Freud’s focus on infantile and childhood sexuality where the child seduces the unsuspecting

and blameless father (Driver, 1989:89). Utilising accounts that resonate with psychoanalytic discourse enables perpetrators to blame the child for disclosing the abuse, with accusations that it is the child's fault for the perpetrator going to prison, or the perpetrator leaving the family. In this sense, the child is endowed with the responsibility for the perpetrator's behaviour. This strategy is the corollary of denial of responsibility, whereby responsibility is reattributed to the child.

My twin sister and I were totally ignored by our father in the house. We did not exist. So for eight or so years, and it wasn't a big house--we had to function as though we weren't present, even in his presence. And even in the street in high school...if I saw my father coming towards me on the street and I couldn't dive into a shop or something because I was with friends--I knew he would ignore me, but friends would say, "Oh there's your father," or something and I would go through the artificial greeting thing, of "Oh hi dad," or something and he would just walk past me as if I didn't exist (Diane).

And my dad he accused me of being the devil--and then he'd always used the church--it was quite a religious family (Eva).

In the above excerpt, Diane described a situation where her father stopped speaking to her after she disclosed to her mother that she and her sister had been abused. Diane's case was unique in this sample, in that her mother took active steps to ensure the abuse did not reoccur. However, Diane and her sister were implicitly condemned for the next 8 years, throughout which they were treated as invisible. Eva also discussed the derogatory and condemnatory labels she received from her religious father as a result of disclosing her brother's abuse. Through this unwarranted condemnation, the perpetrator and his supporters were able to deflect attention away from the original issue of sexual abuse.

Appeal to higher loyalties

In the context of CSA, the appeal to higher loyalties is typically the appeal to the mythological benevolent family as protected entity (LaFontaine, 1990). Such an appeal brings the relative status of female children into sharp contrast when juxtaposed with the status of adult males. This was evident in Jennifer's story, where Jennifer's mother adopted Jennifer, despite the fact that she was aware that her husband had been sexually abusing her

eldest daughter. This appeal is often shared by other family members, as evidenced in the case below:

So when I came home from school one day and my sister and my dad and my mum were sitting there--my mum said, "Your sister was abused too, she's forgiven your dad, you need to, you need to move on, you're the black sheep in the family, you'll ruin the family if you don't move on and forget about it" (Jennifer).

At the apex of this protected entity, father figures are immune to scrutiny, and any action is performed by the father is often excused by this call to "family preservation" at any cost. Loyalty to the family will be seen later when the nature of bystander complicity is examined. Such loyalty masks the abuse of power and is built upon the subjugation of those most vulnerable. Ironically the family adopts a dual status of protecting its members, while sacrificing its most vulnerable. The family is presented by abusive parents as the only barrier between the individual and a Hobbsian society of survival of the fittest. In this context, it is as though the family depends on 'necessary' sacrifices, where those at the apex of the hierarchy are allowed to indulge their whims in exchange for token protection of its members (LaFontaine, 1990). Ironically, the family comes to represent the Hobbsian world which it purports to protect individual family members from. This will be explored in greater detail below.

Bystander techniques (adopted by Cohen, 2001)

One of the key features that distinguishes intra-familial CSA from other forms of CSA is the fact that the secondary victims or family members, can often be supportive of the perpetrator. Family members become familial bystanders when they defend the perpetrator and actively condemn the victim-survivor when she attempts to disclose. The ideology of familialism (Barrett and McIntosh, 1980) underpins familial defence of the perpetrator. As the perpetrator is usually male and possesses either symbolic or financial power, or both, within the institution of the family, the family's preservation appears dependant on obeisance to the perpetrator. This was a commonly observed theme in this research.

Eight survivors disclosed to their parents as children, with another three survivors reporting that other people in the neighbourhood were aware of the abuse. Of these eleven

survivors, only three survivors received intervention that led to the cessation of abuse (either through removal of the perpetrator or removal as children from the home). In addition, there were two separate cases (Nola's mother and Eva's father) of non-offending parents witnessing their child being abused. Cohen (2001:143) in reviewing the literature on denial within social psychology, suggests that there are a number of situational circumstances that contribute to bystander inaction: misperception; diffusion of responsibility; fear; denial; lack of empathy; boundaries; psychic numbing; routinisation and desensitisation; lack of channel of help and ideological support. Ideological support, denial, lack of empathy and routinisation and desensitisation will be specifically discussed here.

Ideological support

Ideological support is perhaps the most concerning, and it can be observed in bystanders' support of the institution of the family, including their tacit support of those at its apex, often the perpetrator. Indeed, one of the factors that distinguish this form of abuse from other forms of CSA is the way in which it has been obscured by the dominant construction of the family as inherently altruistic, or as the foundation of social cohesion (LaFontaine, 1990). It is argued that ideological support can perhaps be conflated with other factors such as fear, denial and the lack of channel of help, which means many individuals did not know where to seek help for this problem. In cases where parents were aware of the abuse but failed to take action to protect the child, it can be suggested that a lack of knowledge of the possible avenues for actions led to inaction. This is evident in Eva's case, where her father walked in on her brother raping her, and in her opinion, failed to prevent the brother from reoffending.

All I was told was that my brother got the biggest hiding of his life that day [...].

However, my brother--three months after that episode--he went and tried to abuse my sister. So the message obviously hadn't--didn't get through. I, from speaking to another brother--all the girls in our family were pretty much open slather (Eva).

While Eva concedes that her father attempted to discipline her brother through corporal punishment, today viewed as physical abuse, she also later suggests that the culture of sexual violence in her family was so widespread that her father had also abused his sister. Thus, a lack of substantial intervention could suggest that her father condoned this abuse to an extent, and this accounted for his lack of action.

Well if you've spoke out in the community as I've done or as my friend has done, you are outed in the community initially, a lot of the time, in my instance, I lost my family because they were ashamed that I'd actually spoken up because they knew that by me speaking out they knew who my brothers and sisters were...So, I've lost family. Which, I've dealt with that, I've moved on [...] (Sue).

My sister has been abused by my godfather [...]. And um, she told my mum and my mum said, "Oh no, what are we going to do now, the friendship will break up if I [...]" and your dad will get sick if we tell him.— So um nothing happened. It's like she sacrificed her daughters. And he's my godfather so she kind of sacrificed both of us, for my father who had manipulated her into taking care of him all the time (Tessa, Interview 3/4).

But actually, at one point I nearly died, I think I was in intensive care and they were thinking there was something bigger than just the girls carrying on, which was always something we always got when we were growing up. I used to wonder why they gave us names. It was always the girls, well why did you give us names, you never use it? (Felicity).

She [Mother] used to call me a whore in Dutch continually until about 9 months ago when I said, "Cut it out" [...]. She said, "I am only joking", and I said, "It is not a joke [...]" I don't like it stop it," and she said, "Oh here you go again your always like that" (Irena).

They have proven that they protect him. They have protected him at a cost to my feelings and a cost to our relationships. I don't like to be the superstitious person that says "oh it happened before", I'm not a victim but history has shown me that they do protect him over me, so why would I give them that further opportunity to actually tell him, he fucks off--excuse my language-- um, and I'm left waiting again in this void and he's off merrily having a good time (Tessa, Interview 2/4).

Lack of empathy

In addition, bystanders also demonstrated a *lack of empathy*. Both Nola and Jennifer's mothers were cognisant of the ongoing abuse perpetrated by their fathers, to the point where

Nola's mother witnessed the abuse. Nola described her mother's reaction to witnessing her father's abuse, illustrating the way in which her mother interpreted the abuse through masculinist discourse of victim culpability (see Alaggia and Kirshenbaum, 2005). As Nola will later discuss, her mother's desire to preserve the family unit, and the lifestyle her mother was accustomed to, overrode her empathy for her child's experiences.

That was the night my mother found my father digitally raping me. And [her mother said]—~~he~~ wouldn't have touched me if I hadn't have touched him", and he lay there, he didn't defend me, he didn't say boo. And I was in all the strife if I spoke to anyone about it, she was going to kill me, she was going to put me in the convent [...] (Nola).

A similar situation was observed in Jennifer's case, where her three attempts at disclosure at various points in her childhood were met with her mother's condemnation. Her mother's desire to maintain the family unit by silencing her two daughters, again demonstrates ideological support for the primacy of the family unit over its more vulnerable members.

As a kid, when I first told my mum at three she pushed me away, when I told my mum at five she pushed me away, when I finally had a temper tantrum at fourteen because she made me wear my sister's dress to church and it showed my stomach-- and I said, ~~rah~~ rah dad's abusing me, he's touching me--and she freaked out, grabbed me and threw me into my room. I sat there for about an hour going, I'm going to die, I'm going to die. And they came home. We never spoke about it. [...] When I came home from school one day and my sister and my dad and my mum were sitting there-- my mum said ~~your~~ your sister was abused too, she's forgiven your dad [...] you'll ruin the family if you don't move on and forget about it" (Jennifer).

Survivors' responses indicated that two mothers did attempt to protect their children from future abuse, despite their relative lack of power and agency in society at that time. Diane described her mother's reaction to her sister's disclosure. While Diane's mother had 8 children with no source of income, and was living in an era where women could not access single mother's benefits, she took steps to ensure her daughters' safety without removing the perpetrator from the house.

Never again as normal. My mother um had locks put on our bedroom door and she believed us and she was wonderful in that respect [...] So, during this brief transitional

period where my mother took steps to protect us, and the balance of the household changed--I don't know how long this took-probably a year-I don't know-certainly it had shifted to a more certain, not valuable but to a different area where everyone knew things weren't going to be the same (Diane).

Irena also described her mother reporting the matter to the police, although the relationship with her mother deteriorated, and she blamed Irena after her husband was sent to prison. Interestingly, Irena's mother was a Holocaust survivor, and herself had been continuously raped as an adolescent while in hiding from Nazi persecution. While Irena identified her mother as acting imperviously to some potential signs of the abuse (such as unexplained pregnancy and bruises), her mother acted when told explicitly of the abuse.

Community bystanders

The following extracts from the interviews denote bystander denial from community members. Both Diane and Jennifer attempted to disclose the abuse to trusted members of the community: a Sunday school preacher and a school counsellor at a Catholic high school, only to have their allegations deflected and negated.

I went to Sunday school and oh some preacher guy I said to him just a passing remark ... he turns around straight away and says, "Oh well fathers do their best [...]," more or less judging my comment. And my comment was barely a breath of my reality and immediately he perceives the parents are correct [...] (Diane).

I went to the school counsellor and I said look this is what's happened. I don't know what to say, I don't know what to do, and the only thing they said to me was "What does this have to do with your relationship with God?" and that was the first thing out of his mouth! And I went, "Probably not a lot" (Jennifer).

Pam and Sue reported evidence of close family friends and neighbours being cognisant of the abuse and yet they failed to intervene. This lack of intervention, particularly in Pam's case, captured the inaction associated with believing the family to be sovereign, and intervention of any kind to be a violation of its claims to sovereignty.

Friends that I've known from the time we were kids and they just broke down and cried and they said, "We knew you were being abused." I said, "Well you were

children too.” So the parents all knew, everybody knew but nobody did anything (Pam).

When we were kids and we were being perpetrated left right and centre, no one rang welfare for us, they didn’t ring the cops (Sue).

In both Sue’s and Pam’s excerpts, there was a sense that the status of children was considerably diminished, with children at the time having little recourse against capricious adults. This dismissive attitude towards children, and in Sue’s case, Indigenous children, appeared remarkably widespread.

Denial

Often children believe adults automatically know that abuse is occurring and are therefore able to rescue them from the abuse. However, it must be emphasised that some survivors were not merely of the opinion that others knew, but they displayed overt medical signs of being abused. The first case is Mary, who was hospitalised on a number of occasions for physical injuries consequent to severe beatings and venereal infections. Similarly, the other two cases which involve Nola and Irena, both of whom fell pregnant as a result of rapes by family members. Irena was declared “uncontrollable” by the NSW Children’s Court as a result of falling pregnant to her father.

I often used to ask my mother what happened when I was 9. And she just used to say, “You had rheumatic fever and went to hospital” and I mean I was hospitalised as a consequence of violence and abuse (Mary).

And the thing is, when he was deported-like he was gaoled, but when he was deported, and my siblings asked her where he was, she told them that friends assisted him to return back to Holland. No, the bloody govt (sic) kicked him out of the country (Irena).

And she denied all knowledge of it. It wasn’t happening in her house. She told my daughter, that all that shock treatment I’d had was about the guilt I felt about all the lies I told about my father and brother. My daughter was horrified (Nola).

In these three cases, a number of bystanders of professional standing would have been cognisant of the abuse: doctors, nurses, court officials and social services (who removed Irena's baby from her care). The lack of intervention on the part of community bystanders may reflect the status of the family as a private haven that should be protected from government intervention. This research data covered experiences of abuse that occurred across a long period from the 1940's to the present day. As such, we must be cognisant of changes in societal attitudes towards the private realm of the family, particularly in relation to the decades prior to second wave feminism. Even in the decades following the feminist campaigning of the 1970s, the family as —~~a~~ ideal model of what domestic groups should be" (La Fontaine, 1990:187) or a ~~monolithic~~ entity that serves everyone's needs" (Macleod and Saraga, 1988: 44), still holds popular currency despite the variations in the family structure (such as blended families, extended families and single parent families), underpinning social policy and political rhetoric.

Routinisation and Desensitisation/psychic numbing

One of the most compelling aspects of this study was the degree to which intra-familial child sexual assault had been transmitted inter-generationally, such that the experience of sexual violence became routinised and commonplace. Nine survivors described the multigenerational transmission of abuse, with their parents or their parents' siblings being victims of CSA. Two survivors described three generations of abuse, with two survivors, Irena and Sue reporting that their own children had been sexually abused as well.

And then it just sort of stemmed from conversations with my cousins, realising that the abuse in our family had been generation stuff, it happened obviously--all three girls in my family had been abused, one of my cousins had been abused quite badly by a couple of other cousins. Because where we used to live, we used to all live next door to each other. So after these discussions, I confirmed in my head that absolutely it was a generation thing and we believed that my dad was actually abusive to one of his sisters (Eva).

My sister has been abused by my godfather [...] so and she told my mum when she was little [...] (Tessa, Interview 3/4).

I mean my mother had her own issues as well. She's a Holocaust survivor she lost all her family [...] I'm the offspring of rape [...] I was born in '44, she was in hiding [...] somebody else's child. Because she was raped in so many different circumstances when she was in hiding. (Irena).

Her sister came out when their mother died and said that their father abused her and that was all happening at the time, so it was a lot for my mum to deal with (Tanya).

I think that's the most difficult part for people is that initial denial, and that initial denial is so confronting to the child and even young adults. Even it doesn't happen immediately it happens further on, it's just maintained in the family. And I think it's so widespread that the community doesn't believe us. (Irena)

The biggest-and I've had 1st hand experience with this now-is the "this is too much, this is too hard to process, let's just walk away". The problem is that sexual abuse feeds off that and it continues to grow because we don't talk about it. (Jennifer)

In families where CSA is normalised, and bystanders have become desensitised, disclosure of one's experiences may have little effect on the listener. As one survivor, Nola suggested, "acceptance of the unacceptable" becomes common place. There has been limited research as to the intergenerational nature of intra-familial CSA, with the limited literature pointing to the correlation between mothers who have experienced sexual abuse, and their children having experienced sexual abuse. Other literature has largely focused on whether victimised children grow up to become victimisers.

By examining the dynamics surrounding bystander denial and compliance, what becomes apparent is the extent to which disclosures to other family members were met with inaction or condemnation of the child. This corresponds with previous literature on disclosure of CSA, with Roesler and Wind's (1994) study showing that after disclosure, 53.1% of parents responded with anger towards the child, 51.6% ignored the disclosure, and 53.3% blamed the child. Much of the research suggests that "when children do disclose, it takes them a long time to do so" (London et al, 2007:20). Indeed, research suggests that when the relationship between child and perpetrator is closer (Allagia, 1994; Kogan, 2003), and the abuse more intrusive (Connelly and Read, 2006), delayed disclosure is more likely. However, the research has shown that some children do disclose abuse. Survivors such as Tanya, Irena,

Jennifer, Nola, Diane's sister, Tessa's sister and Sinead did disclose the abuse as children, with only Irena's and Diane's mothers taking action to prevent the abuse in the future. Thus, the problem may be that the people to whom children disclose are the ones who fail to act on such disclosures, and this is an area that requires further research. As we will see in the next section, bystander inaction or even complicity can lead survivors to seek validation from the criminal justice system. This becomes complicated by the fact that family members are unwilling to corroborate survivors' evidence.

This complex *relationalism* (Hudson, 2002, 2006), then, is an issue that must be addressed when exploring criminal justice reform. Recognition of the complex dynamics which occur with the family is integral to understanding why survivors fail to disclose, or why their family fail to support them in their disclosure. It is too simplistic to suggest that survivors do not disclose until adulthood. Many survivors did disclose as children, but were met with such antipathy such that it was not safe to disclose again until they had left the family home and established lives elsewhere. The implications of living with such denial are expressed below:

And essentially the worst damage it had done to my life was that it wasn't made open at the time--that my dad knew and it wasn't addressed so therefore it actually affected my relationship with my mother and sister (Eva).

The chapter thus far has explored the ways in which the dynamics of abuse, including perpetrator strategies, and the often unacknowledged bystander denial influence disclosure patterns and ultimately, whether a matter is dealt with by the criminal justice system. In particular, the strategies of denial that are used by the perpetrator to perpetuate their power and continued sexual abuse appear to also affect bystanders, who, in the aforementioned ways, also perpetuate silencing and denial.

The cultural value of the family, whereupon the family is imbued with the potent mythology that the social order rests upon the basic building block of the family, and thus the family is an entity that must be protected against all external forces which threaten its balance (La Fontaine, 1990:183). Of particular interest is the value ascribed to fatherhood and the consequent embodiment of male privilege in society. Ruddick (1997) contends that fatherhood invokes a series of functions and myths. Firstly, there is the function of provision, with the societal expectation that the father will accord with the gendered division of labour and be the ultimate provider. Secondly, there is the function of protection, which Ruddick

contends is more myth than function, where fatherhood invokes manly protection, a masculinist belief detrimental in many ways to female agency (Ruddick, 1997:2006).

It can be argued that the exercise of authority, conferred to fatherhood and parenthood in general, is legitimised ~~through~~ its proper exercise” which ~~limits~~ parents’ use of power” and designates certain excessive displays of power, that is, abuse (La Fontaine, 1990: 192). LaFontaine (1990) contends that due to mythology endowing parenthood with ~~innate~~ altruism”, parents are often exempt from the same level of scrutiny traditionally apportioned to other institutions which exercise power over its members. The lack of intervention on the part of neighbours, teachers and health professionals suggests an insistence on the myth of familial altruism in addition to an insistence on the legitimacy of paternal authority. To confront the reality of intra-familial CSA is to destabilise the mythology of altruistic parenthood, and to confound paternal authority its sinister shadow and diametric opposite: power for self-gratification.

While it is essential not to blame bystanders for CSA, an investigation of intra-familial CSA must take into account the techniques bystanders use to deny that a family member, child or sibling is being abused. While the extent to which bystanders in this study subscribed to the dominant ideology of familialism cannot be ascertained, the most common pattern was a sense of routinisation and desensitisation. The intergenerational transmission of trauma, such that CSA had become normalised within the family, was one of the most striking themes arising from the findings. One other facet leading to bystander complicity is the notion that there is no avenue of support. While some bystanders may subscribe to paternal authority and the discourses surrounding the altruistic family, it is equally possible that bystanders felt that there was no alternative avenue in which to seek support for the family, aside from incarceration of the family member. The psychology of shared denial also means that collective delusion is easy to perpetuate if everyone is participating in the denial. Nonetheless, in these findings, the consequence of such denial was reflected in survivors’ help seeking patterns, with bystander denial motivating engagement with the criminal justice system, as well as effectively interrupting the police investigation process in a couple of cases

Official reporting and disclosure

Despite the perpetrator and bystander strategies of silencing, some survivors transgressed these unspoken rules of denial and made the choice to seek official recourse as adults. Survivors such as Tessa, Jennifer, Mary and Pam made police statements. Their motivations are discussed in detail here. Particular attention will be given to Tessa's case, who volunteered to be interviewed for this study on several occasions over the six-month period when she made her police statement.

Tessa is a woman of Greek-Australian heritage and a therapist who works with child survivors of sexual abuse. Tessa suffered abuse from the age of three to fifteen at the hands of her father. At forty, Tessa decided to report the matter to the police and offered me the opportunity to interview her throughout the police reporting process. These excerpts have been taken from five interviews over a six-month period, from late 2009 to early 2010.

At the time of interviewing, Tessa had not had contact with her father for a number of years. She had disclosed the abuse to her siblings, a brother and sister. Tessa's sister did not believe the abuse, nor was she supportive. Instead, she kept bringing over unwanted gifts from Tessa's father. Tessa's sister had also been a victim of sexual abuse at the hands of a godfather, and when she had disclosed as a child, was met with their mother's insistence that she remain silent to preserve the 'good name' of the family. Tessa believed that each family member had been groomed to fit a certain role. Her brother believed the abuse, but had conflicting loyalties. Tessa's father admitted that he had abused Tessa once only, when she was fifteen, but claimed that Tessa had precipitated the abuse.

As the police reporting process continued, Tessa was worried that her family would assist her father to return to Greece, to avoid investigation. When the police commenced their initial inquiries, Tessa's sister refused to speak to the police. Similarly, Tessa's niece, her sister's daughter, informed her that although she believed her, she felt a loyalty towards her grandfather, and would not participate with the police investigation. After the initial inquiries, there was a long delay in the investigation, whereby the investigating officer went on leave and wasn't replaced.

Eventually, Tessa's fears were confirmed when Tessa's siblings bought her father a ticket to return to Greece in order to avoid investigation. This study closed with Tessa reconciling with the probability that her father would not return to answer the charges.

This section will explore survivors' experiences with the criminal justice system, and examine the factors that lead to both satisfaction and dissatisfaction with the criminal justice system. Tessa's case, described above, will be used in conjunction with the experiences of other survivors who reported their experiences to the police, to explore the issues discussed in this chapter. Much research has been conducted on the degree to which police can facilitate or minimise alienation from the criminal justice process, and by extension influence personal feelings of autonomy (Jordan, 2001:700). Norris and Thompson (1993) elucidate the way in which institutions can compound or reduce PTSD symptoms by either alienating the victim, or conversely by validating the victim's experience. The notion of validation, of allowing the survivor to tell their story in their own words highlights the importance of police behaviour while conducting the interview (Temkin, 1996). Three survivors, Pam, Mary and Sue expressed a great degree of satisfaction with the treatment they received from the police.

When, well _cos in SA we had the statute of limitations-anyway that got dropped. So I decided that once it was dropped I could do something but [...] now I did go to the police and they were very good for me (Pam).

This highlights the role the state has in encouraging disclosure to the police, through officially communicating reprobation. Mary wrote in her submission to the Mullighan Inquiry:²²

The best place to start is with my journey back to Adelaide in 2004. One of the most healing moments for me was driving across the state border, back into South Australia on the way to Adelaide station. At long last, I could reclaim Adelaide as home. My exile was over. As I sat in the interview room in Adelaide City Police Station, I thought to myself-I have been waiting a lifetime, to come and tell this story to the Police (Mary).

²² The Mullighan Inquiry or officially "Commission of Inquiry into Children in State Care" was commissioned in 2004 by the South Australian government to investigate allegations of child abuse within state institutions. However, the Commissioner also invited submissions from survivors of other forms of abuse, such as intra-familial CSA.

In the above excerpt, Mary wrote poignantly of the impact that state recognition of the abuse had on her feelings of safety and healing. Her choice of words such as “~~exile~~” and “~~home~~” indicate that the victimisation did not simply render her personally traumatised, but rendered her a physical refugee who had been forced to flee her homeland. Moreover, Mary also provided compelling evidence for the importance of official recognition of harm suffered, despite the fact that proceedings did not eventuate. It is common for practitioners and reformers to be caught in the mire of despondency or hide behind a rigid utilitarianism which perceives criminal justice processes merely within the popular frames of recidivism, outcomes and risk. However, Mary alluded to the importance of state reprobation, and the subsequent affirmation by the police of her humanity and right to bodily integrity.

Both survivors from South Australia described the impetus for their disclosure to the police being the legislative changes which eventuated in the Statute of Limitations being dropped, and the policy shift which saw the implementation of the Mullighan Inquiry. Satisfaction appeared to be related to the discursive opportunities that some police officers made available to survivors. Interestingly, those who had experience with specialist police officers, such as Mary, Pam (both from South Australia), Sue (with NSW Joint Investigation Review Team²³) and Jennifer (ACT Wraparound²⁴) expressed satisfaction with their interactions with the police. Sue and Jennifer’s partial satisfaction with regards to the specialist police officers could be attributed to what Freiberg (2010) would define as interdisciplinary partnerships between the police and external agencies. These agencies include, but are not limited to, the Rape Crisis Centre and the specialisation that characterises the NSW specialist CSA police unit, known as the Joint Investigation Review Team (JIRT). This sense of *discursiveness* (Hudson, 2006) seemed to be a common characteristic amongst all who demonstrated some degree of satisfaction with the police. In addition, Sue also felt that the JIRT officer provided sufficient emotional support and information to her daughter throughout the trial.

They were really good [...] Because they’re a specialist team. They deal with it time and time again. They know the characteristics, they know when people are lying and they know what they’re looking at, they know how to support the victim, they know how to get them to open up about what’s happened to them without being so harsh

²³ The Joint Investigation Review Team (JIRT) is made up of professionals from the NSW Police Force as well as Community Services and NSW Health, which investigates child protection allegations.

²⁴ The ACT Wraparound service is an interagency collaboration between the Australian Capital Territory police and the Canberra Rape Crisis Centre, providing assistance to survivors who decide to report sexual assault to the police.

[...] and they, she kept us up to date with what was happening. She was brilliant [...] (Sue).

Tessa's case illustrates the ways in which individual choices made by criminal justice stakeholders can dramatically affect one's perception of the criminal justice system. Over the six-month period of interviewing, Tessa detailed her relationship with the investigating officer, which appeared to above all, be characterised by recognition of Tessa's human rights and dignity, and observe the tendency of discursiveness. This *discursiveness* can also be traced to Pam's statement who stated, "I said I've done my court. I've told my story."

Then the first meeting, the policeman again said, "Why don't we just get an AVO out against him, because you know-you don't know the outcome, there's his age, he's mentally ill." And I said to him, "No, I've gotten it out myself to stop him contacting me." So it's not about an AVO it's about more than that. It's about acknowledging. I said to him, "I don't want him to die with everyone thinking what a good man he is- everyone saying oh we're so sad" (Tessa, Interview 1/4).

What made Tessa's case distinctive from those discussed in the literature (Temkin, 1997; Jordan, 2004) was her description of the developing relationship between herself and the officer throughout the statement-making process. This progressed from the officer's initial misunderstanding of Tessa's motivations to a dialogic process where, at times, true discursiveness was achieved. As seen above, he believed she merely needed protection from her father and responded with the offer of an AVO, and he also assumed she desired a particular court outcome such as a prison sentence.

When I think of it, I don't [...] really know what I want as an outcome. Like I don't have an outcome, for me the important thing has been this process. And I am a process person. It's about the process; you know it's not about the destination but the journey (Tessa, Interview 1/4).

When Tessa emphasised the importance of acknowledgement, he appeared to be willing to initiate the statement writing process. By focusing on the process, rather than the outcome, the officer embodied what Freiberg (2010) refers to as one of the central tenets of non-adversarial justice, "process not outcome", which as seen below, has the potential to alter the dynamics of communication.

And what happened with him is that when I said to him, “I’m finding that really intimidating, that can actually shake me. I need someone supportive,” and he actually received that. He didn’t get defensive and from that moment the relationship grew and now I’m actually fond of him. Now he’ll finish his phone calls or the meetings with, “So when’s your therapy, do you need anything?” and I think it took that feedback for someone to say, “This is how I’m receiving you, this is really difficult for someone in my situation.” So he actually heard and didn’t get defensive--not in any way, he didn’t get defensive. Even when he said, “Are sure you don’t want to just get an AVO?” he wasn’t rude, he wasn’t derogatory. I felt it a bit like that because I felt like I was being talked out of my decision and when I stated how it affected me, he went, “Wow, ok, thank you. Thanks for saying that” (Tessa, Interview 1/4).

This experience highlights a degree of discursiveness, where the officer is also willing to divest himself of absolute control and engage in a dialogic process premised on reflection and self evaluation. Rather than being an infallible agent of the legal system which precluded Tessa from “entering the discursive circle” (Young in Hudson, 2006), he asked questions which facilitated Tessa’s entrance into this circle, and displayed his vulnerability through his distress openly, rather than hiding behind the mask of his profession. In addition, Hudson contends that discursiveness requires “openness to challenges of the identity of the law [...] and that any topic can be raised by any participant” (Hudson, 2006:35). Tessa’s ability to openly confront the officer, who in turn, changed his behaviour, highlighted the way in which the officer was unwittingly creating an environment of that Hudson (2006) would define as conducive to entering into the circle of discursiveness.

And he said to me, “I don’t know how you went through this. I’m just hearing this and it impacts me.” And he actually admitted, “Off the record, out of this statement, I could throttle him [the offender].” So he showed his support, he actually was real (Tessa, Interview 1/4).

In displaying his emotional reaction to Tessa’s experiences, he also relinquished the false dichotomy between reason and emotion created by the mask of impartiality (Young, 1990), and the police officer began to dismantle one of the facades which operate to exclude victim-survivors of CSA.

By looking at Tessa, not simply as another case, but as a person who as a child suffered immensely from sexual abuse, he demonstrated a sense of *reflectiveness* (Hudson,

2006), through his willingness to listen and not make assumptions about Tessa as a generic “victim”.

Yeah, we went in and we signed the last one today and we changed it a little bit. He read a few of my changes and we kind of...um yeah, back and forth about how it sounded, about how that might be responded to by--um the defence etcetera . And then, he was very different again this time. It was almost like he reverted back to um...back to the beginning, like it was almost a regression. Like-very cold-more cold, and more-at one point of the statement he asked if how would the perp-or the alleged perp‘ actually respond to that, like how would he feel? And I was like I don‘t give a shit-like fuck how he feels (laughs). I go-that‘ s his problem to sort out. He can respond whichever way he wants to (Tessa, Interview 24).

Despite this change in behaviour, the problems emerged not from the officer himself, but the organisational constraints that demanded certain behaviour of the officer after the statement was taken, as well as from a failure to engage in a greater sense of reflectiveness and a lack of relational understanding on the part of the police officer. As an examination of the organisational culture of the police force is beyond the scope of this thesis, only a limited exploration of the latter issues will be undertaken below.

Dissatisfaction with the criminal justice system

Arguably, Jennifer, Tessa and Sue‘ s experiences of bystander complicity negatively impacted their experiences of the criminal justice system. Family members refused to support their police reports and thereby precluded the potential for corroborating evidence and stymieing the investigation. In the case study, Tessa‘ s siblings felt torn between loyalties between the perpetrator and supporting their sister. Tessa‘ s case demonstrated the fact that the perpetrator, as an elderly man, still had the capacity to use strategies of denial to maintain control. The perpetrator threatened to kill himself if the other members of the family provided corroborating evidence to the police. The police officer‘ s failure to act on Tessa‘ s warnings that her siblings would help their father return to Greece, also highlighted ignorance of the complex *relationalism* (Hudson, 2001; 2006) in which intra-familial CSA is embedded.

Similarly, Jennifer‘ s family also suggested that reporting the matter would ~~destroy~~ “the family”. The discourse of family preservation, whereby the protection of the family as an

entity supersedes the protection of its most vulnerable members, invariably affects the quality of information that the police are capable of proceeding on²⁵. Provided below is Tessa's description of the situation where her siblings and niece refused to cooperate with police investigations. Tessa's sister refused to believe Tessa's claims of abuse. Yet, as detailed, the police officer placed undue weight on her sister's corroboration.

Like my sister who said —~~w~~'ve found holes in your story. Don't worry, we punched all the holes." The policeman's going to interview her. Even though I told him, she's one of the most hostile people in my statement [...] And he goes yeah, but she's your sister, and I want to corroborate parts of your statement that involve her, and if I can corroborate those, then others will be true. You know? But I'm sure she'll be quite helpful in punching the holes for the police, as she is with me [...] (Tessa, Interview 3/4).

Tessa also detailed the problem of family members, such as Tessa's niece, who did support and believed her, but felt unable to assist the police in their investigations due to her fear of upsetting the perpetrator.

So my father's put on the victim, —I'm going to kill myself," and that's what he's playing with [my niece] as well. She goes —~~w~~ll what am I supposed to do?" she goes —I believe you Tessa, I believe you 100%, —she goes —~~b~~ut the minute I say that to the police, I'm scared that my grandfather's going to kill himself" (Tessa, Interview 4/4).

Tessa also discussed the need for the police to have some degree of specialist knowledge surrounding CSA, a major reform issue discussed in the previous chapter²⁶.

Everyone in the family, and the extended family and friends, are groomed. Grooming doesn't just happen only to the abused child, that's the most important thing. And police need to know that. It's very important. My sister has been trained from the day I was born to not believe me, so it's no surprise. I've been the —~~o~~veremotional" one (Tessa, Interview 3/4).

The need for criminal justice stakeholders to be cognisant of the complex relationalism surrounding intra-familial CSA is highlighted through the event which signalled

²⁵ The discourse of family preservation was also observed in almost all the survivors' experiences of bystander complicity above.

²⁶ It is important to reiterate that Tessa reported the matter to the NSW Police which does not have a specialist sexual assault unit like South Australia and the ACT. JIRT only officers specialist services to children.

the end of police investigations. Tessa had warned the officer that there was a real possibility her siblings would assist their father in fleeing the country and avoiding investigation.

I said to him, “you know I don’t want this to drag on forever.” I said to him “I’m scared that he’s going to take off to Greece.” I said, “Then I have to wait.” And he goes like, “Look I’m doing it as fast as I can!” That’s when I actually said, “The quicker we do it, the better” (Tessa, Interview 3/4).

This warning was not heeded and her siblings did indeed assist their father in returning to Greece and avoiding charges. The above quote, which details Tessa’s interactions with the police officer who inherited the case after the original officer went on paternity leave, also illustrates another common source of dissatisfaction with the police process. Jennifer and Tessa discussed the degree of time taken for the police to begin investigation. Both felt that the police did not see their cases as a priority, and were unwilling to act on information provided by each of the survivors.

Both Tessa and Jennifer felt that by going to the police, their fathers would be compelled to admit their guilt. It could be argued that both had expectations about the police and perhaps the CJS that were incommensurate with everyday practices. Both saw the CJS as an authority which would supersede the authority of their fathers. The CJS, as a moral authority, was seen as potentially being capable of ‘revealing the truth’, validating their claims and obliterating the denial that protected the perpetrator. In this sense, the police as an agency was seen as a mechanism that could mobilise change and a possible critical space (McCorkel, 1998), from which as adults, these survivors could be shielded from the perpetrators’ power. This will be discussed further in the following chapter.

These expectations of the CJS as a moral authority were also revealed in Sue’s case. Sue, a survivor of child sexual assault, is an Indigenous woman whose daughter was raped by Sue’s partner when she was 9 years old. Her daughter Lily, disclosed the rape when she was 13 years old, and the case was eventually heard in a NSW district court when Lily was 15. The trial lasted for 2 days, whereupon the Crown Prosecutor decided that there was not enough evidence (as Lily could not remember the exact date upon which she was raped) to pursue the matter and decided to drop the charges. Sue describes a situation which reflects the findings of Eastwood’s (2003) and Taylor’s (2004) studies, whereby masculinist discourses influence the narratives mobilised by the defence. Such discourses reflect what Taylor (2002; 2004) refers to as phallogentric discourses which position children as liars and fantasisers

who concoct fantastical stories regarding sexual abuse, and alternative discourses which position the girl child as being sexually precocious and precipitating her own victimisation.

It was terribly hard. We had a barrister who was defending him and calling my daughter a liar and did she initiate any advancement towards him knowing she was fucking nine years old when it happened (Sue).

The above excerpt highlights the way in which legal offence categories are dispelled by the dictates of cross-examination and affirms previous Australian studies into child sexual assault (Eastwood, 2003; Taylor, 2004; Cossins, 2006). For example, consent is not a legal consideration in child sexual assault matters, nor is precipitation of any kind (Brown et al, 2000). This example reiterates Taylor's assertion that —legal trials operate as a microcosm— albeit a powerful one—of a society where children traumatised by sexual violence are constructed in particular ways” (Taylor, 2004:7).

In addition to her discussion of —defence harassment,” Sue also discussed a ubiquitous failure to afford the victim-survivor and her family with dignity and respectful treatment.

But the accused need to be limited in who they can bring to court...There was about 15 people there. And I mean I'm sitting around with a couple of close friends and that's it. It's incredibly intimidating and to me you know you sort of say something to the crown solicitor who was defending us on our behalf, what was happening and the abuse they were yelling out. And she goes —well you've have to grow a thicker skin(Sue).

And the worst part being you're about 15 feet away from the perpetrator. And he's staring, smiling at you, saying —you know I'm going get off, don't you?” and that sort of behaviour, like where is the duty of care in the justice system for us and for Lisa? (Sue).

Sue raised issues about the harassment and perpetuation of victimisation by the perpetrator and his supporters that can occur in the vicinity of the court. Such harassment appears paradoxical when compared with the rigid procedural requirements within the courtroom (Reichel, 2008) which precluded her from comforting her daughter while she was vomiting on the witness stand, as discussed below. Similarly, her reference to the Crown Prosecutor's dismissal of her complaint highlights a lack of concern for the basic needs of witnesses to be treated with respect and dignity.

It could be argued that the level of intimidation permitted in the court building is facilitated by the confrontational atmosphere fuelled by the worst excesses of the adversarial system. Doak (2008) contends that ~~tr~~ials are typically characterised by a highly competitive and confrontational atmosphere, which renders them fundamentally ill-equipped to address emotional trauma.”(Doak, 2008:35) While Doak confines his analysis to the trial itself, Sue’s excerpt suggests that other non-legal players also emulate this combative atmosphere within the court precinct.

Other cited issues involved the consequences of observing ~~pr~~ocedural fairness” on the victim’s physical health. In much the same way as Ngairre Naffine (1991) contends that procedural fairness is ~~—a~~ untenable ideal”, for Sue and Lily, their experience of ~~pr~~ocedural fairness” reveals the absurdity of rigid adherence to rules that in practice operate to legitimise the trial process, rather than guarantee protections to the accused. Indeed, Reichel contends that ~~pr~~ocedure [has become] so important that, some authors believe, the adversarial process became a system emphasising procedure over substance. As a result, each side plays a game in which the players use the law (especially procedural rules and rights, to gain an advantage)” (Reichel, 2008:169.) This is captured in Lily’s experience of cross examination. She collapsed four times while she was giving evidence via closed circuit television, and vomited into a waste paper bin.

You know, it’s just so overwhelming and no medical staff around to help when my daughter passed out. Luckily the girls from Mayummarri²⁷ were there and they helped her. They tried to bring her around and she vomited in the bucket, in the bin.

Did they adjourn the case?

They gave her fifteen minutes...And they kept it going. And it was just horrendous. There was nothing I could do. I hadn’t given evidence at the stage so I wasn’t allowed. You know, seeing your daughter on the screen and then passing out. I can’t even begin to tell you how bad it was. Beyond belief. I wanted to kill him (Sue).

Any practice which invokes extreme physiological responses such as vomiting and fainting must be seen as violating a person’s rights to psychic integrity. The loss of voice on the witness stand could be interpreted, as Phelps (2000) suggests, a destruction of language

²⁷ Mayummarri is a healing centre situated in the mid north coast of NSW, which provides therapeutic, residential care for adult and adolescent survivors of child abuse.

due to the violence of the courtroom, which mirrors the destruction of language during the original rape. This profound secondary victimisation appears to be anathema to the discursive ideals of innovative justice that Hudson (2006) espouses. When language is foreclosed by such a physiological response, one is distinctly removed from the “discursive circle” necessary for justice.

Despite the harrowing experience Sue describes, she also detailed one positive aspect of the trial, which is the judge’s demeanour. Her satisfaction with behaviour appeared to be due to the judge’s consideration given to the victim-survivor’s needs as an adolescent who demonstrated visible trauma. Braithwaite and Pettit (1990) would suggest that the judge’s fair, albeit compassionate behaviour reinforced the victim’s ‘dominion’, and communicated to her that she was worthy of respectful treatment.

I could see that the judge was trying to be very...um...non-committed to either party. Um...he did seem to have a patience toward Lily that you know--that our CP didn’t have for instance. He was patient with her; he’d ask her a question if she didn’t understand it he’d ask her in a different way. I think he was pretty fair. So, he was very compassionate and I had to give evidence and he allowed for the fact that he knew people were very nervous and the emotions were running high. He certainly didn’t give the perpetrator any favours and in fact, he was sitting at one point and he said to the barrister, “Can you tell your client to sit up and stop making those looks” (Sue).

This behaviour is also synonymous with Hudson’s espousal of the “rights regarding element” of her justice vision. Hudson cites Minow (1990), stating that “rights are relationships, which demarcate reciprocal rights and responsibilities” (Hudson, 2006:37). The judge demonstrated this understanding of rights, insofar as the defendant’s responsibilities in behaving appropriately in the courtroom were enforced. Ultimately, it is important to note that in Sue’s case, satisfaction and dissatisfaction pertained largely to treatment, that is, process rather than outcome. The case was dropped by the prosecutor after the second day, following two days of intense cross examination, because Lily could not remember the exact date upon which she was raped. As a consequence of this attrition, Lily was inconsolable and attempted suicide. Sue’s response is described below:

And all the system does really is add more trauma to your already suffered trauma, why would you bother doing it-why put yourself through more than you need to? I

feel really um, you know, disappointed for Lily that we didn't get an outcome that she would have liked. I certainly feel for her that she had to go through that horrible experience with the system and there was no support for her when we needed it, apart from the police woman...that was it.

There's no... There's no acknowledgement to the victim, they don't say 'we believe something happened', it's all they need to say, it's like saying it's not in your head, it's not, you know [...]. And like I said it's not about a greater sentence (or a gaol sentence or death sentence preferably) it's not high on my list. It's about the acknowledgement, you know? (Sue)

Satisfaction, in the cases cited above, is seen when criminal justice stakeholders (police officers, judges) behaved in such a manner that reflects the justice ideals that Hudson cites (2006) or the promotion of dominion, as Braithwaite and Pettit (1990) espouse.

The dissatisfaction raised by Sue, as well as Tessa and Jennifer, is consistent with the findings of other researchers (Gregory and Lees, 1996; Temkin, 1997; Eastwood, 2003; Taylor, 2004; Taylor and Gassner, 2011). Reasons for dissatisfaction included delays in police investigation and the court hearing, the lack of female police officers, the need for specialisation and training of police officers, lawyers and judicial officers, and a lack of understanding on the part of police officers and legal stakeholders of historical CSA's gravity. Poor staffing and allocation of police officers to the cases, particularly in country towns, has been discussed. A lack of additional staff within the court vicinity to provide support, such as medical aides, court support, and personnel, who could provide auxiliary services such as transport to and from court for traumatised witnesses, has also been discussed.

Dissatisfaction can also be linked to the expectations and perceptions that survivors have of the CJS. It is interesting that the CJS was seen as one site of resistance. The CJS has promoted itself as divine arbiter of "truth" (Smart, 1990). From a discursive and post-structural position, it is seen by some survivors as being capable of declaring "truth" and reversing the techniques of neutralisation that have been permeated (McBarnet in Taylor, 2002). Unfortunately, these survivors were unaware of the realities of the Australian adversarial CJS, whereby factual truth is not synonymous with legal truth. Similarly, elements of innovative justice, such as *discursiveness*, *reflectiveness* and *relationalism* (Hudson, 2006), which at times emerged from some individual experiences with the CJS,

such as Tessa's experience with her investigating officer, who appeared too arbitrary and sporadic to meet survivors' expectations. Of particular note is the failure of *relationalism*, where CJ authorities, namely the police, were unable to recognise the impact of bystander complicity on the process of the gathering of evidence.

Conclusion

The findings in this chapter make a unique contribution to the literature on CSA reporting and disclosure. The findings emphasise that many survivors did disclose the abuse as children, but this disclosure only eventuated in police reporting in two cases. An exploration of the dynamics of disclosure necessitates an exploration of the contextual circumstances surrounding CSA. In order to do this, however, the family needs to be reconceptualised as an institution like all other institutions, complete with a hierarchical power structure, discursive rules, ideologies and a desire to maintain the status quo. By looking at the family as an institution, we are able to utilise Biderman's compliance strategies for those in captivity. Reconceptualising the family as a site of captivity (as Herman suggested (1992) allows us to explore the way in which the perpetrator gains compliance, not just coercively but psychologically. It is these psychological blocks that create greater barriers to disclosure. Cohen's (2001) conceptualisations of denial were also helpful in the examination of discursive practices that perpetrators use to maintain control and to prevent the victim from speaking about the abuse. While Biderman's typology was applied to the more severe cases, most cases saw the perpetrator using Cohen's (2001) identified discursive techniques (seen as grooming strategies) to enlist the survivor's compliance. Such discursive techniques operated in a more insidious--and therefore--more effective manner. Ultimately, this chapter has contributed to the existing literature on intra-familial CSA by expanding the notion of bystander complicity to extend to familial bystanders. Through applying Cohen's discursive strategies, it has become easier to see the way in which abuse could be transmitted intergenerationally through a routinised acceptance of sexual abuse, and through a range of other strategies which also makes disclosure for the survivor difficult. By examining micro-strategies in a manner reminiscent of Bell's (1993) Foucauldian analysis of incest, we gain a better understanding of the workings of power through discourse, and the way in which grooming strategies are discursively constructed.

For the survivors who decided to seek justice recourse as adults, bystander denial motivated their desire to engage with the criminal justice system. Yet it was this bystander denial which complicated and stymied survivors' experiences of official help seeking, a finding that has not previously been discussed in the literature. When examining survivors' experiences with the CJS, this data replicated previous findings of survivors' experiences with the policing process and court process (Eastwood, 2003; Taylor, 2004). However, this data differed from previous research as it also captured the elements of the CJS that lead to survivor satisfaction. These elements are commensurate with Hudson's aspirational principles for innovative justice. Specifically, when criminal justice stakeholders like the police were guided by practices of *discursiveness* and *reflectiveness*, they invariably behaved in a way that allowed the survivor to feel that they were heard and valued.

A final theme which emerged from the data is that for many survivors, ideas of justice and the legal system are to an extent peripheral to their every day concerns. While several survivors viewed the CJS as a potential avenue for change, other survivors felt that the CJS was unable to meet their needs, and sought resistance through other mechanisms. This theme of resistance will be explored in the following chapter, which examines the survivors' pathways of resistance to their early victimisation and observes that the CJS occupies a minimal role in the achievement of a personal sense of justice and resolution.

Chapter 6: Speaking through the silence: resistance and agency

Introduction

One of the aims of this thesis was to examine the ways in which adult survivors of intra-familial CSA challenged their experiences of victimisation and sought healing through acts of resistance and agency. In relation to this research question, the research findings demonstrated that survivors had diverse ways in which they sought to minimise the adverse consequences of their abuse. In this sense, one summation that can be made is that there is no generic response to early victimisation. The focus on resistance and agency in this chapter thus attempts to establish a framework that conceptualises these responses. This is also important as it allows us to gauge the degree to which the criminal justice system features in survivors' lives as an institution of importance or utility.

There are a number of theoretical facets to 'resistance' as a construct. Pickett (1996:459) cites Foucault's relational construct of power, where the nexus between power and resistance means that resistance destabilises power, but is simultaneously productive, enlisting strategies of power. Bosworth (1996) contends that resistance can be used as a strategy to evaluate the legitimacy of a particular institution. Resistance strategies cited include the use of everyday resistance strategies that build on Scott's (1985) original theory,²⁸ such as various 'presentations of the self' and identification with various subjective identities which construct the subject in a fashion favourable to their sense of autonomy and values (McCormack, 2005; McCorkel, 1998; Ronai and Cross, 1998; Bosworth and Carrabine, 2001). The data suggests that survivors utilised subjective identity as a form of resistance. This chapter explores the various ways in which survivors subverted and resisted the 'institution' of intra-familial CSA, as well as the silencing, secrecy and denial that perpetuated its occurrence.

Resistance theorists suggest that resistance is related to the need to preserve one's self identity (Bosworth and Carrabine, 2001). For survivors, acts of resistance can be understood in the converse-as a means to reconstruct a self separate to that of the perpetrator and the

²⁸ Scott's (1985) posits the idea that resistance amongst subjugated groups such as peasants more commonly engage in every day forms of resistance as opposed to organised rebellion.

stigma surrounding intra-familial CSA. The self that exists within the abusive household is one that is circumscribed by the interplay of power and domination. Resistance can thus be manifested through the occupation of critical spaces, symbolic protest or subjective identity, or a combination of all three.

Part 1: Resistance through critical spaces and symbolic protest

Formal Institutions: criminal justice system

This chapter builds on the themes explored in the previous chapter, using Tessa's motivations for reporting and her use of the criminal justice system as a form of "symbolic protest" (Taylor and Norma, 2011) and "critical space" (McCorkel, 1998) as the foundation for examining survivors' experiences of resistance. The data demonstrated that some survivors did not simply see the criminal justice system in its purely utilitarian function of delivering legal judgements and passing criminal sentences, but as an institution capable of countering the abuses and denial of other societal institutions such as the family. In this sense, some survivors also saw the criminal justice system's aims, conceptualised by due process and the rule of law as having the capacity to counter the intrinsically hierarchical role driven nature of the family. By viewing the criminal justice system as delivering divine "arbitration on the truth" (Smart, 1990), they were able to perceive the CJS as something of a Truth Commission, able to deliver a process that could counter bystander and perpetrator denial (Cohen, 2001). In providing acknowledgement, the CJS is in effect conferring a new identity upon the victim-survivor, that of truth-teller, rather than liar or trouble-maker, an identity often conferred upon the victim-survivor through popular patriarchal mythology (Taylor, 2004).

Many survivors can only gain a sense of equality by leaving the family home. If one compares the type of power imbalance observed in such a home with that of being in captivity (see Herman, 1992; Biderman, 1956), it becomes apparent that survivors must create spaces beyond the family of origin to assist in their subversion. Critical spaces apply to survivors of intra-familial CSA due to the fact that the institution of the abusive family is characterised by immense power imbalances that can rarely be renegotiated (Driver, 1989; Herman and Hirshman, 1977).

Indeed, the circumstances that give rise to critical space follow from power imbalances in a relationship, which precludes an individual from negotiating a role or

identity that is more in line with his or her conception of self. Construction of critical space implies the absence of possibilities for negotiation, since its enactment involves subversion rather than the mediation of formal structure (McCorkel, 1998:249).

Tessa's interaction with the police can be construed as a construction of a critical space.' McCorkel (1998) uses the term critical space' to describe a process where the physical and conceptual spheres intersect, and subjects can define themselves as separate from the pejorative labels assigned to them. Utilising the police statement process, Tessa sought to define herself as a person distinct from the labels assigned to her by her family and the perpetrator, and "sort out competing identity claims" assigned to her by the perpetrator and complicit bystanders.

Actually that's what I'd need as an outcome. Just for him to know that I was brave, and I exposed. It's not a secret anymore. It could be that-for him to know. And to see his eyes when he knows that he didn't take my whole life, he didn't steal my whole life. Maybe there's that element of me that needs that (Tessa, Interview 3/4).

Tessa utilised one institution, that of the police as a gatekeeper criminal justice agency, to challenge the institutional legitimacy of her abusive family, which previously had the kind of control observed in total institutions' (McCorkel, 1998).

But we've written a statement-the truth's on the statement. Now go about approaching the others. They may get a confession straight away from him. He's just a coward. He's just a chicken shit-lying-coward...Authority's going to scare the shit out of him (Tessa, Interview 3/4).

As McCorkel argues, "critical space decreases legitimacy and produces challenges to institutional authority" (1998:247). Jennifer, Mary and Nola, also described their use of the institution of the CJS to subvert the authority of, their families and the denial promulgated by familial bystanders.

I think though[...]the catalyst was my family's reaction when I disclosed and I think that was the final straw on the camel so to speak where I thought no if you're not going to believe me then I'm going to go through this process and this process is going to reveal something to you. But then again I think the ultimate satisfaction for me is just that someone independent in authority goes to him and says "this has been

[...] put against you and what do you say?" I think that brings with it something.
(Jennifer) (Quote used earlier/in chapter 5)

The acceptance by the Police of my story was very validating. As the Police symbolise social authority, knowing the crimes against me are on the social record is empowering-it feels as though at last society has acknowledged the crimes. Talking to the Police has also empowered me in dealing with my family [...]. (Mary, written submission to Mullighan Inquiry)

And my mother wanted me back she said, —Come home" and I said look, —I will--you get a flat I'll come and live with you." But she didn't want—she wanted what she had. She knew about the abuse, I didn't realise that she knew--but she didn't want that. She wanted her life but me in place. And to get her off my back I did my lolly and went to the police and made a complaint about incest. (Nola)

Mary, Jennifer and Nola also utilised a criminal justice agency, a formal institution endowed with the traditional degree of power to validate or invalidate truth (Smart, 1990), to remove themselves from the labels of liar, malingerer, mad-woman and trouble-maker attributed by complicit familial bystanders and perpetrators. This is problematic, however as the CJS is an unstable critical space as its institutional power can just as easily reify the labels and identities from which survivors wish to escape, as seen in other survivors' cases as well as in the literature (Eastwood, 2003; Taylor, 2004).

In addition to being a site for the development of critical spaces, for Jennifer and Tessa, the CJS was also a site of symbolic protest (Taylor and Norma, 2010), where they were able to expand their strengths as activists and spokespeople for survivors. Taylor and Norma (2011:25) contend that sexual assault survivors often report under the remit of symbolic protest, where they demand ~~that~~ state agencies work harder to suppress this category of crime."

You know and there was also part of me that thought, and a big part of me that thought I've met too many people who wouldn't be able to tell someone outside a group situation let alone tell the police. So if I've got the ability to go to the police and become a statistic and start demonstrating that there are these cases out there, then I've got a responsibility to do that (Jennifer).

Yeah, it's good. It feels good. It's motivating actually. It's, um, when I think about it it's quite motivating. Especially since I'm in the fine line between what the ~~hell~~ am I doing?" and ~~why?~~" This reminds me, of my passion. It is to raise consciousness, it is to protect children, it is to um...to be heard and to have voices that are usually silenced heard. So ALL those fundamentals that keep me motivated in life are in this. You know, so while I--I think if this hadn't happened it's probably quite timely. This would be the time when I'd balk. So, I'm thinking no hang on--it's not about me, it's more than me (Tessa, Interview 2/4).

In making these demands,⁶ (Taylor and Norma, 2011) survivors implicitly declare themselves and other survivors as worthy of recognition, time and attention, challenging the messages of objectification and diminished worth communicated by the perpetrators (Driver, 1989). Moreover, in utilising the CJS in this manner, survivors are able to reverse the facets of objectification including the denial of subjectivity ~~where~~ the objectifier treats the object as something whose experience and feelings (if any) need not be taken into account" (Nussbaum, 1999:213). Through expressions of protest and outrage, these survivors are making direct claims to their subjectivity. Yet despite the construction of critical spaces and symbolic protest through the co-option of the CJS institution, it is important to examine the limitations of this form of resistance. Taylor and Norma (2011) highlight the fact that the CJS often fail to meet survivors' justice needs. It is for this reason that other possible sites of critical spaces and symbolic protest will be explored.

Political activism and discourse

Another subjective identity embodied by survivors was the adoption of a political activist ~~identity~~". Resistance in this sense can be seen as a public performance (Bosworth and Carrabine, 2001) of political activism in the form of lobbying, letter writing or blogging, and public speaking. This performance subverts the shame and silencing intrinsic to experiences of intra-familial CSA.

When I first began to write I was still ashamed and I put an ~~NM~~" at the bottom of the article-I couldn't put my name to it. Until I realised that until I admitted publically that it has happened-get rid of the guilt and the shame and help someone else (Nola).

Indeed, most of the survivors in this study were willing to define themselves as activists who campaign for community awareness of CSA and for reforms to justice and social services.

That many survivors reported adopting this subjective identity, following what they perceived as effective therapy or counselling, and through this they challenge the previous false binary some researchers have drawn between therapeutic narratives where survivors adopt a victim-damaged model and intra-familial child sexual abuse becomes re-privatised, and the earlier political and consciousness-raising narratives which characterised second wave feminism (Breckenridge, 1992; Armstrong, 1994). Indeed, for some survivors, identifying as a feminist and engaging in the activities associated with this identity was inherently therapeutic.

I was fortunate to have embraced feminist ways at the age of 12 or 13. The philosophy of feminism helped-it was like a mindshift-that these things happen and it's ok to talk about it (Liz).

Linda used feminist discourse to reflect on survivors' continued silencing within the public sphere.

Women's voices are not heard, they're not seen as something that has as much value as a male voice, um and therefore the issues that women have to deal with aren't um...aren't looked at on an equal basis to men's issues. (Linda)

The following excerpt also illustrates the way in which feminist discourses have helped survivors gain a sense of agency in their own lives, and helped them reject the objectification imposed upon them by their experiences of CSA.

Having time to think and read was beneficial and I began to place myself in a social and historical time. I became very angry and joined the women's liberation movement [...]. By the time I graduated I decided I wanted to be a political activist and after all those years of study I realised I actually needed to be active [...]. So I joined the women's health network and set up the women's health centre in _____ and used a

combination of degree skills-nursing skills with the _____ Women's Health Centre. (Mary, written submission to the Mullighan Inquiry²⁹)

As illustrated by the above excerpt, Mary discussed the pivotal role education and the attendant political climate of a 1970s university education played in her pursuit of meaning and self understanding. Self-identification with the women's liberation movement can also be seen as having allowed Mary to develop a greater sense of self-efficacy and social-efficacy, which is antithesis of the passivity and powerlessness that sexual victimisation is viewed to imbue in a survivor (Kelly and Breinlinger, 1995:44). Adopting this identity also allowed Mary scope to engage in what could be considered as 'emotional deviance' (Hercus, 1999), within the parameters of activism. Hercus contends that "the centrality of anger to collective action stems from its link with action" (1999:36), and she highlights the way in which feminist collective action can provide an outlet for emotions, such as anger, that women are generally expected to suppress. In this sense, identification as an activist has a number of instrumental aims: on the one hand, practical change can be enacted, as seen through Mary's contribution to the women's health centres; on the other hand, personal catharsis can also be attempted.

The centrality of emotional deviance inherent to these political identities, and hence, resistance to the silencing and denial that accompanied many women's experiences of childhood sexual assault, is also reflected through Tessa's contemporary performance of activism. Tessa's online campaign against the sexualisation of children similarly allowed parameters for anger.

So you'll see my anger. I wrote a very personal blog but I tried to keep it objective about my work as well. So it's quite angry (laughs). And I had a rant about anger as well, I go, "Well how many of you are going oh well she's just an angry person? [...] She's just angry with no manners, you know?" And so I wrote about that. I go, "How many of you have used that as a second excuse, to deny?" If you just asked them perhaps, "Have you got something to say?" Then you might find out that they do, "Yes I'm angry for a reason." So I wrote about that as well. I didn't let people just use that: "Oh she's angry, oh she's just an activist." "Cause? that's bullshit [...]" (laughs) (Tessa, Interview 3/4).

²⁹ During Mary's interview, she presented excerpts of her written submission to the Inquiry and expressed a desire for these excerpts to be used in conjunction with her narrative interview. These written excerpts served to further emphasise her interview answers.

Other survivors did not explicitly utilise a feminist identity to protest in the political realm, but presented themselves as advocates for survivors of sexual abuse.

And what I actually found and what I'm finding now is that I get a sense of empowerment from telling my story and actually trying to bring about change [...]. Hence, why I write to the ACT Attorney General and go blah blah [...] (Jennifer).

I want the community to be aware that it happens more than you read in the paper. I want the community to be aware that it happens in families. It happens in families where you go, ~~It~~ doesn't happen in my family," and you don't look (Nola).

In the same way that Bosworth and Carrabine (2010) suggest that acts of resistance within their prison case study could be seen as the structuring of subjective identity, it could also be argued that survivors' occupation of this identity is as much ~~expressive~~" as ~~instrumental~~" (Bosworth and Carrabine, 2010:511). There was pride in identifying as active and vocal, but such identification generates its corollary, where some survivors positioned themselves in contrast to more ~~damaged~~ survivors".

And I think part of it is that I see sort of two stereotypes-well not stereotypes-but types of survivors. One that is the damaged goods that has gone into using drugs, alcohol, whatever, vices-hasn't recovered, hasn't healed quite well either, sitting in gaol somewhere. And I see the other group of survivors as really articulate, really intelligent, really proactive and want to do something. They don't want to see the next generation of kids having to go through what we went through. And we're so driven, we actually want to make a difference and do something (Eva).

Such a binary is problematic for survivors, and reveals the propensity for constructions of resistance to be somewhat simplistic. Indeed, from this sample it is evident that engagement with resistance and agency is a fluid process, as throughout a survivor's lifetime there are opportunities to actively resist, while there are also challenging times where day-to-day survival can be a struggle (Bosworth and Carrabine, 2001). Yet, further to this is the recognition that this sample is far from representative, as it is a largely middle-aged cohort who are relatively well-educated. Resistance from younger, more disenfranchised women may be demonstrated through other modes. Thus, it is important when examining notions of resistance, to attend to the limitations of a resistance paradigm (Bosworth and Carrabine, 2001).

Work as vocation

As discussed in the introduction, intrinsic to discussions of resistance is an examination of discourse. Resistance is as much to discourses of CSA as it is to material conditions of oppression. Theorists have discussed the limited accounts of survivors given in dominant discourses as though there exists only the following options: the binary between political and therapeutic, or a hybridised version of both (see Armstrong, 1994; Crossley, 1998; Naples, 2003). Similar to Hill Collins' assertion that dominant definitions of political activism "misunderstand the meaning of these concepts in Black women's lives" (Hill Collins, 2000:217), the spheres of activism also have different meanings for some of the survivors in this study. Indeed, the survivors' accounts of action reveal that these survivors do not confine themselves to public confessional speech, as some writers suggest (Armstrong, 1994; Alcoff and Gray, 1993) and have attempted to develop alternative frames with which to guide collective action. Some women have chosen to pursue change at a grassroots level, working in the community and with vulnerable populations.

Such activism through caretaking of others is often under acknowledged (and often devalued as 'women's work') and not viewed as an active political strategy to change views about CSA (Huffman and Cohen, 2003). However, Linda, Tanya, Tessa, Sinead and Felicity all worked in areas of domestic violence and sexual assault counselling, child sexual assault counselling and child protection intervention. Their work embodied the fusion of personal and political. While their work could simply be construed as paid employment, it is important to note that community sector work is often underpaid, and for women who have the professional training to work in more secure, better paid departments but chose not to do so, such work must be construed as a political choice. Linda's work in particular was informed by feminist practice and an ecological view of community.

I choose to work with women, not just survivors of CSA but survivors of a range of violence in their life. That's how I choose to...I guess, try and make changes in the system that I think need to happen. Just feeling like I can make a difference in the system that I think need to happen. Just feeling like I can make a difference for other people. Yeah, that's how I choose to probably deal with the anger, and the hurt and the betrayal and all that rather than turning it in on myself and doing negative things, I try and turn it into something positive (Linda).

I think that's its really rude that the children--the people who've had their potential stolen away have to heal in order for them to take action. It's very mind-blowing and I don't know what to do about that and I'm a counsellor in the field,? So hopefully I'm giving children the opportunity to take their lives back a bit quicker, but still, the effects of CSA are devastating and have been on me and I get angrier and angrier as I go along and I have to grieve my life (Tessa, Interview 2/4).

I work with kids who have this stuff as well which isn't that triggering...actually it's quite empowering. In some ways if they're young, and it's already being talked about and hopefully they won't have the ongoing problems that adult survivors have (Felicity).

In each of these quotes, grassroots action through care-giving appeared necessary in constructing another critical space. For some survivors, there was recognition that one cannot transform their own family, and that one may not be able to interrupt the multigenerational transmission of abuse in their family, but they were able to construct other critical spaces in the public sphere to resist and fight the prevalence of gendered violence and sexual victimisation. In much the same way as survivors turned to the CJS as an institutional critical space (McCorkel, 1998), one's work as vocation plays a dual function. In one sense, it paradoxically becomes apparent that for many survivors, mastery and self-actualisation may be played out in the public sphere of work, volunteering, activism, writing and public speaking, rather than in the realm of the private where covert tyranny and oppression may be more difficult to challenge. This was certainly observed in Diane's case, where Diane wrote a book about her abuse, challenging the familial denial surrounding severe physical and sexual abuse. Unfortunately, many of her eight siblings refused to read the book and the family dynamics of oppression and denial remained unaltered.

And I wrote the book in 1992. And my husband read it, I finished the book and I had to tell him and um...he...read it 13 times editing it, so you can see from that that he's very supportive and he's caring of me in many respects, but he had to deal with the responses. And the difficulty for me with the family is sure I wrote it all down, but then I had to live with consequences of writing it all down and I'm out on a limb [...]. But it's published under a pseudonym but I published it so it's not broadly available. But it was very therapeutic (Diane).

Survivors also sought or constructed others spaces where they could develop a sense of belonging, acceptance and self-actualisation.

Part 2: Resistance through alternative identities and sites of belonging

Survivor support groups

The creation of formalised, yet non-institutional “critical spaces” (Hollander, 2002; McCrosley, 1998) is a related political action, and this is evident from the accounts of the women who organised support groups either on their own or through ASCA. This is an organisation created by survivors, which shares current research into child abuse provides a space for the dissemination of various forms of knowledge, acceptance and demystification, essentially allowing survivors the “ability to define themselves” and “fashion a more empowered self” (Tretheway, 1997:298). Tretheway goes on to quote Bricker Jenkins (1992b:298) stating that “to ever imagine that one has the capacity to create a new definition of oneself is a radical and powerful act.” A person who has adopted an alternative identity does not remain passive, but actively reworks their environment, or forms new environments that are less dissonant with the different subject positions.

The first place a woman will go to is another woman (Liz).

I also started up a support group for survivors of abuse, because I couldn’t find one. So I talked to my counsellor and said I’d like to start one up and she was very supportive, which was wonderful. So she helped me find a venue and it started up a group and it ran for a year. It went really well. It was a relief to be with other people who had experienced similar things and just have that even if we didn’t talk in great lengths about it. It was kind of a revelation. And then I found ASCA--Advocates of Survivors of Child Abuse which is now Adult Survivors of Child Abuse. An Australian organisation and they ran support groups and they offered training for facilitators. So I went along and closed the group that I just had myself and reopened a group under the ASCA banner and I ran that for 8 or 9 years [...] (Tanya).

And I guess too, the--you know groups like we had at W ___ that gave us a protective little group to know that we could trust each other. That was very unique. And it just gives you that little bit more strength...sometimes when you think, god, sometimes I can't cope with this on my own, you think, oh hang on, ___ is still hanging in there and so and so's still hanging in there. What am I doing? Snap out of it. It just gives you that little bit of oomph (Sue).

The ASCA support network is wonderful and it is a relief to be with people who understand the challenges of surviving trauma (Mary).

My sister is still like an 8 year-old child, still caught there in the abuse. I know that she's reaching out and I can't help-where's the referral, where's the support? Her doctor says he's given her names and referrals, but some people need a hand. In our fellowship, if a woman rings up and says she's got a problem, we go to her, two women go to her (Janet).

And when we started the group there were two ladies as old as me or maybe a bit older, who joined the group and had never spoken about it before. You know, because it's a simple thing. You're ashamed of it. You've got the guilt and the shame. My first words when I started to write were ~~it~~ "it was my fault". Why was it my fault? But that was it, that was what I had been taught, that's how I had grown up. Nobody had disabused me (Nola).

If resistance, as Bosworth and Carrabine (2001) contend, is related to the construction and location of oneself in a 'subjective identity', then it is important to explore the nature of identity in relation to the collective identity discussed above. Stevens (2012) suggests that identity is found in the "capacity to keep a particular narrative going" (Giddens in Stevens, 2012: 527):

As Giddens suggests, however, identity also requires a sustained, sequential, integrated and purposive self-narrative: 'the stories we live by' (McAdams, 1993) and (metaphorically and literally) tell ourselves and others about who we are (Stevens, 2012:528).

Developmental theorists (Erikson, 1959; Maslow 1943; Collaruso, 2000) have suggested that there are times of identity crisis, where internal and external conflict leads to

the transformation of identity. Self-narratives are adopted, modified or rejected as one grows in knowledge and life experience. Thus the data above describes survivors who have identified with survivor groups due to their shared values, goals and also ability to embody a narrative commensurate with survivors' self-concepts. The notion of community and a shared commitment to each other's wellbeing provides for the survivor some of the needs that were unfulfilled by the family of origin. Similarly, in identifying with a "survivor group," survivors were able to divest themselves of the pejorative labels they were given by the perpetrator and familial bystanders. Interestingly, the human needs for attachment (Bowlby in Stevens, 2012; Ainsworth, 1989), belonging and esteem (Maslow, 1954) are also met by survivor groups. Herman also states that in restoration of the bonds severed by trauma and its attendant isolation and degradation, "the group restores her humanity":

The restoration of social bonds begins with the discovery that one is not alone. Nowhere is this experience more immediate, powerful or convincing than in a group[...]Irvin Yalom[...]calls this the experience of "universality". The therapeutic impact of universality is especially profound for people who have felt isolated by shameful secrets [...] (Herman, 1997:215).

Consequently, it is too simplistic to suggest that groups are a form of resistance. Resistance is something of a secondary consequence of survivor group identification, and can accompany the fulfilment of fundamental survivor needs.

Cultural and religious identification

Survivors may also claim culture and religion as subjective identities of resistance. Bosworth and Carrabine (1999) described the way in which female prisoners used their ethnic heritage and identity to resist the demands of conformity within prison. Similarly, Sue also utilised her Aboriginality to resist the silencing within the legal system and her perceptions of middle-class sensitivities. However, Sue's narrative reflects the complexities of resistance, particularly for an Aboriginal working-class woman whose mother abused her, and whose partner abused her own daughter. This story of resistance is situated in the face of multi-generational trauma, deprivation and Indigenous disenfranchisement, and highlights the multiple and often simultaneous modes that resistance can embody. Sue spoke of the pressure

from within her community to remain silent about gendered violence, and the added pressure present if the perpetrator from the community is also an elder. This is compounded by the history of antipathy between the police and the Aboriginal community (Cunneen, 2001). For many women, negotiating the competing demands of multiple aspects of subjectivity can cause immense inner conflict. Much has been written in relation to the complexity of Black Feminist politics in America, where women describe the competing political struggles between middle class feminism and racial equality (Crenshaw, 1991; Hill Collins, 2000;). For Sue, however, speaking out about sexual assault does not compromise her sense of Aboriginality or her commitment to Aboriginal rights.

Well if you've spoken out in the community you're outed initially, a lot of the time, in my instance I lost my family because they were ashamed that I'd actually spoken up...yeah, you have to be prepared to do that, to speak up...because some people who are perps are actually held in high esteem, and as you know, if you're not Aboriginal, you think "Oh, they're elders, they deserve respect and the community hold them in high esteem so they must be okay". In fact, a lot of the time they're not. They're filthy paedophiles? and they get away with it because people don't speak up. We gotta speak up. Name them, shame them.

In the above excerpt, Sue highlighted the loss and sacrifice that can accompany resistance and 'speaking up' against inequalities, seen through her comment, 'you have to be prepared to do that, to speak up'. Sue compelled all women to 'speak out', and participate in collective action, seen through the phrase 'we gotta speak up'. However, the option of 'naming' and 'shaming' that Sue advocated highlights the limitations of resistance. Ultimately, such grassroots tactics which invariably resonate with the discourse of vigilantism, reveals the language of one who has limited access to formal public arenas. Again, McCormack cites Foucault (McCormack 2005:664) who states that 'the alternative understandings always operate in relation to domination and power, resistance is never in a position of exteriority in relation to power'. While Sue's tactics of resistance very much relied on interrelations within her community, they were invariably limiting.

Mind you we put our contacts out and we tell everybody. I do. I put my contacts out to the NT and tell them, word will get around everybody (Sue).

By refusing to conform to what she identifies as 'white middle class' political correctness, and adopting a working class vernacular, she embodied a hybrid subject position

that is classed, gendered and racialised, that is, a position of intersectionality (Crenshaw, 1991). Indeed, Sue's behaviour embodied the positionality that Laura Alcoff (1988) espouses. Alcoff's paradigm of positionality allows for a fluidity of gendered subjectivity, reminiscent of Sue's multiple subject positions. In this excerpt Sue challenged the government's controversial NT intervention³⁰ and highlights the flawed nature of attempting to stop child sexual assault in this manner.

And you know he walks around today and apparently he's working in NT with children. How do we protect these kids? And yet the government's sending in troops and Christ knows what to protect our black kids in the NT and these fucking black bastards are up there and probably sexually assaulting them. Because he has the trust (Sue).

Her language embodied the notion of positionality, wherein she was able to separate the issue of gendered violence from racial politics. Her working class vernacular, seen through the phrase *“these black bastards”* could be seen as engaging in what Ronai and Cross (1998) label as *“deviance exemplars”*, which assist in distinguishing herself from Aboriginal men who abuse children. Her reference to *“our black kids in the NT”* highlights a level of identification through the pronoun *“our”*, coupled with *“these fucking black bastards”*, highlighting that such sex offenders, despite being Aboriginal, have no commonalities with her as an Aboriginal woman. By appropriating the language of the coloniser, it could be argued that Sue was able to distance herself from *“deviant black men”*.

In a similar manner, Sue used her orality within the courtroom to denigrate the man who raped her daughter. Using the language of the profane, she transgressed the rules that circumscribed speech in the courtroom. In the following excerpt, Sue described herself as an active subject who was unwilling to acquiesce to the court's authority or show her vulnerability in front of her daughter's perpetrator.

I mean obviously I yelled out what I wanted to yell out. I called him a *“fucking black cunt”* and whatever I wanted to say. I did. I didn't care. Lock me up, I don't care. Filthy fucking child molester you dog cunt, I just let rip mate. I didn't care (Sue).

³⁰ ‘The Northern Territory Intervention’ is a policy created in response to a combination of long standing Indigenous social deprivation, moral panic and reported high rates of CSA in Indigenous communities. This intervention saw a paternalistic policy of intervention which was legalised by the Stronger Futures in the Northern Territory (2012) Act.

Sue's comment, "I mean obviously" highlighted her attitude and her refusal to obey conventions imposed by the court. Her lack of compliance reinforced the court's lost legitimacy for Sue. In speaking about her refusal to be silenced, Sue emphasised the transgression of what she believes to be white middle class mores. Thus, she refused the identity and the ways of speaking that she saw as stratified by class and race. Unfortunately, such speaking out could also be construed as counterproductive, insofar as her behaviour in the courtroom confirmed pejorative stereotypes that hegemonic groups possess in relation to marginalised groups.

If it makes people uncomfortable so what? Imagine how we feel. If you're uncomfortable, so what. So what if the average middle class person is, "Oh god we don't talk about that, keep it to yourselves" bullshit. Fuck off. The more uncomfortable people are, the better I like it. As far as I'm concerned I'm stirring the conscience they don't like to have stirred....I think everyone has a part to play in prevention...Make a fucking stand and stop being such a fucking whoosy. You know get out of your comfortable zone. That's the message I want to get through (Sue).

Here Sue eschewed what she perceived to be white middle class values of diplomacy and circumspection. Instead, she transgressed the bounds of polite society to speak openly and bluntly about child sexual assault. It could be argued that Sue created a binary between middle class white society and those at the periphery, attributing qualities traditionally seen as negative, such as passivity, as implied in "stop being fucking whoosy", to middle class society and the strength that arises from adversity, to those at the margins. In doing so, Sue resisted such complacency by drawing upon her own experiential knowledge of multigenerational trauma as a form of "insurrected knowledge" (Foucault, 1978), thereby positioning mainstream society as naive and ignorant.

Religious identity was another form of resistance through subjective identity. Diane turned to Christianity as a form of rebellion as a teenager, in defiance of what she labels her father's "Victorian attitude" to morality and in an attempt to derive meaning out of her life experiences. Indeed, she believed that a pivotal role in achieving a sense of resolution was her spiritual and religious beliefs. The following excerpt highlights the way in which Diane had utilised her spiritual beliefs to divest herself of the guilt that survivors of child sexual abuse often experience. Her exploration of the notion of responsibility was in response to the question of whether she felt responsible for the changes that occurred in her family after she

disclosed her father's abuse. Certainly, her repetition of the phrase ~~“huge liberty”~~ highlights the way in which the situation of the self within a religious discourse, which she believed promoted love and acceptance, provided scope for personal empowerment. The figure of speech ~~“mind-blowing”~~ indeed highlights the extent to which situating the self within this discourse can engender an internal metamorphosis.

Those principles were put forward out of love and the main factor is not punishment it's love and the freedom, and the freedom in understanding that I am not responsible--so there you go--that I am not responsible, God is not an inspector of persons, it's not what I'm doing, it's not my responsibility--well it is in my response to things--but there's huge liberty in knowing that sure I've messed up, there's forgiveness for messing up and that I can't earn my salvation. There's huge liberty in that and it's there for everybody not just a certain few. There's huge liberty--there's freedom in knowing that. That I find mind-blowing really because it frees me up in a way that I've never felt freed up (Diane).

Liebman-Jacobs, among countless other theorists, contends that the child in intra-familial sexual abuse ~~“bears the burden of her father's sins”~~ (1994:123). However, through her newfound religious knowledge, Diane was able to reject the blame her father apportioned to her and her sister with regards to the abuse. Diane also alluded to the notion that intra-familial CSA is constructed, in part, through panoptic surveillance (Bell, 1993) when she stated that ~~“God is not an inspector of persons”~~, highlighting that the authority she derives from her belief in God liberates her from the hierarchical authority which has subordinated her within her family. Although Diane was the only survivor in this study who spoke specifically about the role of spirituality as a form of resistance, her identification to/with/of a spiritual site parallels Wang and Ho's (2007) case study of a young Chinese woman's resistance against incest. In both cases, the body and spirit dualism allows the violation and domination of the body to be viewed as distinct from the domination of the soul.

Challenging the myth of the altruistic family

Through the construction of non-abusive families

One of the ways in which some adult survivors in the study have resisted the invalidation, subjugation and dehumanisation they experienced as children was to establish a sense of emotional and spatial distance between themselves and their families of childhood. For some survivors, this meant the rejection of the myths and secrecy that hid the reality of violence within their families.

By speaking the truth and struggling to get out of an emotionally enmeshed family, I have gained my sanity and self-respect, and lost my biological family (Mary).

The biggest impact has been on my family. I had to walk away from them. And because of all the abuse I've not been able to talk about. And certainly family--god I can't even think of the word--certain family acceptance that in any other family is not acceptable. And the biggest thing is I couldn't talk about it with the family. Um and in the end I just crashed and went, "I have to do this". This is what's happened from there...I need time and space. So I'm going to ask you all to leave now and I can't be around you--any of you--it has happened and I'm walking away (Pam).

While these survivors rejected the ideology of familialism (Barrett and McIntosh, 1980), which constructs the family as beyond reproach and intrinsically altruistic, survivors were also open to constructing their own families premised upon honesty and mutual affection, rather than the dynamics of power (Biderman, 1956; Cohen, 2001) discussed in the previous chapter.

I guess it's like if you can't stop seeing your family get your own family as well...like family's who you choose really...and that's what came out of the whole 10-year process--realising who my friends were and who were acquaintances (Felicity).

Reconfiguring the discursive meaning of family entailed the countering of ideologies of familialism and their inherent emphasis on discourses of biological naturalism, such as kinship and familial obligation. Inherent to this is what Bosworth refers to in her work as the notion of perceived choice, as "a vital pre-requisite for resistance" (Bosworth, 1996:133). Choice, or perceptions of self determination, where adult survivors saw themselves as having

the choice to create their own families and leave their original families, is essential to the construction of self in reconfigured family units.

And that's another thing--I said to my brother and sister. They go, "Why?" and I go, "I don't want to die like mum--passive." I go, "She died from her own grief because she couldn't be autonomous, she couldn't get her life in her hands" (Tessa, Interview 3/4).

In the above excerpt, Tessa described explaining to her brother and sister the reasons for breaking the unspoken rules of non-disclosure, denial and silencing that were rife in her family. By rejecting the ideology of familialism, she is able to resist the role that her dysfunctional family has imposed upon her.

I think with my sister, because she was older... a lot of the grooming work had to happen in distracting her from caring for me. So that's the role she played. So she's very jealous, very, very jealous of me, I was the little one--I wasn't even as cute as she was when I was a baby, but I got all the love, and my dad made it clear that I was the favourite. She was the older, smarter one who did the cheque work, paper work, and yet she couldn't get that affection. So, that was how she was groomed. So her role was to hate me, and hate my usurping her position. She was first, and then I took everything. So that was her role. Um, hating me so she wouldn't believe me when I finally told (Tessa, Interview 3/4).

As Tessa explained, such roles are constructed by perpetrators to assist in the grooming process, where everyone is groomed in the family, and familial bystanders become unwittingly complicit in the perpetrator's power (Salter, 2003). Returning to Cohen's work addressed in the previous chapter, it becomes apparent that the construction of such roles corresponds with the misperception held by bystanders as a form of bystander denial (Cohen, 2001).

Um, I no longer talk to my father. I have one twin brother in Tasmania who I contact, who obviously I have a relationship with--but the rest of my brothers--some I haven't seen for fifteen and sixteen years. On that level, that's affected that (Eva).

And I was saying to my mother and brother and sister, I'm not taking that guilt or that blame anymore. I was saying, "This is it," also I wasn't taking responsibility for what

my brother or dad felt, to me that's their issue. I don't feel the need to forgive them (Eva).

Not only did Eva describe rejecting the ideology of familialism, she also described her resistance of the internalised self-blame commonly seen as a coping mechanism used by survivors. Such a coping mechanism, however, resonates with the Freudian orthodoxy which places culpability for CSA at the hands of girls and women (Taylor, 2004). For many survivors, however, this realisation often occurred after considerable periods of destabilisation, leading to what McCorkel (1998) labels —“identity transformation” where individuals--survivors in this case---construct critical spaces in an effort to distance themselves from the constraints or imputations certain identities pose for their personal sense of self” (McCorkel, 1998:249). These constraints are often the identities placed by the abusers or bystanders on the victim-survivor, which effectively invalidate and subjugate her, precluding her from a subjective identity or the possibility of self-actualisation.

Tessa's rejection of her family's identity was embodied through symbolic rejection of family traditions.

It's slowly pulling away from the last members that felt like they were supportive. But then in their denial, and un wisdom actually kept bringing presents from him. I actually had to throw one off the balcony, for them to realise this is serious. I had to have a drama queen hissy fit, and they go she's just a drama queen (laughs). You know? You up the ante. So I upped the ante and I threw it--we were four flights up and I felt stupid afterwards but I actually had to do it, it wasn't getting through. —He really wants to be close to you again, look he's sending you presents,” (emphasis) VIA THE FAMILY. He has my address, goddamn send it. But they're so groomed to that dirty way of relating that he has, they're so--so groomed by it. (Tessa/Quote also used previously)

Her description of throwing her father's present off a balcony highlights the way in which her behaviour had to be extreme in order to be heard. However, it was also a form of everyday resistance, resonating with Scott's assertion that —resistance in everyday life is often informal, often covert and concerned with immediate, de facto gains” (Scott in McCormack, 2005:663). Her description of her behaviour, spoken in the imperative voice, —I had to have a drama queen hissy fit” also suggested the potential limitation of her actions as she admitted that her family would relegate her behaviour to simply being desirous of

attention. Tessa's last statement which begins with transition signal *but*, coupled with the repetition of statement *so groomed by it* highlights the limitations of her resistance with this particular family institution.

Other survivors chose relationships, in spite of the rather grim prediction of re-victimisation, studies which predict that survivors have a tendency to attract partners who will continue to abuse them (Wager, 2012). Irena's statement *—he was a very loving man. And a gentle man* emphasises the contrast between her husband and her father.

Don't know what made me hold this life--I came very close to...um I mean my second husband he was wonderful. That state of my life I was only married 10 years before he passed away. But he was a very loving man. And a gentle man. But he wasn't a pushover either. I mean we had our moments, so for that period of time I actually experienced what a relationship could be...so it was good (Irena).

Survivors typically also rejected deterministic therapeutic discourses in other relationships, such as their relationships with their children.

Through motherhood

A number of survivors made choices around motherhood in resistance to perceived deterministic therapeutic discourses which present the abused child as reproducing the abuse. One common trauma discourse positions the survivor as irrevocably damaged (Armstrong, 1994). To combat fear of the cycle of violence, some mothers made a deliberate effort to provide extra protection for their children. Nola used motherhood as a form of resistance to her prior abuse, fiercely protecting her children in stark contrast to the way in which she was neglected and abused. Despite the degree of dissociation which she reported and is observed readily in survivors, where she felt estranged from her emotions to the point where she could not feel emotions, she created a family in direct opposition to her family of origin.

I don't know if I loved my children, but I loved having babies and I wanted to prove you could have children and they didn't have to be abused (Nola).

Cognisant of the fact that she was unable to provide emotional nurturance, she chose a man who was innately nurturing and compensated for her own limitations. Despite the lack of

modelling to develop positive parenting strategies, Nola capitalised on her experience by ~~–~~doing the exact opposite of what my mother did”. Interestingly, Nola, along with other survivors demonstrated protectiveness towards their children that they themselves have not experienced

My children kept me going--not insofar as saying ~~–~~my children kept me going”, but I had responsibilities to rear them because I was a single mother for a long time...I don’t know I think, just the thought of okay, pardon the expression ~~–~~you, I’ll survive what you and the others have done to me (Irena).

So when I had my children and he was never alone with my children and I knew exactly where they were and where they weren’t. I watched them like a hawk. But then I watched them like a hawk with my husband too. It’s an all intertwined thing (Nola).

I wouldn’t let my kids go out when they got to a certain age. Like other kids were allowed to go to the mall and hang out whatever--but no, no way, not happening (Sue).

Think I have a good relationship with my children, especially when I compare it with my husband, because he does have a good relationship with my children but he’s not intimate with them (Diane).

While for some survivors, being a mother was not an overt form of resistance to essentialist trauma discourses, it was an implicit by-product. For survivors such as Nola and Irena, who arguably experienced the most extreme forms of violence in the form of continued rapes, beatings and forced pregnancies, motherhood was an opportunity to say, as Irena stated —~~F~~you, I will survive.”

Much of this discussion has revolved around resistance to the denial, silencing and oppression surrounding sexual assault, as well as resistance to patriarchal and limiting therapeutic discourses. Foucault’s (1978) notion of subjectivity as constitutive of the discourses which one identifies with, is useful here, as it allows us to examine resistance through the adoption of counter-discourses.

Part 3: Resistance through the 'insurrection of subjugated knowledges' (Foucault, 1977)

Appropriation and rejection of therapeutic knowledge

As Crossley (2001) contends, a therapeutic discourse need not be apolitical nor re-privatised. Instead, it can be ~~potentially~~ empowering [enabling] individuals to respond creatively and reflexively to ongoing changes in their social environments" (Crossley, 2000:81.) Mary's identification of multiple discourses reiterates Weedon's contention that an individual's sense of self is subject to continual reformulation (Weedon, 1987:106).

I don't suffer from depression anymore. That's really cleared up since I recovered memories and dealt with them. I think that was about freeing up the repressed material. And um, discovering anger, learning to identify personal needs-all that alleviated depression for me (Mary).

Above, Mary identifies anger as a site of emotional deviance, as it has been argued that when women express anger, they ~~engage~~ in emotional deviance" (Herle, 1999:37). Mary uses a feminist discourse, she also invokes the discourse of psychotherapy, through the clinical terminology of ~~recovered~~ memories" and ~~repressed~~ material", highlighting the way in which Mary was able to create meaning from the fragmented memories of abuse.

Go to counselling. And start to understand yourself. Look my, my mentality is so warped. But my counsellor said my mother did more damage to me than my brother and father put together. I have a very good counsellor. He taught me to accept touch. I was sixty something and I had to learn to accept touch. And I've got to see it coming [...]. And one day my counsellor said, he wasn't doing it to you, you were an object. And I said, ~~Like~~ a hole in the bottle?" And he said, ~~yes~~." And I can be a hole in the bottle, that's fine, I distanced myself from my brother, and I was sixty-three (Nola).

Other survivors have demonstrated that they are not passive consumers of the therapeutic industry (Armstrong, 1994) and simultaneously resist and appropriate elements of therapeutic discourse as they see fit. As Comer (2007) posits, it is important to also note that

there are a number of therapeutic modalities³¹ used by clinicians in assisting survivors recover from the psychological effects of CSA, and thus it is misleading to subsume the different modalities into one discourse.

Once I wrote my history down, she says, —“Well that’s rather all over the place,” and I said —“Yes well, my life was rather chaotic.” And my brain, at that time when I wrote it, it was rather chaotic because of how it came to me and that’s how I wrote it down. Like what else do you want me to do? I can’t sit down and write a chronological history and can’t do it. And I thought I can’t do it because of memory lapses anyway so I thought I’d write it down as it is. And you can’t make sense of it either as a psychologist, then who are you? (Irena)

In the above excerpt, Irena engages in what Ronai and Cross (1998) label as “~~n~~narrative resistance in opposition to discursive constraint”(105). Here discursive constraint occurs when the speaker’s behaviour and narrated biography is controlled by voices of authority. In this situation, the psychologist suggests that Irena’s recount of her history is too chaotic to make sense of, which Irena interprets to be derogatory. Rather than adopting the negative label of ~~d~~“disordered” she resists this label by inverting the situation, questioning the psychologist’s expertise, asking ~~t~~“then who are you?” Ironically, this is the question to which Irena has been seeking answers.

And my biggest thing is when people crash like that, what about looking at child abuse or trauma? I’ve talked to doctors about this and they start to realise, you know people who don’t just go along kind of living and just go crashing in a mess for no reason. And the hardest thing is, and you probably know-is there’s not the people out there that are trained in childhood trauma (Pam).

The mental health system is a sphere in which subjective identity is very much regulated. The capacity to define the self is circumscribed by expert knowledge and assessments of what constitutes normal and deviant behaviour. Thus, extreme emotional distress, self-harm and formerly adaptive coping strategies, which could be seen as a form of resistance (Bosworth, 1996) and is also a logical consequence of complex trauma, is often subsumed into a medical taxonomy of pathology (seen through the DSM IVTR). Russell further contends that psychiatrists often act as moral guardians, regulating patients’ behaviour

³¹ For example, commonly used therapies include psychodynamic, cognitive-behavioural therapy, gestalt therapy and humanistic therapy among many others (Comer, 2007:83)

according to the dictates of expertise (Russell, 1995:12). In this study, many survivors reported interpersonal tension between themselves and various mental health professionals. However, it is within this tension that a space for resistance is created. Rather than subsuming their experiences of abuse within therapeutic discourse, survivors actively chose the diagnostic labels that were commensurate with their own evaluation of what they required. Linda states:

I've been within the psych system where I've had psychiatrists trying to tell me about false memory syndromes³² and it's just fortunate that I was articulate enough to say, I don't want to be treated by you anymore and I'd like to see a female psychiatrist.' You know I probably would've stayed in the psych system for longer and um god knows what I would have been diagnosed with, medicated with (Linda).

Linda's awareness of her rights and needs, particularly her desire to see a female psychiatrist, is indicative of her self-identification as a feminist activist. The discourse of feminism, particularly the cultural feminism that Linda later expounds during her interview, enabled Linda to advocate for her own rights and reject circumscribing labels such as "false memory syndrome". The notion of false memory syndrome refers to a label coined by a father whose daughter accused him of sexually abusing her after recovering memories of the abuse in therapy. False memory syndrome gained a certain currency during the backlash against the incest movement (Cossins 2000; Armstrong, 1994), but there has been no scientific evidence to adequately legitimise false memory syndrome (Cossins, 2000). Rather, evidence leans to its antithesis, that is, the notion that complex trauma leads to compartmentalisation and fragmentation of memory. This discourse and label consequently is mobilised to discredit and negate survivors' realities. Linda was able to assert an identity that resisted this label which, if adopted, would silence and disqualify her experiences of childhood sexual assault.

Felicity's wholesale resistance and rejection of the mental health system was precipitated by her experience of victimisation within a psychiatric institution, where she was raped by another patient who was a known sex offender. After she was raped, Felicity decided to leave the hospital immediately. In doing so, this relatively minor act of resistance challenged the legitimacy of the hospital and the medical profession's authority over her autonomy.

³² False memory syndrome (FMS) refers to a movement in America who claimed that repressed memories of CSA were fabricated or even worse, implanted in patients by therapists. Cossins (1999) contends that there is no empirical evidence to substantiate FMS.

Yeah cause I couldn't keep myself safe and I actually broke out that night and so they actually didn't know I was gone until the next day and that was in the part where they were supposed to see me every ten minutes (Felicity).

Fraser states that clients use ~~—needs talk~~” to politicise their needs when talking with therapeutic experts (Fraser in Tretheway, 1997). Felicity, Linda and Irena engage in ~~—needs talk~~” by ~~—speaking publically~~” about their needs, thereby politicising them (Tretheway, 1997: 285). In the above excerpt, Felicity emphasises that her need to be safe superseded the need to conform to hospital regulations.

A related form of resistance within the sphere of the mental health system pertains to Foucault's notion of the confessional (Foucault in Tretheway, 1997). Tretheway quotes Foucault's critique of confessional practices, which states that ~~—when~~ people verbalise their thoughts to those in positions of power, those thoughts can then be monitored, analysed, categorised and ultimately controlled” and that ~~—rather~~ than sources of liberation, confessional practices are instruments of power” (238). Several survivors have subverted the confessional, and established a defiant stance whereby they reject the notion that healing is dependent on the therapeutic professional.

Resistance through education

One of the mechanisms which allowed survivors to challenge prevailing therapeutic knowledge was the discursive knowledge gained through informal and formal education. Some survivors discussed the importance of formal education in their lives, and the capacity for higher education to assist them in combating the oppressive patriarchal discourses and the discursive tactics of silencing and denial used by their perpetrators.

In addition I-my degree was English, women's studies and philosophy and part of my degree was a unit in women, memory and culture which focused on survivor issues and so I did talk about my experiences in tutorials and wrote about it in essays. Oh look that was an incredibly positive experience, the tutorials we were in-we had a lecture on you know on trauma and looking at various things like the Holocaust and we had one lecture on sexual assault and we had a tutorial afterwards where we were exploring ideas and there was a room of maybe 25 women and in that room maybe 10

women came forward and said I was abused as a child'. It was amazing actually it was quite an amazing experience in that tutorial and writing the essays, it was the first time I had actually publically just gone blah on a piece of paper and written about my experiences (Jennifer).

For Jennifer, higher education as an institution, like the CJS, is a critical space, insofar as it confers a form of social authority that empowers survivors to combat the original oppressive discourses surrounding abuse with established knowledge. In Jennifer's case, this was also a space where she could begin to speak about her experiences.

Nonetheless, education need not take the form of a formalised institution. Both Felicity and Tanya discussed the importance of informal education in the form of reading and gaining knowledge about perpetrator behaviour. Challenging perpetrator grooming behaviour has been seen as a crucial step in diminishing the perpetrator's power (McAlinden, 2005) as well as divesting oneself of the shame associated with victimisation.

Yeah. That was a problem for me and I kept reading and reading more stuff and I sorted it out intellectually...but it was all the grassroots stuff... well a big learning curve for me was really learning how perpetrators work and I've read Ann Salter's stuff and I've realised how tricky they are and how you're being groomed [...]
(Felicity).

Get as much education around everything(Tanya).

Such reading illustrates the subtlety of everyday resistance, where ~~everyday~~ resistance is informal, often covert, and concerned largely with immediate, de facto gains" (Scott in Riessman, 2000:122).

Confrontation of the perpetrator's abuse discourses

The last manifestation of resistance to be discussed in this chapter is the act of confrontation. Confrontation is a particularly powerful, yet risky strategy, of which Herman (1997) cautions survivors to be wary. Eva, Tanya and Diane confronted their perpetrators as adults, with Eva and Tanya feeling a tremendous sense of empowerment as a result. This empowerment is derived from the survivors' ability to develop an autonomous voice and

reject the silencing that their early experiences imposed upon them. Such empowerment, according to Herman's (1997) model of recovery, is seen as a crucial step in healing from the impacts of CSA.

And in confronting, it was a great thing for me, I took back my power and the nightmares stopped which was great. And I realised that he was only human as well and the fact that he had left the country made me think, –Wow, that's quite a big, power that I had in confronting him.” That was the upside-and it wasn't really justice but in confronting him I felt like I'd called him on it, after so many years of it being shoved under the carpet and him getting away with it. But through that I really lost the relationship with my parents, which was in the similar damage category to the abuse-that loss of connection, support and feeling like I was in my family-I felt like I could divorce my parents and they were just as angry at me, that took more counselling to deal with that. I felt really betrayed by my parents-they'd never done anything about the situation-they'd never confronted him, never taken him to court, never gone and punched his lights out. All the things I thought should have happened (Tanya).

Despite the feelings of relief and empowerment Tanya described, she also discussed the consequences of confrontation and the inevitable losses that may eventuate. This was also described in Eva's case of confronting her father, a bystander to the abuse who witnessed Eva's brother raping Eva when she was in primary school.

And I confronted him very openly in that foyer, and he had his...church elder with him. And my dad he accused me of being the devil-and then he'd always used the church-it was quite a religious family or a highly religious family um and has always used the church and the language barrier. Sort of saying things like I don't understand you and using religion-saying, –You're the devil,” again-I absolutely very openly confronted him and my uncle-about abuse in the family. Not just my abuse but certainly abuse in the family. So yeah.

How did you feel after that?

Oh I felt wonderful. Absolutely wonderful. Felt like the anger had just gone (Eva).

So between sixteen and twenty-four I had learned enough to know I had options-that I had control [...]. Anyway, a few years later after I had children I went back up and I asked my father why he did it...I was very careful about how I did it, very gentle-you

have to consider him in order to get what you want and so he said, “Oh I don’t know really,” and my husband was there which I was very pleased about because that straight away said that he did it. And he said, “I suppose I thought you were attractive” (Diane).

Diane also highlights Herman’s (1997) caution that in confrontations, perpetrators may not provide the admission of guilt or apology that survivors seek. Yet satisfaction may not be related to the perpetrator’s response, but to the survivor’s recognition of her own voice and courage. Herman states:

Survivors who grew up in abusive families have often cooperated for years with a family rule of silence. In preserving the family secret, they carry the weight of a burden that does not belong to them[...]. Survivors may choose to declare to their families that the rule of silence has been irrevocably broken. In so doing, they renounce the burden of shame, guilt and responsibility, and place this burden on the perpetrator, where it properly belongs (Herman, 1997:2000).

As will be discussed in the following chapter, confrontation for these survivors replaced the role of the CJS, as can be seen in the cases of Tanya and Eva, where they believed that such a confrontation contributed in some way to fulfilling their justice needs.

Conclusion: based on this, what do survivors then need?

In this chapter, at no point has resistance within the family of origin been discussed. This is due to the fact that the creation of critical spaces within a space of absolute authority is almost impossible. While survivors did resist as children and as adults, many found that resistance within the family was futile and it was better to seek agency and perform resistance using other sites and institutions. Critical spaces in the form of institutions such as the CJS and the public sphere of work or activism are seen as fruitful spaces from which to resist the silencing, guilt and objectification that accompany intra-familial CSA.

Subjective identities in the form of reformulating family identification and motherhood, culture and religion, as well as collective survivor identities, are also used as forms of resistance. While survivors occupied and developed such identities for numerous

motivations, such as the need for fulfilment of other needs, in addition to the need for resistance. Needs such as the sense of connection and belonging, which survivors are often deprived of during their childhood, are also sought. Resistance then, accompanied the act of healing and sheds light on the notion of healing from abuse. Returning to Martha Nussbaum's (1999) explication of the seven facets of objectification, healing essentially captures the journey from objectification: instrumentality; the denial of autonomy; inertness; fungability; violability; ownership and denial of subjectivity, and a reclamation of one's worth and humanity (Herman, 1997). Resistance is then intertwined with this journey.

Resistance was also intrinsic to the development of counter-discourses, or the "insurrection of subjugated knowledges" through education (Foucault, 1978), therapeutic and political discourses. Developing such alternative knowledges was crucial for those survivors who felt they needed to confront their perpetrator. Without such knowledge, it is easy to be consumed by the strategies of denial, silencing and complicity so readily enlisted by bystanders, as evidenced in Chapter 5, to the extent that the survivor adopts the burden of responsibility for the abuse. Reading, studying and asking "why" exemplify Scott's (1985) vision of everyday resistance, and ultimately provide the building blocks for subversion.

Finally, examining resistance provides us insight into some of the healing and justice needs of survivors. The first section explored the CJS in terms of its symbolic role, suggesting that some survivors require the CJS to fulfil its mandate as a social authority. The CJS then embodies republican rather than liberal ideals of justice. The needs that emerged from exploration of resistance are diverse and reflect that a singular survivor's need or vision does not exist. Some common needs include the need for speaking, storytelling or confrontation, the need for belonging and validation through survivor groups and other relationships, and the need for useful knowledge. Such needs however, are related to healing needs, and whether there is an overlap between healing and justice needs is a matter for discussion in the following chapter.

Chapter 7: Envisioning Justice

The previous chapter explored the notion of subjective identity as central to resistance and agency. Similarly important was the role of the CJS as a critical space that allowed some survivors to resist the subjugation inflicted by their families. This chapter will explore survivors' visions and perceptions of justice, as well as their reaction to potential legal reforms of specialist courts and restorative justice. The data reveals certain common elements in regarding survivors' perceptions of justice. Firstly, justice needs fall upon a continuum similar to that stipulated by Herman's (1997) trauma recovery process, and Toews' (2006) justice tree model. Survival needs, such as safety for oneself and others, and compensation, were 'justice needs' that had to be addressed before other identity needs could be met. Compensation for everyday costs of medical and therapeutic expenses was paramount. Secondly, for the survivors in this study, the need for justice is connected to a sense of identity (akin to Balboni and Bishop's 'reaffirmation of identity' 2010). Specifically this is evident through the justice needs of validation and acknowledgement; storytelling; public denunciation of the perpetrator and confrontation, the latter including some elements of retributive punishment. Through these justice needs survivors sought to establish an identity separate to the stigmatisation and stereotyping they had suffered after disclosure of the abuse, and conversely, attempted to place the stigmatised identity onto its rightful owner, the perpetrator. Thirdly, the data reveal that justice cannot be subsumed within a liberal paradigm of individualism. Survivors stipulated needs that involved recognition by bystanders, social authorities such as the CJS, as well as the perpetrator. Conceptions around punishment of the perpetrator were also complex, with survivors displaying ambivalence about the most appropriate consequence for their own perpetrator.

The data also highlights the broader implications of survivors' justice needs. Survivors' conceptions of justice appear to highlight the primacy of a process over outcome, respectful treatment and recognition of human dignity. They are consistent with Hudson's (2002; 2006) principles of innovative justice, and elements of Freiberg's (2010) non-adversarialism, as well as Braithwaite and Pettit's (1990) republican theory of criminal justice. The second half of this chapter will examine survivors' and stakeholders' perceptions of justice reforms, with a specific focus on specialist courts and restorative justice.

Part 1: Justice Needs

Previous research

Researchers such as Herman (2005); Jülich (2006); Hopkins and Koss (2000); Des Rosiers et al (1998); Grimes (2006) and Balboni and Bishop (2010) have identified some of the individual justice needs outlined by survivors of sexual assault and CSA. More broadly, RJ proponents such as Toews (2006) and Zehr (2002) have identified broad needs for crime victims in general. Specific needs have included: validation by community and family bystanders (Herman, 2005; Jülich, 2006), as well as validation by the criminal justice system (Jülich, 2006; Des Rosier et al, 1998); public affirmation and community denunciation of the perpetrator (Des Rossier et al, 1998; Herman, 20005); deprivation of the “perpetrator’s undeserved honour and status” (Herman, 2005: 585); storytelling (Jülich, 2006), confronting the aggressor (Des Rosier et al, 1998) and perpetrator accountability (Jülich, 2006, Herman, 2005). Another justice need involves the survivor-bystander nexus, which signals greater recognition of the bystander’s role in either facilitating or hindering the fulfilment of survivors’ justice needs, through acknowledgement of the victim-survivor’s experiences and denunciation of the perpetrator’s acts. Central to this as Balboni and Bishop (2010) suggest is the negotiation of one’s personal and social identity. They state that “many survivors felt a need to be acknowledged as human beings who had been terribly violated and harmed” (Balboni and Bishop, 2010:151) and emphasise the centrality of acknowledgment to reaffirming one’s personal identity.

The construction of a subjective identity as a form of resistance is also compatible with Howard Zehr’s vision of justice needs for victims. Zehr (2002) contends that belonging and connection is inherent to the transcendence of trauma, where the three central characteristics of trauma are established as “disorder, disempowerment and disconnection” (Zehr, 2002:24). Similarly, Toews (2006) uses the metaphor of the ‘justice tree’, which stipulates the eight individual justice needs that must be fulfilled for crime victims to overcome the impact of the crime: relationship and safety; empowerment; storytelling and expressing feelings, information, growth, accountability and meaning (Toews, 2006). The strengths of these concepts rest with their emphasis on the need survivors have for empowerment and meaning, reiterating the research discussed in Chapter 6, that the “journey

to belonging often involves a journey to identity”(Zehr, 2002:21). Similarly beneficial is Toews’ elucidation of justice needs in such a way that it parallels Maslow’s (1956) hierarchy of needs. Such hierarchical ordering is instructive in that, before self-actualisation goals can be attained, relationships and safety must first be established. Certainly, a survivor cannot make meaning of the crime if they are still living with the perpetrator and being assaulted. What Toews’ (2006) theory highlights is the way in which some justice needs are of a higher priority than others, and this is contingent on the survivor and perpetrator’s contextual circumstances.

The foundation of the justice tree: safety and security

Relationships and Safety

According to Toews (2006), the individual justice need that underpins all else is the need to be grounded in “safe relationships”. Indeed Herman (1997) also contends that physical and psychological safety is a pre-requisite for recovery. In this sense, justice needs and therapeutic needs are not mutually exclusive. Some survivors in this study still felt unsafe around their perpetrators and expressed an ongoing desire for both physical and psychological safety. For survivors such as Mary, who experienced her father attempting to kill her, the threat of violence was quite a realistic fear.

A violent childhood has meant living at ‘survival level’ rather than at a blossoming with life, level of living (Mary, Written Submission to the Mullighan Inquiry).

This has implications for policy as recognition of the continued psychological domination of the victim-survivor is essential. Indeed, survivors felt the need not only to keep themselves safe but to keep other family members safe from the perpetrator:

But all I want is to prevent it from happening to someone else (Nola).

I told them [police] because I knew he was starting on my niece (Questionnaire response).

How do we protect these kids? Mind you we put our contacts out and we tell everybody (Sue).

Safety then became related to recognition that perpetrators of CSA often abuse more than one child, and many survivors felt a moral obligation to ensure that other children did not suffer what they had suffered. Safety also became a need that was not effectively handled by official authorities and needed to be dealt with by survivors themselves. For example, some survivors such as Sue above, used ‘word of mouth’ to disseminate messages about the perpetrator’s behaviour throughout their communities, contacted the perpetrator’s spouse to warn her about the perpetrator’s potential reoffending, or contacted anonymous police helplines, such as the Operation Paradoxes of the 1990s. Satisfying safety, one of the next concerns financial survival, expressed through the idea of compensation.

Compensation

Compensation, like safety was a need some survivors cited as essential. Justice needs such as safety and compensation remind us that survivors have daily existence needs, which are often neglected over more abstract conceptions of justice. Survivors discussed straightforward compensation, which would cover medical or therapeutic expenses, as well as attempting to articulate the precise form of compensation that would effectively rectify the state of alienation experienced from self and others. As adults, many move away from the family of origin and are not equipped with the skills to negotiate a different world (Herman, 1992).

But I think I needed some sort of re-education or re-socialisation um. I really needed to get a grip on...on...self-worth, value, establish some confidence socially, intellectually and emotionally-in these situations and I expect my situation is not unique. You have to divorce yourself from emotion in order to cope. So you need re-education in terms of bringing that emotional part of you together and realising that it’s valuable. You shouldn’t have that part of you trampled on (Diane).

So you never have a natural progress from being a child, growing as a teen and going into adult status. I mean you waltz through the years but not the actual

emotional...because you've never experienced it really. You know you're 66 years of age but sometimes you're absolutely a child again (Irena).

I found until I was 50 I really didn't know how to be an adult. I had problems um, trying to work out what an adult's supposed to be [...] (Pam).

These excerpts indicate that it is necessary to extend the theories expounded by Zehr (2002) and Herman (1997), to emphasise that the "journey to belonging" through reconnection and re-empowerment may first require an initial process of connection and empowerment that some survivors have never experienced. Janoff-Bulman's (1985) assertion that individuals' beliefs in a meaningful world are shattered as a consequence of victimisation is rendered irrelevant in the case of intra-familial CSA. Unlike other trauma or crime victims, survivors of intra-familial CSA are born into trauma, and as such, do not progress through the normal developmental growth processes of empowerment and healthy relationship building in their families.

Disconnection from society's behavioural norms and from the self is inherent in many survivors' stories. What is often unacknowledged is the extent to which a crime can impact on a child who has not yet developed a solid concept of self. As Diane states, many survivors find it difficult to articulate how compensation in the way of re-socialisation would manifest. Felicity also invoked the metaphor of living with long-term sexual abuse as akin to living in a warzone:

Now that I'm a war widow and I get a war widow's pension, because I happened to be married to a Vietnam veteran...I think adult survivors should have that. Because you went to Vietnam for one year and I lived with sexual assault for six years and again when the priest got on to it, when I was 16 or 17, again for another 2 or 3 years. So he gets that, he got more than that for doing one thing for one year. What did we get? (Felicity/Quote used before)

However, other survivors reluctantly admitted the need for pecuniary compensation. Some survivors did not wish to equate their suffering to a numerical figure, but many discussed the financial cost resulting from the abuse, such as counselling and other related medical costs. Survivors raised the inequity of having to pay for a service that, had they not been abused, they probably would not have had to employ.

Financial assistance to survivors should be offered through financially subsidized psychotherapy and the taxation rebate offered on counselling expenses being improved (Mary, Written Submission to the Mullighan Inquiry).

[...] appropriate financial recompense including all costs of therapeutic treatment and pain and suffering (Questionnaire response) .

[...]I'm going to go against every other person I know and say I think "compensation" [...] not to-for things like, for example, I've attended paid counselling in addition to free counselling. Paid counselling is not cheap [...] (Jennifer).

That's right and so I think that they should be responsible for all of the mental health bills of that person for the rest of their life as well as for paying pain and suffering to honour the person's pain and suffering that they've experienced. That would probably send them broke I imagine in most cases but so be it, that's the consequence of their actions. It shouldn't be the victim or society that has to pay. They should be financially responsible for what they've caused (Tanya).

Ongoing funding for psychological treatment would be good. "Victims of Crime" funding was only for seven years and unfortunately that is not good enough. It is helpful to have the Medicare system offer twelve to eighteen sessions per year but this does not cover all the cost and is at times daunting to have to go back to the doctor again [to explain] why you need ongoing psychological help (Questionnaire Response).

Other survivors saw the need for compensation in terms of lost opportunities and productivity as a result of the mental health issues eventuating from the abuse. Some survivors were not able to complete their education and as a consequence, were dependent on social welfare or could only occupy low paying jobs.

I have not had the emotional resources to work full time or to pursue a career in adult life; instead I have struggled to maintain employment at different times...I did let go of life as a nurse when I went to University, but I could not cope any longer with all the fears, phobias, anxieties, suicidal thoughts and compulsions to self harm etc. Poverty became a part of life and it is when I emotionally began to crumble and life became even harder as an adult (Mary, Submission to Mulligan Commission).

It is also important to note that the need for compensation is also contingent upon the stage of life a survivor is in, their sense of self-worth (as expressed below) and the degree of financial stability she enjoys.

I didn't ask for money--probably because of my low self-esteem, I didn't feel I was worthy enough! I should have for all the pain and suffering and all the money for counsellors [...] (Tanya).

The need for compensation to 'level the playing field' and ensure that survivors do not suffer any more consequences for the crime than they have to, is what Braithwaite and Pettit (1990) would label as the promotion of dominion through reintegration, an idea that will be more fully explored later in this chapter. It is important to note that not all survivors believed compensation was important; for example, survivors such as Nola believed that no amount of financial recompense would suffice.

Identity Reaffirmation: confirmation of human dignity

Validation/accountability

An almost unanimous theme that arose from the interviews was survivors' fundamental need to receive acknowledgement and validation of the sexual abuse they suffered. This reiterates Herman (2005) and Des Rosier et al's (1998) research, which emphasised the need for validation from family and community bystanders, in addition to validation from judicial stakeholders. Interestingly, for these survivors, acknowledgement and validation from family and community bystanders and the criminal justice system was seen as paramount.

I think the only justice I want to see is to be vindicated within my family and not carry the pain and shame of someone else's actions. The perpetrator knows we (my younger sister was also abused) are watching and that we will act if there is any hint of his repeated behaviour (Questionnaire response).

If I'd have said something when I was a lot younger, absolutely, it would have been crucial to me that my parents acknowledge what happened, that I had been through a trauma and I would have wanted their utmost support (Liz).

Survivors who did not receive acknowledgement/validation from bystander parents and family members highlight the connection between validation and affirming the survivor's dignity and worth. Conversely, as Jennifer's excerpt highlights, a lack of acknowledgement and reparation is akin to secondary victimisation and leads some to seek validation from social authorities such as the CJS.

I felt really betrayed by my parents--they'd never done anything about the situation--they'd never confronted him, never taken him to court, never gone and punched his lights out. All the things I thought should have happened (Tanya/Quote used previously).

And then another part of me kicks in, which says for god's sake, I had to go through that and now I have to go through this. When is my turn where I have someone to sit me down and go what happened was wrong and we're really sorry it's wrong, and what can we do to fix it? (Jennifer)

In order to explore the importance of acknowledgement, it is important to revisit the nature of the harm caused. Compounding this suffering has been the stigmatisation and denial that many survivors faced from bystanders. Many felt their identities were tarnished, the shame and humiliation compounding a sense of defectiveness. Layers of stigmatisation were identified: the shame of being a victim in a culture that valorises domination; the shame of being sexually violated in a culture that regulates sexuality (Bell, 1993); the shame of sexual violation from a relative and, for many, the shame of suffering from significant mental illnesses. The following excerpt illustrates the stigmatised identities (Goffman in Balboni and Bishop, 2010) to which survivors are relegated:

And she [mother] denied all knowledge of it. It wasn't happening in her house. She told my daughter, that all that shock treatment I'd had was about the guilt I felt about all the lies I told about my father and brother (Nola/Quote used earlier).

She [Irena's mother] used to call me a whore in Dutch continually until about 9 months ago [...] and my sister has a husband who wrote me some dreadful emails last

Christmas who refers to my child sexual assault as utter garbage and this and that (Irena).

Irena has been given the pejorative identities of “~~w~~hore” and “~~h~~ar”, the former largely because Irena gave birth to her father’s child as a teenager and was deemed by the Children’s Court as uncontrollable. This is illustrative of the “~~s~~igmatised identities” (Goffman in Balboni and Bishop, 2010) that survivors can face within their immediate families. Thus, acknowledgement functions to assist survivors in the recreation of meaning and establishing a new sense of self-identity, a justice need elucidated by RJ theorists such as Toews (2006) and Zehr (2002). Acknowledgement from bystanders or an external authority reaffirms the survivors’ innocence (in relation to this crime) and communicates the survivors’ inherent worth, through condemning the experience of CSA as a serious crime. The importance of bystander validation was also highlighted in Jülich’s (2006) and Herman’s (2005) studies on victim’s needs. Herman states:

Community denunciation of the crime was of great importance to the survivors because it affirmed the solidarity of the community with the victim and transferred the burden of disgrace from the victim to the offender [...]. (Herman, 2005:585)

Acknowledgement/validation entailed recognition not merely that they had suffered intra-familial CSA, but acknowledgement that a serious crime had been committed against them, and that they needed to be treated accordingly. Survivors expressed the desire for acknowledgement/validation from an authority that has social legitimacy (such as the police or judiciary) and/or social acknowledgement from the community.

Acknowledgement, and respect from others at both a personal and social level, has been and is, for me the healing essential in ending the “madness” (Mary).

I think sometimes too, an acknowledgement of what has happened to them, and to gain the knowledge that what’s going on is as a result of the abuse, not something wrong with them. And that’s a huge thing. But to have what’s happened to them acknowledged, really, to break the silence which is the term we use a lot of the time, and to be believed (Sinead, interviewed as both stakeholder and survivor).

I think essentially we need as survivors to know that we’ve got the support of our community, firstly if we can have the support of our family and those closest to us, then our extended community. If we don’t feel that we don’t have that support around

us anyway to put ourselves out there, it's going to be a long time, hopefully not. But I think we need, the community I feel needs to get behind survivors to give them the strength to know it's not right (Eva).

Interestingly, legal validation is particularly potent and sought after, as Carol Smart suggests, due to its discursive claims to be the divine arbiter of truth (Smart, 1989).

I thought no if you're not going to believe me then I'm going to go through this process and this process is going to reveal something to you [...]. But then again I think the ultimate satisfaction for me is just that someone independent in authority goes to him and says, "This has been um put against you and what do you say?" I think that brings with it something [...]. So if I can have the police say, we've investigated, we've found valid grounds and we've gone and laid charges against him. Even to have that there's level of satisfaction in that (Jennifer).

In this study, survivors also sought validation and community denunciation to counteract the tacit support that family members provided perpetrators with, coupled with bystander denial. This validation was sought from those who were perceived as a legitimate authority, when validation from family or the perpetrator was not forthcoming. Here, the CJS is conceived of in somewhat a republican manner (see Braithwaite and Pettit, 1990), where through its legitimacy, it is seen as having the moral authority to denounce the crime. Indeed, both Mary and Pam are from South Australia, and interpreted the abolition of the Statute of Limitations in 2004 as government recognition of the prevalence of child abuse. The Mulligan Commission of Inquiry into Institutional Child Abuse 2004, South Australia (of which submissions from intra-familial abuse survivors were also accepted) also communicated the state's desire to listen to survivors and acknowledge their suffering. An excerpt of Mary's submission is written below:

Acceptance by the Police of my story was very validating. As the police symbolise social authority, knowing the crimes against me are on the social record is empowering--it feels as though at last society has acknowledged the crimes [...]. Acknowledgement and respect from others at both a personal and social level, has been and is, for me the healing essential in ending the madness (Mary, Written Submission to the Mullighan Inquiry).

Mary emphasises the transformative importance of societal acknowledgement, and highlights another crucial aspect of acknowledgment. Inherent to acknowledgement/validation is the accompanying reprobation of the crime that survivors feel when they are listened to. Reprobation of the crime is inherent to the promotion of dominion, a concept which will be explored in greater detail later. In order for reprobation to be mobilised, respectful listening of testimony needs to be enacted. Pam's excerpt below highlights the importance of validation through respectful listening of testimony

And I said, ~~—~~Actually I'm quite happy not to go to court actually." And she said, ~~—~~Oh." I said, ~~—~~I've just done my court, as far as I'm concerned. You're the first person I've ever told everything that I knew I could remember in detail." I said, ~~—~~I'd never done that, going through the nitty gritty bits." I said, ~~—~~I've never done that. I feel I've done it. I've been to court. I don't need to [go to court] anymore (Pam).

The significance of validation through respectful listening becomes apparent in Pam's situation given her willingness to forgo judicial proceedings after she had given her police statement. This was also reiterated in Sue's following comment:

It could've been done in the court room where professionals the whole lot are there to listen and acknowledge the pain that my daughter went through, that I went through [...] (Sue).

Sue's desire for the court and judicial officers to listen to the pain her daughter went through as a process of acknowledgement emphasises the nature of testimony as a ~~—~~relational act," where the survivor and listener(s) engage in open disclosure (Weine et al in Henry, 2005:145). Further, this relational act of testimony/listening is expounded by restorative and transformative justice advocates (Morris, 2000) in alternative justice paradigms. Thus, it is important to conceptualise testimony/respectful listening as a vehicle that facilitates acknowledgement.

There's no acknowledgement to the victim, they don't say, ~~—~~we believe something happened", it's all they need to say, it's like saying it's not in your head, it's not, you know [...]. And like I said it's not about a greater sentence...it's not high on my list. It's about the acknowledgement, you know? (Sue)

The idea that validation is almost as important as the judicial decision itself is a theme prevalent in other research (Des Rosiers et al, 1998:440). While previous research findings

have shown that bystander validation is paramount (Herman, 2005; Jülich, 2006; Des Rosiers et al, 1998), few researchers have elucidated the reasons why such validation is important for survivors. It can be argued that there is a nexus between validation and subjectivity which has not been adequately explored previously.

In her study, Herman found that validation was crucial for survivors insofar as —~~the~~ sought [...] the restoration of their own honour and the reestablishment of their own connections with the community” (Herman, 2005:585). What validation can provide then, is a transformative opening for survivors, into new forms of subjectivity, and possibly facilitate newfound acceptance into the community. This operates on two levels. Validation and acknowledgement then signals the bystanders’ recognition of the survivor’s dignity and equal access to the same human rights as that of the bystander. Social psychology highlights the fact that bystanders who react empathically and assist —~~define~~ the threshold of the intolerable as exactly the same for everybody” (Cohen, 2001: 293).

Acknowledgement/Validation also allows for survivors to resist the discourses that have circulated and construct a new form of subjectivity through counter narratives. Validation allows the survivor to construct alternative discourses as it opens up different forms of subjectivity (Weedon, 1987:37).

However, it is important to note that acknowledgement, validation and vindication involves a process of discursiveness: speaking and listening. Cohen’s allusion to Thomas Nagel, stating that —~~a~~knowledge is what happens to knowledge when it becomes officially sanctioned and enters the public discourse” (Nagel in Cohen, 2001:225), emphasises that official acknowledgement is discursive in character. Acknowledgement may be one way in which those excluded from the circle of discourse, may, in Hudson’s (2006) terms, be ~~b~~rought inside”. This leads to the question of discourse, and the many ways in which the justice need of storytelling can be manifested.

Storytelling

Henry contends that testimony is —~~a~~niversal ritual in healing,” (Agger and Jensen in Henry, 2005:141) where testimony is *relational, integrative, ritualistic* and *social* (in Henry, 2005:145). Indeed testimony and storytelling have been widely extolled as therapeutic and

transformational by restorative justice proponents (Toews, 2006; Zehr, 2002; Gaarder and Presser, 2005; Coker, 1999). Zehr contends that ~~id~~entities are embedded in our stories, so the recreation of meaning requires the re-storying of our lives [...] stories are shaped in the telling and retelling; they need compassionate listeners to hear or validate their truths— (2002:25). Survivors identified the importance of both speaking and listening as intrinsic to storytelling.

So I don't know yet, I don't have a clear visual of what I want to happen in response to my statement, other than for me to be heard [...] (Tessa).

Justice to me is the perpetrators need to acknowledge their behaviour, own it and apologise for what they did--but, more importantly, hear my story of what it did to me and how it badly impacted on my life (Questionnaire response).

Being heard, however, entails respectful listening free of judgement and accusations.

Someone said law is not about justice. Justice is for the victim to be heard³³—not to be attacked--children do not tell lies--adult children do not tell lies! (Questionnaire response)

Storytelling, for many survivors, was seen as a means by which social transformation and reform could be engendered. Survivors did not necessarily draw an inherent connection between storytelling and justice. Rather, storytelling was directly connected to catharsis and transformation. Interestingly, storytelling need not adopt oral form, as some survivors received equal empowerment through written testimony.

And what I actually found and what I'm finding now is that I get a sense of empowerment from telling my story and actually trying to bring about change [...]. Hence why I write to the ACT Attorney General and go blah blah [...] (Jennifer).

Storytelling as a therapeutic act for Nola, was a process of reversing the shame she had experienced.

My first words when I started to write were ~~it~~ was my fault". Why was it my fault? But that was it, that was what I had been taught, that's how I had grown up. Nobody

³³ This sentence was underlined in the questionnaire.

had disabused me. And it's gotta come out. When I first began to write I was still ashamed and I put an NM at the bottom of the article-I couldn't put my name to it. Until I realised that until I admitted publically that it has happened-get rid of the guilt and the shame and help someone else! (Nola/Quote used earlier)

While many writers such as Phelps (2001) and Zehr (2002) appear to construct storytelling as a 'justice panacea', it is important to acknowledge that for survivors, storytelling does not necessarily equate to justice. Rather, while storytelling is often instrumental and transformative, it also commands its corollary, respectful listening and validation. This is highlighted through a particular variant of storytelling/testimony, confrontation.

Confrontation

One aspect of storytelling that survivors utilised was confrontation, which can be seen as an instrumental form of storytelling. Confrontation can be conceptualised as a mechanism which allows the survivor to challenge the "master narrative" (Phelps, 2001:46) used by offenders to deny accusations of abuse, silence dissent and maintain control. Five survivors were given the opportunity as adults to directly question their perpetrators about the abuse. Two survivors, Tanya and Eva, labelled this opportunity a "confrontation" of the perpetrator, and emphasised the positive transformation that eventuated from these confrontations. A third survivor, Pam, did not plan this confrontation and instead was forced to confront the perpetrator (brother) one night when he appeared at her house without warning and apologised for the abuse. The fourth and fifth survivors, Diane and Irena felt that they had gained nothing from the perpetrator by confronting him, particularly as both perpetrators justified the abuse by blaming their victims.

Tanya, who spoke positively of the confrontation, stated:

My uncle left the country after the confrontation for a short time before his wife said, "Look we don't care what you've done, just come back." And in confronting, it was a great thing for me, I took back my power and the nightmares stopped which was great. And I realised that he was only human as well and the fact that he had left the

country made me think, –Wow, that’s quite a big, power that I had in confronting him (Tanya).

Interestingly, Tanya confronted her perpetrator, her uncle, in a letter. Generally, confrontation through written form is viewed as less compelling than a verbal confrontation, particularly given the way in which oral testimony is valorised in court and the adversarial justice system (Doak, 2008). It could be argued that oral testimony or speaking in the public realm is a traditionally masculine domain that has excluded women’s voices. The ability to confront and speak without interference can be seen as a form of resistance, as explored in the previous chapter. Tanya’s statement, –and in confronting [...] I took back my power [...] I realised that he was only human as well” sheds light on the aspects of confrontation which have the potential to fulfil a particular justice need.

Tanya explained that her motivation for confronting her uncle was due to a desire to gain information and answers to why he committed the offence in the first place. The desire for answers from the perpetrator is a need outlined in Toews’ (2006) model of the justice tree, and the need for accountability was also seen as crucial, given the fact that Tanya had disclosed the abuse as a child but received no validation.

Through a great many years I felt my uncle got away with it and I was absolutely livid and that contributed to my suicidality. When I confronted him I confronted him by letter, I just wanted answers [...] (Tanya).

Herman (1997) contends that survivors often seek answers from their perpetrators, but such answers are seldom forthcoming, something that Tanya discovered in the process of confrontation. Other research on child sex offenders reiterates the idea that such offenders rarely acknowledge the impact of their crimes (see Cossins, 2000; McAlinden, 2006). However, the need for information is cited as an inherent justice need (Toews, 2006:33) and as Toews (2006) and Herman (1997) suggest, personal growth is predicated on being able to make sense of the crime, through additional information about why the crime was committed. For some survivors, truthful information from the perpetrator may serve to validate the survivors’ memory or fill gaps in survivors’ memories.

It’s just another way of holding him accountable and I felt like I had done that through my confrontation, I finally held him to account for what he’s done and he’d found that even though he could abuse a child, that child grows up and has a voice (Tanya).

Above, Tanya discusses the importance of accountability, and the significance of rebalancing the unequal power dynamic that keeps a victim-survivor silent. It signals psychological separation from the offender's power and world view (Jülich, 2005, Phelps, 2001) and Tanya's final line highlights the way in which confrontation as an adult can assist in the restoration of dignity that she had lost as a child (Phelps, 2001). Confrontation can also have utilitarian aims; Tanya raised another motivation for confronting her uncle: protection of other children. Unfortunately, many survivors felt limited in their capacity to prevent the abuser from abusing other children. Many survivors assumed responsibility for the perpetrator's behaviour and carried tremendous guilt for not being able to stop the perpetrator from offending. As Tanya states:

I felt a great responsibility to keep other children safe so I felt that by my disclosure and confrontation, at least other people in the family knew. Even though his wife didn't believe me she felt that I was lying but maybe on some deep level she would know and his two sons never got married or had children and if they ever did I would still grapple with my responsibility to tell their wives and just try and keep their children safe (Tanya).

Similarly, Eva spoke about the cathartic nature of confronting, not the perpetrator, but her father, whom she believed had a duty of care to protect her from the abuse. Unlike Tanya's written confrontation, Eva's bystander confrontation occurred in public, in front of significant witnesses from her father's community.

Sort of saying things like I don't understand you and using religion—saying, “You're the devil” again—I absolutely very openly confronted him and my uncle-about abuse in the family. Not just my abuse but certainly abuse in the family (Eva).

Despite her father's denial and mobilisation of patriarchal discourses which position women as ‘evil’ and ‘manipulative’, Eva felt a level of justice through speaking out.

Oh I felt wonderful. Absolutely wonderful. Felt like the anger had just gone (Eva).

There are a number of unique elements to Eva's confrontation of her father. Eva described multi-generational and intergenerational child sexual abuse where, as she described it “all the girls were open slather”. The analogy to a totalitarian state drawn in chapter 5 certainly resonates with Eva's family. Eva's act can be seen as parallel with/to? the collective action of an oppressed social group, where the public confrontation can be situated within an

attempt to construct an alternative collective narrative about her family. Indeed, Eva's confrontation initiated her sister's disclosure of sexual abuse, and made her mother aware of the secrets that her father had been concealing for many years. While the therapeutic nature of speaking out is highlighted in the above quote, Eva did acknowledge some of its adverse ramifications:

After confronting my dad, I got married in April and my flashbacks in the last year have been coming thick and fast (Eva).

This indicates that the search for justice and the fulfilment of justice needs is a continuum, and that while the fulfilment of a particular need may be transformative, closure itself is difficult to attain. While Eva and Tanya spoke positively about confronting their perpetrators, other survivors felt that confrontation of the perpetrator would be either futile or re-traumatising. Jennifer states:

You know it's hard enough for me to go ~~–this happened~~” let alone in front of my perpetrator. That would be--I just can't fathom it. I mean I can't--I've never spoken to him about what happened. I don't talk to him. I haven't spoken to him in a few years so. Yeah--nuh I couldn't do it. It doesn't allow me the space--I've created for myself a space that I can talk in--that takes it away instantly and it just puts me back there. It doesn't say that he's more powerful than me but just, yeah I just couldn't do it (Jennifer).

And when I did disclose the sexual abuse from my father, he collapsed and went to hospital. So, um--and it was very difficult at the time because I was working as a sexual assault counsellor at the same hospital in the emergency department that he was taken to. So, it was, it was really messy and really, really confronting in terms of that crossing over of worlds (Linda).

Both Linda and Jennifer raised some common issues regarding the dangers of confrontation. Jennifer highlighted a common issue raised in the literature on CSA: the nature of the relationship between the abuser and abused, years after the abuse has ceased (Jülich, 2005). For many survivors the public world has been a place where they have been able to achieve a sense of mastery, with a majority of survivors in this study occupying professional roles and/or affecting change in their communities. It is the “private” world of the family home in which survivors feel less empowered. Confrontation of the perpetrator thus means

that survivors then enter into a space that can either be negotiated and transformed, or one in which the dynamics of abuse are replicated. This is seen in the justice and gendered violence literature, where "women who survive trauma through suppression and isolation find expressing themselves very threatening" (Gaarder and Presser, 2005:152).

Public denunciation of perpetrator

Related to confrontation is public denunciation of the perpetrator, where the perpetrator's identity as child sex offender is exposed. As the literature has suggested, such public denunciation is a popular justice need, related to the need to reverse one's 'stigmatised identity' (Goffman in Bishop and Balboni, 2010). All survivors in this study believed that offenders should be held accountable for their crimes. However, survivors had varying ideas about the best way for offenders to be held accountable. In keeping with Herman's (2005) findings, many survivors desired public denunciation of the offender and by extension, deprivation of the offender's good reputation. Such public denunciation may not mean 'naming and shaming', but denunciation of the perpetrator within his community of care.

My expectation of justice would not necessarily mean that he'd be locked up and have the key thrown away but my sense of justice would be-his wife knew about it, his kids knew about it, and that he actually got some idea of the impact that he has had on somebody else's life (Liz).

Justice would be him paying instead of me. Maybe gaol or people knowing (Questionnaire response).

I just want to know that society knows that there's a charge...I s'pose that some of this comes back to, if the end of the day he just gets put on the register, and the register's not for public knowledge, what's the point? (Jennifer)

I said to him, "I don't want him to die with everyone thinking what a good man he is- everyone saying oh we're so sad." I don't care if it's vengeful. I don't care what it is. I don't want everyone to be at his funeral saying to me, "I can't believe you weren't at your father's funeral," and I would be like, "You stupid people" (Tessa, Interview 1/4).

Both Tessa and Jennifer's excerpts reflect previous findings as to why some survivors value public denunciation of the perpetrator, and is one mechanism by which he is held accountable. Dismantling the offender's public reputation and exposing his hypocrisy seemed to be one way in which survivors felt vindicated (Herman, 2005). Given that abuse flourishes in silence, and the perpetrator is able to continue a reign of sexual abuse often due to his esteemed reputation (Salter, 2003), public denunciation appears to provide a sense of balance, providing the offender with a more honest identity.

However, not all survivors believed public denunciation would be helpful. Diane stated that public denunciation would be counterproductive and was one reason for not seeking recourse in the CJS. She suggested that exposure of the perpetrator would bring shame upon the entire family and create numerous problems for her siblings and their children.

It's a bit ambivalent, but once you have it out there in the public domain that your father's a criminal and the effect that has, and the effect it has on people's lives and careers and the perceptions of who they are, it's somehow a little scary. And I know just from the family modus operandi that they wouldn't have wanted it. So no I never did (Diane).

In the above excerpt, Diane emphasises the stigmatising ramifications of having a family member seen as a 'criminal'. For her, public exposure of the perpetrator also mars the reputation of the family. Restorative justice proponents (Jülich, 2006; McAlinden, 2007) have emphasised the stigmatising effect that public exposure can have on secondary victims. Interestingly, this is a consideration that is often overlooked when analysing the barriers to reporting. Survivors are often taught to take responsibility for the perpetrator and the family at the expense of themselves (Briere and Elliot, 1994; Briere, 1992) and perpetrators often tell their victims that disclosure of the abuse may signal destruction of the family. The gendered nature of this must also be taken into account, given the traditional socialisation of women to bear the responsibility for harmony and stability in the family. Yet, regardless of whether this responsibility is misplaced, it appears that the complexity of perpetrator denunciation does speak to the complex *relationalism* (Hudson, 2006), that underscores intra-familial CSA survivors' justice needs. The perpetrator and victim-survivor certainly do not exist in vacuums, and consequences for the perpetrator may invariably affect familial bystanders.

Perpetrator recognition and apology

Another justice need that survivors raised was the need for the perpetrator to demonstrate recognition of the consequences of their actions, as well as to apologise.

But he's also gotta know-and I'm a big believer of people knowing the impact that they've had on others. We don't operate in a vacuum. Thank god we don't operate in a vacuum-how lonely that would be. I've had cause to talk to my own kids about their impact on other people. And if you're more aware of the impact you've had on other people then you're more inclined to treat them with fairness and respect (Liz).

Recognition, for Liz, then meant faith that the perpetrator may be able to see the effect of his actions, as well as recognise his victim as a subject worthy of human dignity.

Actually that's what I'd need as an outcome. Just for him to know that I was brave, and I exposed. It's not a secret anymore. It could be that--for him to know. And to see his eyes when he knows that he didn't take my whole life, he didn't steal my whole life. Maybe there's that element of me that needs that (Tessa, Interview 3/4).

In the excerpt below, Linda connects the offender understanding the impact of his crime as a precursor to providing a meaningful apology.

That very simple thing of taking some responsibility and you know saying sorry, saying that they recognise the impacts, sitting and understanding-well trying to understand what those impacts have meant for someone over many years (Linda).

For the family to um except the truth first up and for the perpetrator to be held fully accountable and for the perpetrator to um understand the impact of their actions, um, and for the perpetrator to say sorry-a meaningful sorry, a meaningful apology.(Tanya).

In the above excerpt, Tanya emphasises the concept of a “meaningful apology”, alluding to the desire for a genuine statement of contrition. Felicity and Tessa experienced disingenuous apologies, and believed that their perpetrators admitted and apologised in order to present their offences as less serious than they actually were. Tessa's father admitted that

inappropriate sexual behaviour occurred when Tessa was fifteen, but claimed that this was initiated by Tessa. Undoubtedly, this is markedly different to the twelve years of extreme sexual abuse to which Tessa was subjected, beginning at the age of three. Felicity also described her brother confessing and ‘apologising’ to their parents as a strategy to minimise blame:

And um because my brother, my brother actually abused the three girls and other people and it was interesting because my sister--my sister got drunk one night and rang my brother. And he shocked everyone by ringing my mum and dad and confessing to the minor details which and now I know but back then I had no idea that’s what perpetrators do and it gave him the power straight away and our parents summoned the girls down to see them [...] (Felicity, quote used before).

The use of a ‘qualified apology’ where the offender minimises the harm caused or blames other people for their actions is one reason why survivors were sceptical about criminal justice approaches such as RJ. Herman (1997) contends that survivors often desire that the perpetrator take responsibility and admit the harm they have caused, but such desires often remain unfulfilled. The complexity of these justice needs is also exemplified through survivors’ responses to punishment. What becomes apparent from examining the aforementioned needs is that justice needs pertain not simply to punishment of the perpetrator, but vindication, family and community acknowledgement, and bystander condemnation. In short, as Hudson (2006) argues in promoting her innovative justice principles, justice needs transcend classical liberal notions of justice.

Beyond liberal individualism-community involvement/ awareness

That justice needs transcend traditional liberal notions of justice is reflected in survivors’ preference to discuss broader needs for social change. Such needs speak to the inherent *relationalism* (Hudson, 2006) of their preferences. Some survivors discussed needs more akin to social justice in the form of social transformation through community awareness and more accurate knowledge about the prevalence of intra-familial CSA. Most survivors expressed the desire to eradicate myths and social stigma.

I see sexual abuse, child abuse, incest as cancer. When I was growing up--we never spoke about cancer when I was growing up. But now it's actively talked about, you know people doing research and I'd like to see sexual abuse get to that stage where people can talk about, where the stigma's gone (Eva).

In this sense knowledge and awareness-raising can be seen as a form of transformative justice that alters societal values and behaviour. Survivors typically wished that the public realise the unique issues that survivors face. Many survivors emphasised the difference between CSA and adult sexual assault and highlighted that despite similarities in the physical violation, contextual attributes were vastly different.

Not to say that rape is worth less. But you can't even compare us to a rape case. Because we're born into this and this is what your experience of good family bonding and relationships are and it's just--It's trauma at the maximum in our formative years (Jennifer).

The sexual assault of a child is a far worse crime [...]. Of course it is you ruin a child's whole life ...sure you ruin other life too but a child? It destroys so much. The justice system needs overhauled in terms of sexual assault but...child sexual assault is a whole different ball game...you know it really is [...] (Irena).

That child could not speak. That's half the problem, of telling people what happened (Nola).

While feminist campaigners (Driver and Droison, 1989; Ward, 1984; Rush, 1980) have placed child sexual assault on a continuum of male violence against women, survivors highlight that this issue is of specific concern and cannot be collapsed into a monolithic category of violence against women. Jennifer's comment —because we're born into this...— emphasises the nuances of this crime, and the way in which the status of children, coupled with the developmental age at which the crime occurs and the recognition that for some children who grow up in long-term sexual abuse, this is what they learn to identify as love, sheds light on the distinctions that are often not recognised.

For it to be publically known that this happens. And it happens in normal families, and it happens with normal, respectable looking people you know? And this sweet old pathetic man is actually dangerous. And I want our consciousness to actually be raised to that (Tessa).

And I don't know what the answer, how you prevent it, but people have to be more aware that it happens in your family. Yes it happens in the street but more it happens in your family (Nola).

The perception of the stranger danger that's out there. Like oh my god there's someone out there trying to pick kids up on the way to school and that's highlighted in the news where as survivors we know that it's in the homes, we know that it's the upstanding people-the media, in management, media, we know that it's people-doctors, lawyers-we know that it's these people as well. Because we know who they are (Eva).

Almost all the survivors in the study desired to make the public aware of the prevalence and ubiquity of CSA. Eva and Irena also desired to communicate the idea that contrary to popular stereotypes, this crime is both white collar as well as blue collar, with many 'professionals' evading scrutiny.

And I think it's so widespread that the community doesn't believe us. Its imagination, you know...a child doesn't lie, a child doesn't invent things...in that group, where my father was involved, they were professional people...the perpetrator is not from a low socio-economic...no he doesn't drink, no alcohol is not to blame-that is also a lot of garbage that alcohol is an issue. Bullshit it has nothing to do with it whatsoever [...]. No it's not a mental illness. It's a criminal offence that's it (Irena).

Inherent in the above excerpt is the desire to transform the hegemonic discourses that operate to construct erroneous narratives regarding the nature of sexual offending. Such discourses effectively pathologise child sex offenders through creating folk devils in the way of deviant others, or mitigating the responsibility of offenders. Interestingly, some survivors provided their own explanatory framework as to why such discourses proliferate and resonate with the public.

People don't really want to know about it. Because strangers aren't the problem. It's in the home. Or it's next door or it's a key person...So I guess without the sensational stuff from the media people need to take it back on board more and I think that's the only way we can change our thinking around it [...] (Felicity).

And that's it and so if there's forces in the media--and the media has a lot power um and if their aim is to portray the stereotypical abuser it sort of limits people's

perceptions about what is real out there and we know it is, it's within our families and we're not total damaged goods and we don't all come from low socio-economic backgrounds (Eva).

In addition to discussion of social awareness, survivors also highlighted the complex relationship between punishment of the perpetrator, and the specific difficulties related to intra-familial offences.

Complexity of punishment

Survivors provided a variety of responses as to whether and how they believed the perpetrator should be punished. As the perpetrator was often a close family member, survivors felt ambivalence towards lengthy prison sentences. Interestingly, when discussing punishment for their own perpetrator, survivors were not as harsh as when they were discussing punishment for sex offenders in general.

It's really hard to answer _caus I just don't know if gaol is necessarily--I mean you can get me on one day and I'll say, "Yes gaol is the answer," um and on another day I think I don't really care what happens to them. I just want to know that society knows that there's a charge (Jennifer).

I don't know. I can't picture him in gaol. Like I actually get quite sad, so there's that part of me that empathises with other parts of him, not only the perpetrator, you know? (Tessa)

Well an end to the night horrors which my mother achieved without legal implementation. So yes, and end to that victimisation would be pretty big. But where a mother-which is more common-where they don't believe, it must be a nightmare. I don't know. I really don't what the answer is. But I certainly know in my case that had my father gone to gaol it would have rendered an economic crisis and people would not have had enough to eat. So it comes down to life or death. So from my experience I don't think imprisonment would have helped. And I think I put in my responses to you that chemical castration would be a desirable outcome (Diane).

Diane's paramount concern was for the victimisation, or as she labels it —~~not~~ "horrors" to cease. However, the practical implication of imprisoning the primary breadwinner of the family elucidates one of the barriers that prevent many survivors or their family members, from seeking legal recourse. Diane's comment —~~I~~ "don't think imprisonment would have helped" also dispels the common myth of the vengeful victim, illustrating that retribution was not a priority for her. While the issue of chemical castration may appear somewhat draconian in response, it can also be contextualised within Diane's description of her father's recalcitrance and inability to see the harm he had caused. In one sense, this is almost like a harm minimisation approach—a practical measure to prevent further offending.

Proponents of retributivism, such as Jean Hampton (1991), highlight the importance of just deserts to reaffirm the wronged person's inherent worth, a principle Nola believes is undermined by judicial discretion. The following quote highlights a common critique of the CJS, in terms of the procedural injustice that takes place.

Mandatory minimum prison terms with the judge being able to increase them. Right, so you make a minimum mandatory term. They know it in court that this is going to happen. You can't appeal it, and if the judge thinks the crime warrants it he adds a bit on. So you can't do that either, so there's no justice when the child's raped, and there's no justice when the child goes to court. There's just no justice. Why do you give paedophiles any consideration at all? They're adults and they know it's wrong (Nola).

Two survivors spoke about their desire to see survivors excluded from the community. Both survivors acknowledged the contentious nature of their assertions but also expressed the view that there are limited options for managing such perpetrators.

These people are very sick. It's very controversial isn't it? You don't have to kill them. Put them on an island somewhere, where they don't get into society again. But then you have to pity the poor people who have to keep them locked up in there. It's a really hard one (Janet).

Essentially I don't think they can be rehabilitated. So would I want them living next to me? No. Would I want them to be part of the community—I know they are part of the community. But no. Essentially I don't think they can be rehabilitated. So...so what do you do with them? So yeah, no idea (Eva).

I don't think, I honestly in my heart do not believe that any perpetrator can be rehabilitated. I think they need to be castrated, I think they need to be put on a register where the public have access to knowing who they are. They should never be allowed to work with children and in an environment where they have access to children. I think there should be a public name and shame, and some people can't go to court and you wonder why but at least if you had a name and shame register, that might be enough for people, you know? (Sue)

The aforementioned views articulate different conceptions of punishment. While some appear retributive, they also address the need for crime prevention/harm minimisation, with the latter being of central concern for the survivors above. It is evident that survivors undergo a complex cognitive process in contemplating the possibility of rehabilitation in Eva's case, or public exposure or shaming in Sue's case. Indeed, it is important to note that views of punishment are more nuanced than previously thought. Without prompting, Mary discussed her preference for RJ, due to her belief that punishment was paramount to revenge.

I think the current court system is abusive based on punishment, retribution and revenge. I did not want to be party to revenge. After many years of struggling with –what is justice” I came to an understanding of Restorative Justice (Mary).

In the following section, survivors' and stakeholders' responses to the reform options of specialist courts and restorative justice are examined

Part 2: Perceptions of justice reform

Specialist courts

Survivors

The questionnaire results in Table 5 and Appendix 6 highlight the support for a specialist court, with 17 out of 21 respondents believing –access to a specialist court” would be either helpful or very helpful. In the interview sample, some survivors chose not to comment on justice reforms. Of the 12 survivors who specifically commented on specialist courts in the in-depth interviews, only one survivor opposed the idea of specialist courts. However, while the others were enthusiastic about the idea of a specialist initiative that has

the potential to meet the needs of survivors, few survivors were aware of how a hypothetical specialist court may operate in practice. Indeed, the most common was the view that specialist courts were useful simply because it appeared to be an *alternative* to the criminal justice system, not due to any inherent merit or deep understanding of what a specialist court might entail. Three survivors displayed enthusiasm for anything that would provide a victim-centric service for survivors.

Oh that would be wonderful. I think the more things you can get the better it helps you live and make sense of your life (Pam).

Definitely. Courts are so scary. If there's a court for that purpose obviously the court should be designed for it and I definitely think that's essential (Tanya).

I would be hugely in favour of it because it would deal with the sensitivity. It's not like someone's gone out and shot someone. It's a...it's a breach of the mind that once breached can never be restored to an innocence that they should have had. No it's a serious breach and it needs sensitive treatment (Diane).

While both Pam and Tanya's reactions illustrate their enthusiasm for an alternative that could provide a less re-traumatising environment, they provided different perspectives on what they believe a specialist court entails. Pam's comment in particular highlights an understanding of specialist courts informed by therapeutic discourse. On the other hand, while Diane also explores the importance of victim-sensitive courts, she emphasised the uniqueness of intra-familial CSA in terms of the breach of trust and the ramifications it has for the victim-survivor and the need for specialist knowledge. Indeed, the common thread among these three survivors is the idea that a specialist court may be able to counter the secondary victimisation commonly associated with the conventional CJS.

While these quotes examine reducing re-victimisation through the treatment of the survivor, Sue explored the idea of reducing re-victimisation by altering the physical structure of the court precinct. Sue understood a specialist court to be one that consists of a separate physical structure that provides separate waiting areas for the victim-survivors and their family.

And that's what needs to happen in these cases. You're mixing with someone who's robbed banks, with someone who's just murdered someone down the hall, you're

mixing with people--in all different shapes and forms. And the worst part being you're about fifteen feet away from the perpetrator (Sue).

In the above excerpt, Sue's response was influenced by her negative experience of the District and Lower courts, where she experienced harassment from both the perpetrator and his family. Interestingly, Sue also raised the concern that the court environment provides fertile ground for the perpetrator to use a variety of strategies to intimidate and gain power over the survivor. The phrase 'duty of care' refers to Sue's desire for a specialist court that embeds an ethic of care in the physicality of court surroundings.

Arguably, the attribute that most commonly distinguishes specialist courts from a conventional court is its highly trained judiciary and court staff (Cossins, 2010; Stewart, 2005). Four survivors discussed specialisation in relation to specialist training and knowledge that captures the complexity of intra-familial CSA. Linda, who was interviewed as a survivor and a stakeholder (as a sexual assault counsellor), discussed the importance of specialist training and knowledge.

Yeah. I think it's a fantastic idea. I'm very pro-that. I think you know--it's ludicrous to think that the same court can deal with you know a huge range of issues, because it really undervalues again this issue of CSA, the impacts that people who deal with those issues are going through. It's a very intense area of work that people need to be really, really well trained in. It's not the same as dealing with driving offences, it's not the same as dealing even with DV or recent sexual assault. CSA is a really, really different area so yeah...I think it would be good to have a specialist sexual assault court [...] (Linda).

Indeed, Linda emphasises the belief that intra-familial CSA, due to its complexity and multi-dimensional nature coupled with its general positioning as a 'crime of dominance' (Herman, 2005), necessitates specialist staff who have been educated in the dynamics of intra-familial CSA. The centrality of knowledge regarding perpetrator tactics and grooming strategies reiterates McAlinden's (2009) assertion that there is a general lack of awareness regarding perpetrator behaviour and grooming strategies (Salter, 2003). Consequently, those who work with perpetrators may be led to believe in the ostensibly respectable identity perpetrators portray. Similarly, Diane also highlighted another aspect of specialist training within a specialist court, and the potentially positive consequences of such training.

Oh absolutely wonderfully useful because people don't understand and if you've got people who do understand and can offer a variety--like if it's a specialist court they wouldn't use the same approach for every victim in trying to deal with the perpetrator (Diane).

Diane, who earlier spoke about being unable to engage with the CJS, as to send her father to prison would have rendered her family destitute, highlighted the fact that each case is different, and that fairness would entail treating each case accordingly, rather than the same. Interestingly, Diane's emphasis on not using the same approach for every victim embodies Hudson's principle of *reflectiveness*, which in this context is predicated firstly upon specialist training which would then enable the judicial officer to consider the merits of each individual case.

Two survivors discussed the importance of specialist police units as intrinsic to the training within a specialist court. Jennifer's experience with the ACT Wraparound service left her with a positive impression of specialist police officers which she associated with services inherent to a specialist court.

To be honest I think that specialist services are um...a good way to go. I like the fact that there was an ACT wraparound service for the police for me to go to (Jennifer).

Like Jennifer, Sue, through her daughter Lily, also had a positive experience with a specialist police service, the NSW Joint Investigation Review Team (JIRT), a police unit that was specially created for sexually and physically abused children. She described some of the potential benefits of having a specialist unit, particularly for Indigenous women.

I don't understand why they don't have specialised units for sexual assault and that's it... you know, there should be a specialised unit-people who are trained and know how to get the best out of people to encourage people to talk about what's happened, rather than clamming up and being terrified-living your life that I've had to lead these last thirty or forty years. It needs to happen, there's no trust with people. Many a time I've known people in my community-especially Aboriginal community people, who actually get brave enough to go to the police and say, "I want to make a statement," to actually be told, "there's no one here at the moment. You'll have to come back tomorrow." I mean the opportunity's gone and it's as though it's not important enough (Sue).

Above, Sue discusses the role of the police as gatekeepers and the need for a specialist police unit to encourage reporting in Indigenous communities. This raises another salient issue, which is whether specialist courts or police units have the capacity to meet the needs of people who suffer simultaneously from multiple forms of disenfranchisement. For cultural groups who have had a history of antipathy with the police and the CJS, the question becomes whether specialist courts have the ability to create a more inclusive system, or whether it merely replicates the alienation of the conventional court system. This issue will be examined in greater detail in the next section.

While the general consensus amongst survivors (eleven out of twelve survivors) was that *anything* that promised a more sensitive and well-informed CJS was favourable, one survivor expressed vehement sentiments against specialist courts. Eva believed that removing sexual offences from a mainstream court would minimise its perceived severity, a claim interestingly often made against RJ.

Yeah, no. You see _cause I just see it taking away from the mindset that this is a crime, you know. How we view murder, that's a crime and it's not tolerated. But yeah, leave it in the criminal [system]. And I know that probably goes against getting more cases out there, and that goes against the perceptions of getting more cases out there (Eva).

In the above excerpt Eva alludes to the fact that the symbolic politics of justice and the public denunciation of the crime by dealing with it in the same way one would address murder or other violent crimes, is more important than maximising convictions.

An exploration of survivors' perceptions and attitudes towards specialist courts suggests that survivors have a general conception of specialist courts, which accord loosely with Hudson's (2006) *rights regarding* and *reflectiveness* principles. Of importance is the desire for reduced traumatisation and harassment. Such desires would require an alteration of the cultural attitudes within the adversarial courtroom culture (Doak, 2008). Other aspects of specialisation such as specialist training of judges and court staff also highlight the need for specialist courts which are open to values of *discursiveness* and *plurivocality* (Hudson, 2006). Given their advocacy for centralised services, the following section explores stakeholders' responses to specialist courts.

Stakeholders

Not all stakeholders commented on the role of specialist courts. Four out of the eleven stakeholders, who can be categorised as welfare/advocacy stakeholders, were highly supportive of specialist courts, in terms of their capacity to provide centralised services, utilise a specialist judiciary and legally enshrine victims' participatory rights. There was little dissent amongst this subset of stakeholders, however, two legal stakeholders contended that there was little to justify a separate jurisdiction, simply on economic grounds. These stakeholders believed that since one third of cases finalised by the district court were related to sexual violence, there was a presumption that such cases needed to be handled effectively and efficiently. This argument will be explored later in this section.

The capacity for specialist courts to provide centralised support services for survivors, or a ~~one-stop shop~~ "one-stop shop" was thought to be highly meritorious. A stakeholder from a state-wide advocacy and counselling service highlighted the use of the 'one-stop shop' within the South African specialist sexual offence court jurisdiction. Indeed, Kathy's vision of a 'one-stop shop' is one in which services are centralised, thereby reducing the trauma that survivors currently experience through having to negotiate a number of disparate services.

Um, so the idea of a one-stop shop is that it's a location, and in NSW what we'd be recommending is run by health and that's where the counsellors are, but you would have units within there where forensic can be taken and that's where police can do the interviews. So rather than the client having to go all over the place. All she has to go is there... And when the police interview her, they come. They have an interview room with all their gear, um when the DPP³⁴ come, they come there (Kathy) .

Ostensibly, the notion of a centralised service appears highly beneficial for survivors. However, such a service appears more relevant for survivors who have recently suffered abuse and still have the physical or forensic evidence to necessitate a medical examination. The question that must be asked is whether ease of travel or convenience is enough to justify the shortcomings of centralisation. Another stakeholder who manages a CSA counselling

³⁴ Director of Public Prosecutions-equivalent of the Crown Attorneys in New South Wales.

service, presented a contrasting view, challenging the everyday assumption that centralisation is superior to other models.

Community organisations just are completely sidelined and not part of these-this planning-as if we have nothing to contribute and I know what happens is that community organisations often pick up people who don't have a good fit with bigger services. Um, people who don't necessarily feel comfortable in health services buildings or in courts or in hospitals, you know (Caitlyn).

Caitlyn's comment highlights the way in which the politics of policy implementation may continue to sideline community organisations, many of whom work with some of the most vulnerable and marginalised populations. Certainly, the finding that a large majority of the victims in Walter and Louw's (2005) evaluation of victim satisfaction with the South African Sexual Offences Court, where 78.4% received no form of therapy or follow-up support, could be attributed to a centralised service where the capacity for follow up therapeutic services is limited. Given Caitlyn's assertion that the non-government sector is seldom consulted, and their services are largely ignored, the idea that a centralised service would not meet the diverse needs of vulnerable populations is a legitimate concern and may undermine the ideals of *plurivocality* (Hudson, 2006).

Most welfare stakeholders believed that specialist courts would facilitate greater victim participation. To them, victim participation would involve victim advocacy through legal representation and consultation of victims and their advocates to inform construction of a specialist court. In terms of facilitating victim participation, Linda, survivor and welfare stakeholder, saw consultations with survivors as integral to the embryonic stages of court formation.

I think it would be good to have a specialist sexual assault court, again to have one that is...um more matriarchal in focus, one that had more women who were in positions that coordinated it. It was very survivor-friendly in terms of having survivor's voices help set up the court and you know continually feed into the processes of the court and break down all the power (Linda).

Such a victim-centric stance challenges the orthodoxy of the conventional CJS and due process principles. Certainly implementation of such a proposal would entail observation of Hudson's principles to ensure that the offender's due process principles are not being

infringed upon (Hudson, 2006). Inherent to Linda's idea are the notion of narrative and the incorporation of subjugated discourses, these principles are more commonly aligned with RJ than conventional courts. A more integrated approach is presented by Kathy, who discussed the incorporation of victim-survivor's voices through the role of a personal legal representative.

The other thing that I think's really crucial for a specialist court is that the complainant has a lawyer. As it stands at the moment, the defendant has a lawyer, the Crown has a lawyer, who's the DPP but the complainant doesn't have a lawyer. They are purely a police witness, they are a piece of evidence. And there's no one in the court that's checking up on their rights, making sure they're informed, making sure their information is being fully and properly represented. And making sure that their rights are protected in that process [...] (Kathy).

In the above quote, Kathy reiterates the recent debate in the literature (Cossins, 2010; Wemmers, 2009; Doak, 2008;) on the importance of victim representation within the CJS. That the prosecution does not represent the victim is a fact upon which many laypeople remain ignorant. The idea of a victim's representative raises many questions however, with regards to the adversarial legal process and whether such representation can be easily incorporated into a process that renders the victim, at best, as a witness and at worse, invisible negligible (Doak, 2005). Other stakeholders problematised other aspects of the adversarial trial. Sinead, a survivor and welfare stakeholder, proposed an abolition of the jury within a specialist trial. Such a proposal leads us to question, firstly, how far a specialist sexual offence court can depart from the principles underlying a conventional criminal court, and secondly, how far *must* a specialist court depart from such principles in order to justify the vast injection of resources, personnel and time required to create this jurisdiction.

The problem with juries is they may have a limited knowledge of sexual assault, they may be easily fooled by something um...really simple stuff...if for example you have a matter where maybe it takes two years for it to get to court, you may have a child that was say 10 when the abuse was happening and it was reported. And is twelve or thirteen when giving evidence. They may look older, they may appear older. Even with a video link evidence, there's still a visual of the child. So if, the jury are lead to see that for example the child may appear to be sexually active, or are lead to see that the child may have consented to what was happening--there's a mindset around that

and it's partly a societal problem in a way we view girls and sex and consent. So I am more inclined to go with a specialist court with perhaps a panel of judges or a panel of trained judges because to a large extent judges do have to make decisions based on points of law (Sinead).

In the above excerpt, Sinead captures the problems not merely inherent to the jury trial, but inherent to the nature of delayed reporting of intra-familial CSA. The prosecution of historical crimes is accompanied by a unique set of issues, regardless of the crime. However, some policy initiatives have tended to conflate historical intra-familial CSA with the recent experiences of sexual assault, not realising the added barriers that adult survivors of CSA face (NSWCJSOT Report, 2005). In this sense, adult survivors of CSA traverse two worlds, suffering victimisation from a child's perspective while being 'judged' as an adult. As chapter 6 demonstrated, the adult survivors in this study displayed a variety of mechanisms of resistance, with many defying the stereotype of the 'damaged' victim. Given these earlier findings, it becomes incumbent upon reformers to ensure that the experience of CSA and its resultant and varying affects on survivors is understood by those who are adjudicating upon this crime.

As survivors discussed earlier, specialist training, which challenges the popular mythology surrounding CSA and the ideology of familialism (Barrett and McIntosh, 1982), was also cited as one of the more desirable hallmarks of specialist courts.

I think we need specialist sexual assault courts. But there are key things for specialist courts. Firstly everybody that's involved with the court has been trained in understanding sexual assault, on evidence based work, not precedence and myths and misconceptions (Kathy).

While specialist knowledge can be seen as largely unproblematic, it is important to critically analyse which knowledge is privileged when training a specialist judiciary. While this is explored further below, it is crucial to note that specialist knowledge can also be influenced through the use of expert knowledge. While the judiciary may be averse to 'being trained', recognised experts such as psychiatrists, neuroscientists and psychologists may be able to shed light on the dynamics of the trauma and the way this manifests in the survivor's behaviour (Cossins, 1999). This utilisation of expert knowledge was also advocated for by Caitlyn, a manager of a CSA counselling service.

I'd like to...I'd like to see some more...meaningful expert testimony around memory. Yeah, who can help juries to understand. And maybe also around how people might respond to trauma. Because I don't think we can expect a jury to understand why a person can spend every Christmas with someone who raped them as a child or why they might be happy for that man to give them away at their wedding or [...]
(Caitlyn).

Caitlyn believed that there was a need for specialist knowledge, which for instance, provides information about the nature of how complex PTSD and Stockholm Syndrome (see Jülich, 2001) manifests in survivors, and leads them to behave counter intuitively to the 'commonsense' way survivors are expected to behave.

Such dissemination of knowledge to judicial officers is not without problems, as outlined by Sinead, a survivor, stakeholder and former court officer. Here Carol Smart's (1990) adage about law as the divine arbiter of truth resonates, with society's veneration of the discourse of law such that practitioners of law may be reluctant to have their ignorance exposed.

I'm involved with a DV liaison committee. Recently we've been trying to get into the court system as far as training magistrates um and the court staff about DV. One of the things magistrates have said is that being trained in that way, could make them less likely to be impartial (Sinead).

Indeed, Sinead's excerpt exemplifies the power of legal discourse to disqualify other knowledge, to the point of rendering all non-legal knowledge subjective and therefore invalid. This is significant as specialist courts are predicated on the principle of specialist knowledge and training for relevant stakeholders. While presumably those attracted to specialisation would be amenable to additional training, this also highlights the barriers that may need to be overcome in the implementation stage of constructing a specialist court.

Lastly, research with some legal stakeholders has highlighted their basic opposition to specialist courts. Discussions with two legal stakeholders emphasised the fact that one third of criminal cases seen to completion in the NSW district courts are sexual assault cases (Fitzgerald, 2006), and consequently, injecting resources into a specialist court was seen as financially untenable. Such an argument which reflects economic rationalist sentiments, ignores the fact that specialist courts may generate a greater sense of integrity around the

court process, which may in fact lead to a higher rate of completion. However, the question remains as to whether there is sufficient support from powerful stakeholders in the legal profession for a specialist court, coupled with impetus from survivors and stakeholders (Refer to NSW Taskforce).

In summary, it can be seen that for survivors, commonalities lie with their need for a legal system that is flexible enough to recognise the complex case of intra-familial CSA and its impact on victim-survivors. Constructing a court that treats survivors with compassion and respect for their dignity was also a common thread amongst survivors. Lastly, support for a specialist police unit was also viewed favourably. In contrast, welfare stakeholders responded with greater specificity, discussing the need for survivors to participate to a greater extent through legal representation or consultation as recognised stakeholders. Greater use of expertise and a non-adversarial system were other suggestions made by a number of stakeholders. Contention regarding centralisation of services and whether a separate specialist court was warranted were also matters of concern. While the stakeholder data enhanced the survivor data, it can be argued that there are points of departure in terms of focus. While survivors focused on *rights regarding principles*, coupled with *reflectiveness*, stakeholder's responses were largely concerned with *discursiveness* and *plurivocality*. This distinction can perhaps be attributed to the stakeholders' broader remit and understanding of the broader policy making arena in which law reform can be situated. For instance many stakeholders from welfare and advocacy agencies were very much aware of the way in which competing voices influenced policy making. For these stakeholders, adopting the most politically salient discourse was often crucial for their survival as an agency.

Restorative justice

Survivors

The earlier Table 5 reported responses from data items in the questionnaire that were designed to operationalise elements of restorative justice: participating in the decision making process of consequences for the perpetrator, telling one's story and speaking in front of the perpetrator were used to measure some elements of the generic RJ conference. While questionnaire respondents demonstrated moderate support for the utility of RJ practices, they were more hesitant about the practical implications of other RJ items. For example, 13 out of

22 respondents found that telling the story of the abuse in front of a community of care may be useful or very useful while 14 out of 22 respondents felt that it would be useful or very useful to participate in decision making regarding perpetrator punishment. Such results reflect survivors' ambivalence towards RJ as a viable legal reform for adult survivors.

Interviews explored RJ in more detail. The following section explores survivors' views on the potential of restorative justice for intra-familial child sexual abuse. Three welfare stakeholders also discussed their views on restorative justice. Four survivors spoke favourably about the potential of restorative justice models, while a fifth survivor spoke favourably about a model that largely adopts a therapeutic/rehabilitative framework, imbued with some elements of restorative justice. Other survivors were sceptical, seeing restorative justice as having the potential to minimise the perceived severity of this crime. Mary, a survivor who shared excerpts of her Submission to the Mulligan Inquiry during the interview, was the only survivor who had previously heard of restorative justice and was thus advocating its use for intra-familial child sexual abuse.

Restorative Justice offers opportunities for healing and reconciliation for both survivors and perpetrators, which will benefit society as a whole. For a long time I have believed that the current legal system is not the place for victims/survivors of sexual and child abuse, be they adults or children at the time justice is sought (Mary).

In the excerpt above, the phrase "offers opportunities for healing and reconciliation" illustrates Mary's conceptual alignment of restorative justice with emotional catharsis and transformation. This comment is understood better in light of Mary's personal experience with extreme violence, including her father attempting to murder her and his rape of her at the age of four years old. This is further contextualised within a family history of multigenerational abuse. Mary thus eschewed all forms of violence and punitivism, and connected the CJS with vengeance. The propensity to favour restorative justice by defining it against the apparent failings of the criminal justice system (Stubbs, 2004) rather than its inherent merits is not uncommon and can lead to dangerous idealisation of RJ. Indeed, despite her conceptual polarisation of restorative justice compared to traditional criminal justice systems, she tempers her response by stating:

After discussion with survivors...it sounds as though small conferences between survivors and perpetrators have some specific difficulties. So a range of options need to be considered (Mary).

Central to this more tempered response is the idea that restorative justice should be one option amongst a spectrum of options that provides women with greater choice, reiterating the views of victim advocates who see that victim-survivors should be given the option to be referred to RJ in addition to the criminal justice system, provided adequate screening of the perpetrator be conducted (Curtis-Fawley and Daly, 2005:628).

Similarly, two other survivors, Linda and Tanya, also displayed interest in restorative justice models largely as a reaction to the flaws inherent in the current system. Linda spoke extensively regarding the failings of the criminal justice process, before envisioning a model predicated on cultural feminist sympathies. A survivor, grass-roots feminist campaigner and sexual assault and domestic violence counsellor, Linda spoke of a justice process she described as a “~~m~~atriarchal approach” to resolving conflict. In many ways, this perspective aligns with Van Wormer’s citation of the poet Audre Lorde, “~~t~~he master’s tools will never dismantle the master’s house,” (Lorde in Van Wormer, 2009: 108). Linda’s infusion of restorative justice with the essentialism underlying cultural feminism is a parallel made by some feminist proponents of RJ (Harris, 1987 ; Pranis, 2002; Hopkins and Koss, 2005:700).

Um..yeah, I mean that’s sort of what I was trying to get to before, you know in terms of bringing things back to um...quite a small level and discussing things at a profound level so that families, extended families actually start to get the impacts of abuse. It doesn’t necessarily need to mean that perpetrator of the abuse gets away with things, if there is a genuineness in the proceedings and I think it can also...I imagine you know help the community take more responsibility for the issues, so that um, you know-particularly for something like CSA which is swept under the carpet and so hidden. You know if there is something like restorative justice, yeah it does...it demystifies it, it uncovers it, um...and it...there’s less chance for perpetrators to be hidden within the community as well. Yeah, no I think it’s a good idea. Yeah (Linda).

Cultural feminism’s focus on “~~h~~uman interconnectedness and relationships”, a “~~c~~ollaborative” rather than a “~~h~~ierarchical model” and the centrality of uncovering the truth of women’s voices, are all evident in the above excerpt (Hopkins and Koss, 2005). The notion that uncovering women’s voices and discourse can lead to awareness and hence social change is a belief extending back to the early days of feminist campaigning, yet the notion of speaking leading to social change has since been problematised (Gilfus, 1999). Similarly, Linda’s perspective of the community and family are as largely unproblematic entities,

mythologised somewhat as monolithic entities of goodwill, akin to the unproblematic vision of community held by communitarians (Lacey, 1995).

Another survivor, Tanya also found merit in the idea of restorative justice in terms of seeing it in binary opposition to the current criminal justice system, which she condemns as patriarchal and ~~out~~ of touch.” Tanya, a survivor, holistic counsellor and feminist, also constructed restorative justice in an essentialist manner, drawing comparisons between the criminal justice system as patriarchy, and by extension restorative justice as the logical other.

I think we’re in such a patriarchal society and...especially in the judicial system any judges are male and the whole system is very patriarchal. I think it would be better coming from a more matriarchal perspective, a more feministic perspective, to be fairer. And I don’t know that prisons are the answer really... (Tanya).

As reiterated above with Linda’s excerpt, the alignment of matriarchy with restorative justice is not such an idiosyncratic response, given feminist standpoint theory’s advocacy for restorative justice (Van Wormer, 1999) and the amalgamation of Gilligan’s *‘ethic of care’* (Hopkins and Koss, 2005) with the potential for mutual respect within a restorative justice conference. Despite Tanya’s positive support for restorative justice, coupled with her support for penal abolition, she qualifies this, highlighting that external advocacy is essential in order to avoid re-traumatisation and coercion of the victim-survivor. Certainly this reiterates many of the concerns raised by critics of restorative justice, such as Hassall, who aptly contends that some of the dangers within family group conferencing in New Zealand, is that *—pride in the membership of an abusive subculture may be reinforced”* and that *—families with an entrenched dysfunctional way of operating may learn nothing.”* (Hassall in Morris, 2002:93).

As long as the victim has some outside support or outside advocacy. Because I think intra-familial systems can keep them locked into um... negative patterns where they wouldn’t perhaps fight for what they’re entitled to or they would get bullied out of it whereas if there’s outside advocacy for them they might get a fairer outcome (Tanya).

The above excerpt challenges the common belief that re-victimisation or re-traumatisation occurs only between victim-survivor and their perpetrator. Indeed, this excerpt highlights the way in which familial bystanders can bully survivors within the conference setting, as well as the way in which families can operate to protect the perpetrator (La Fontaine, 1990; Cossins, 2008). This also emphasises an often overlooked concern: that the

restorative justice practice of including family and friends of the victim may be problematic, given the fact that often this ‘family’ is the very system which operated to conceal, abet or facilitate the perpetrator’s offending behaviour. Indeed, this research has shown, particularly through Tessa’s case study, that even sympathetic siblings may refuse to assist the victim-survivor, or through Tanya’s case where ostensibly sympathetic parents become unsympathetic when the adult child desires to openly address the issue of intra-familial child sexual abuse. What this suggests then, is that survivors’ fear further silencing, within a restorative justice process, which ironically subverts the precepts underlying RJ. Interestingly, Pam’s excerpt supported one aspect of restorative justice, the presence of victim and offender, with the offender meaningfully listening from the victim.

Well bear in mind-I don’t want the community there. Because everyone has to be-and I was lucky in my situation that it was just my brother and I because everyone else wants to butt in on something or suggest something, because I don’t think that they’re-unless they sit there in absolute silence and let the-this is huge for the survivor, and there’s huge emotions and triggers for them. You know you really have to be in the right place to that. No, I wouldn’t want that myself but you know, um that can have huge, huge effects without people realising, they’re re-abusing that survivor again, because it makes it sound like they’ve got to have the community there to say this even happened (Pam).

A number of critics (Bazemore and Earle, 2001; Pavlich 2001; Lacey 2007,) have highlighted the dangers inherent in romanticising the notion of ‘community.’ Pam alludes to Walgrave’s assessment that ‘—in the name of community, people are still subjected to unreasonable control, local stigmatisation and exclusion....’ (Walgrave, 2002:77). She also highlights another concern: the replication of community power struggles within an RJ conference. Her last sentence, ‘—it makes it sound like they’ve got to have the community there to say this even happened,’ interestingly highlights the way in which she positions the community in the role of arbiter or judge, and even more saliently, the way the community can silence the voice of the victim-survivor.

Some survivors viewed another aspect of RJ, coming together with the perpetrator to discuss the crime, as problematic³⁵.

³⁵ However, some RJ conferences do allow for a proxy to represent the victim-survivor (see Project RESTORE NZ, Jülich, 2010)

That would be-I just can't fathom it. I mean I can't-I've never spoken to him about what happened. I don't talk to him. I haven't spoken to him in a few years so. Yeah-nuh I couldn't do it. It doesn't allow me the space-I've created for myself a space that I can talk in-that takes it away instantly and it just puts me back there. It doesn't say that he's more powerful than me but just, yeah I just couldn't do it(Jennifer).

This raises questions about the complexity of restorative justice aspirations such as healing, catharsis and emotional transformation. To heal from trauma, a number of preconditions must first be satisfied. As the literature suggests, one of the erroneous assumptions is that healing can take place within a single conference. Rather, healing is incremental and, for some survivors, a life's journey (Cossins, 2008). Healing is predicated upon safety, and acknowledgement ~~to~~ the victim that what happened was wrong and was not deserved" (Daly in Pranis, 2002:36). From a therapeutic perspective, healing requires reconnection with others (although not necessarily from family) and re-empowerment (Herman, 1997:182). Above, Jennifer discusses the importance of a critical safe space in her life, which facilitates the expression of her own discourse and testimony. Such a space, for Jennifer, related to the public world of work, in which she enjoyed considerable success, and her advocacy and personal storytelling in aid of campaigning for awareness about child sexual assault. The contrast between Jennifer's public adult life, compared to the disempowerment she felt in the private life of her family of origin, reveals the impact of early childhood trauma and the extreme nature of the power imbalance.

Arguably, this has implications for our understanding of *discursiveness* and storytelling, both facets that restorative justice advocates believe should be intrinsic to an innovative justice process. The assumption underlying *discursiveness* is that it is ~~more~~ "than allowing a space in proceedings for various participants to speak" (Hudson, 2006:34). It also includes the incorporation of ~~any~~ "topic raised by any participant," and the precept that the ~~private~~ sphere must not be off limits" (Hudson, 2006:35). However, Jennifer's excerpt reminds us of the caution that must be taken. Often it is not acknowledged that the adult child can still feel the exact amount of fear they felt as a child (Herman, 1992). The nature of PTSD and related mental health issues may mean that the same level of vulnerability can be invoked, and as such the survivor can fail to advocate on their own behalf. This then requires invoking Young's strategy of allowing a survivor ~~privileged~~ "access to discourse" (Young in Hudson, 2006:34; Young, 1990), which will be explored in the following section.

Stakeholders

Welfare stakeholders largely displayed caution regarding the use of restorative justice for intra-familial CSA. Those who opposed restorative justice highlighted a concern with what Donna Coker (2002) labels “cheap justice,” that is, that RJ is a form of second rate justice meted out to perpetrators of child sexual abuse. Sinead refers to the message that using RJ for sexual abuse would send to offenders, known as the symbolic politics of justice and the idea that the way in which a crime is handled by the authorities communicates a message about its severity.

But I guess in some ways it minimises the crime... You wouldn't use it for higher levels of grievous bodily harm so I wonder whether it was minimising of sexual assault...I can see circumstances where it would be useful to some survivors. Um, a lot of survivors do want an acknowledgement from the perpetrators in particular of the harm done to them. But a lot would depend on how it was acknowledged and whether the acknowledgement was a real one. I mean I've had experience and seen letters written by perpetrators to the victims and in the majority of cases they've been another form of victim blaming- “I'm really sorry about it-but if you weren't so beautiful, or if I didn't love you so much, I wouldn't have had to” is a good example. I also think that to use RJ only for sexual assault would be wrong (Sinead).

Interestingly, this excerpt indicates that the need for validation and acknowledgement, highlighted earlier, is something that can be manipulated by the perpetrator. Much has been written about the lack of sincerity that domestic violence perpetrators may possess during a restorative justice process, and their use of contrition to lure the survivor back into a relationship (Hopkins and Koss, 2005). From Sinead's perspective, perpetrators use victim blaming as a way to eschew personal responsibility, a tactic established in the literature on child sex offenders (Cossins, 2008; Salter, 2003; Miller 2010). Such a veiled apology, which on one level is transparent in its insincerity, could possibly be accepted due to the survivor's need for acknowledgement at any level, or the survivor's inculcation of victim-blaming discourses from an early age. As Cook reminds us, “restorative justice conferences...set up a smokescreen where the invisible privileges around gender, race and class are reproduced, embraced and recommended as strategies for future goals of offenders.” (Cook, 2006:121).

Arguably, one invisible privilege related to gender is the reintegration of the perpetrator into the family home, with access to family life viewed inexorably as a male privilege.

Stakeholders Caitlyn, Sinead and Kathy perceived that RJ would not be monitored effectively enough to be a true reversal of the power imbalance between perpetrator and victim-survivor. Issues such as under-funding, inadequate staffing and the dominant discourses surrounding victim-blaming and the sovereignty of the family, were central concerns.

I guess I don't trust the system enough to be able to manage something like that. I don't trust the system enough for it not to be another assault on the person. And given the pressure there is on a lot of survivors to maintain contact and relationship with the perpetrator, I wonder if this would support that idea. –Ok we've done all that, now let's just pretend it never happened." I guess, I'm very cynical about...I'm not saying it's not a good idea...but I'm very cynical about our ability to manage it given the types of views we have around sexual assault and views we have around sexual violence. And sometimes the lack of understanding of how disempowered someone can be (Sinead).

Um (pause) yeah you can end up with a system where complainants feel subtle or not so subtle pressure to agree to um...compromise...and you can end up in situations where people in a program are not safe, and none of that's acceptable (Kathy).

Caitlyn, who coordinates child sexual abuse counselling services in Sydney, presented parallel views to that of Sinead:

So I guess the thing that worries me is the power imbalance that's kind of inherent and established in this kind of relationship, and the best evidence for that for me is the number of adult people I see who are still being sexually assaulted even as parents, or grandparents by this person who in relationship to them is so much more powerful. And I think a way of getting around that is perhaps by using or involving other people who are very powerful within the community um to balance that. If supporters and advocates for the victim are involved in the process too, I think there's a potential for redressing that imbalance. So I think that...I'd be happy to see that if it was really well thought out-I'd be thrilled to see that if it was an option and it was an option that

was really well thought out, well funded, supported and planned. I suspect that it wouldn't be, so I would be terrified and horrified by the idea (Caitlyn, Stakeholder).

The issue of the inherent power imbalance between victim-survivor and perpetrator is one which recurs predominantly in the literature. Caitlyn's reference to the fact that sexual abuse can continue well into adulthood for some survivors, is a concept that is difficult for lay people to understand. Such understanding requires comprehension of the power dynamics that are established at the commencement of the abuse, leading to feelings of disempowerment, complex PTSD or development of the Stockholm Syndrome (Herman, 1992; Jülich, 2001).

The need for a justice system that acknowledges and actively works to promote redress of this power imbalance is essential. Such professionalisation is integral, in addition to community stakeholders adopting an advocacy role in supporting the victim-survivor. Complementing this would be a re-evaluation of the notion of facilitator neutrality which is promoted in the RJ literature. Jülich (2010) contends that re-envisioning the role of the facilitator is vital in acknowledging the inherent power imbalance between perpetrator and survivor. This requires redefining the goals of neutrality and impartiality such that this power imbalance is not reproduced during the conference. The notion that ~~it~~ [is] more useful to distinguish between neutrality in the sense of disinterestedness and neutrality in the sense of fairness..." (Boulle et al in Jülich, 2010:248) allows for the facilitator to adopt a more proactive role in redressing the power imbalance. To ensure that the perpetrator's rights are also upheld and such a conference would not descend into harassment of the perpetrator, eliciting Hudson's (2006) ~~rights~~ "rights regarding principle" is necessary.

One key precondition for such measures, however, is adequate resourcing and funding. Both Sinead and Caitlyn, working in community organisations, are cognisant of the fact that there must be a strong commitment on the part of policymakers to support restorative justice operationally. Both women believed in the potential of restorative justice, but feared the implications of a poorly planned and underfunded restorative justice alternative that replicated gendered power dynamics.

Conclusion

Adult survivors of intra-familial CSA possess a variety of complex justice visions. As a diverse group, their needs are not unitary or fixed, and at times their needs appeared on a continuum of justice related to their current life circumstances. As detailed in Toews' (2006) "justice tree," survivors must first attain a modicum of safety and distance from their family of origin, before being able to explore more abstract conceptions of justice. However, some general findings can be gleaned from the data. Justice needs and therapeutic needs are very much intertwined, and the search for justice is, as Balboni and Bishop (2010) and Zehr (2002) contend, akin to a journey towards subjective identity/identities. Validation, storytelling, confrontation, compensation and denunciation of the perpetrator can be categorised under this search for a reconstructed identity that divests one of prior stigma and prior objectification. One must be cautious however, with assuming that such needs are straightforward. Storytelling requires bystanders who will listen and validate, and for some survivors these bystanders were either family/friends or external authorities such as the CJS. For others, justice needs required perpetrator accountability and punishment.

While some survivors presented punitive responses towards punishment of sex offenders, other survivors were more ambivalent, particularly when considering an appropriate punishment for their own perpetrator. For some, punishment reflected retributivist tendencies, particularly with regards to the notion of moral rebalancing (Hampton, 1991). Others demonstrated less faith in the CJS and the perpetrator's capacity to reform and instead presented utilitarian views regarding harm reduction and safety. As Hudson (2002, 2006) contends, it is important to move beyond individual liberal views of justice. Survivors presented views that transcended the victim/offender dualism, and instead discussed the role of bystanders, and the wider community in prevention of intra-familial CSA. *Relationalism, discursiveness and plurivocality* (Hudson, 2006), appear integral to survivors' justice needs. The suitability of Hudson's innovative justice is thus apparent, but will be discussed at greater length in the following and final chapter. These "justice needs" also emphasise the relevance of communitarian notions of justice such as Braithwaite and Pettit's (1990) promotion of dominion through reprobation and reintegration, seen through the need for perpetrator denunciation and compensation. Lastly, it can be surmised that most of the justice needs discussed focus on process rather than outcome, the need for knowledge that transcends legal parameters, as well as specialisation. These are consistent with

conceptions of non-adversarial justice (Freiberg, 2010), as well as elements of restorative justice, providing certain preconditions are met.

Chapter 8: Discussion and Future Directions

Introduction

This thesis aimed to gain an in-depth understanding into the way in which adult survivors of intra-familial CSA sought to overcome its effects. In order to gain this understanding, the thesis explored survivors' strategies of resistance, visions of justice, engagement with the criminal justice system, as well as survivors' experiences of initial victimisation. Few studies have examined the specific needs of this group of survivors and this thesis has contributed to the field of criminology and sexual violence research in a number of key ways.

Chapter 5 examined the impact of survivors' experiences on their adult lives, as well as the ways in which intra-familial abuse affected disclosure patterns. This chapter revealed distinct findings, specifically that survivors' attempts at official disclosure were mediated by patterns of silencing and denial used by both bystanders and the perpetrator. Not only did survivors have to negotiate the complexity of the CJS process, with its substantial barriers for those who did not conform to the identity of the white middle class man (Hudson, 2006), but survivors had to negotiate discourses of the ideology of familialism (Barrett and McIntosh, 1980) and family altruism (LaFontaine, 1990). The latter constructs the family as a benign and altruistic institution, whose members readily self-sacrifice themselves for the needs of other family members. The myth of family (LaFontaine, 1990) was reflected in the findings that highlighted the practices of familial bystanders, who often supported the perpetrator such that the family became an entity whose rights appeared to supersede that of victim-survivors. This experience was observed to a greater extent with survivors from multi-generational abusive families. This finding has not been observed in previous research, as the role of family dynamics and its impact on survivors' decision-making has not directly been addressed in much of the literature. While Jülich (2006) and Herman (2005) highlight survivors' desires for bystander validation, their research has not explicitly examined bystander dynamics.

Chapter 5 also explored survivors' experiences with the criminal justice system, finding that survivors who were satisfied with their CJS experiences came into contact with stakeholders who provided validation and facilitated an atmosphere of discursiveness, and this treatment tended to be dealt with by officers who were from specialist police units. Conversely, dissatisfaction experienced by survivors reflected problems that had been previously highlighted in the literature, including aspects of the adversarial trial process such as cross-examination and oration (Doak, 2008; Ellison, 2001); the use of phallogentric discourses to undermine survivors (Taylor, 2004; Eastwood, 2003); the dearth of specialist knowledge amongst police officers; the DPP and defence counsel regarding trauma and delayed disclosure. In addition, for some, the CJS only played a peripheral role in their attempts at overcoming the consequences of CSA, with some survivors displaying a lack of faith in the CJS's capacity to protect them or provide them with a 'sense of justice'. On the other hand, the survivors who did seek recourse from the CJS as adults viewed the CJS as having the capacity, as a social authority, to vindicate survivors' stories and assist with breaking through their denial. Aside from Taylor and Norma's (2011) examination of sexual assault survivors' use of the police as a site of symbolic protest, previous research has not examined the ways in which adult survivors may utilise the CJS other than for instrumental purposes, that is, for other than prosecution of the offender.

Following this, Chapter 6 examined agency and resistance, and explored the ways in which survivors resisted the stigmatised identities conferred upon them. Some survivors used the CJS as a 'critical space' (McCorkel, 1998) which allowed them to resist the denial and silencing enforced by familial bystanders and the perpetrator. However, most survivors looked beyond the CJS, using other 'critical spaces' beyond their family of origin to construct subjective identities, and this is achieved through alternative families, workplaces and activism that allowed them a sense of belonging and agency. The data in this chapter both reinforced and departed from previous findings of Bosworth and Carrabine (2001), highlighting the way in which resistance strategies can be problematic. The survivors in this sample were largely well-educated and spanned in age from middle aged to elderly, and it is essential to note that the capacity to resist varied according to life circumstances and opportunities. The mechanisms made available to these survivors as ways of creating subjective identities and fashioning self-narratives may not necessarily have been available to a more disadvantaged cohort. Access to critical spaces was first and foremost contingent upon the ability to separate from one's family. To a lesser extent, it was also contingent upon

knowledge and alternative discourses found in education, and location with collective groups and work spaces that subvert the disenfranchisement caused by intra-familial CSA. Future research may need to focus on younger women who have not separated from their family of origin or the economically disadvantaged subgroups in order to gain a more complete picture of the resistance strategies used by adult survivors.

Through an examination of the notion of resistance, the justice needs of survivors discussed in Chapter 7 were elucidated, as both resistance and justice visions were intertwined with survivors' constructions of subjective identities that transcended their early victimisation. Chapter 7 demonstrated that for many, a sense of justice was a journey towards identity (Bishop and Balboni, 2010), as well as a journey towards transformation (Zehr, 2002). Yet the findings also challenged Herman's (1997) assertion that recovery from trauma, and Zehr's (2002) assertion that recovery from crime victimisation, is dependent on reconnection and re-empowerment. Most of the survivors of this study had not experienced a sense of empowerment or connection prior to crime victimisation, having been victimised during childhood. For some, justice needs were more related to gaining the life skills as well as the social and emotional competencies that non survivors of CSA take for granted. In this sense, their needs were more related to a journey towards construction of a newfound identity, rather than a recovery of a pre-crime sense of self (Bishop and Balboni, 2010)

Moreover, justice was as more about the vindication of the survivor and their desire for validation within their immediate and broader communities, and less about punishment of the offender or legal reform. In this sense, findings reflect previous research (Herman, 2005; Jülich, 2006; Bishop and Balboni, 2010) and are compatible with Hudson's (2003; 2006) aspirations for innovative justice. Survivors valued storytelling, confrontation, consciousness-raising, as well as the greater use of specialist knowledge which tended to reflect Hudson's (2006) notion of *discursiveness* and *plurivocality*. Survivors' needs for validation from bystanders and community denunciation also reflected Hudson's (2006) notion of *relationalism*. The remainder of this chapter will explore then, the ways in which the unique circumstances of adult survivors of intra-familial CSA may be compatible with certain models of specialist courts and restorative justice.

Specialist Courts

The majority of survivors were in favour of a specialist sexual offence court, with the following attributes: specialist training of court staff, separate building facilities, and greater consultation between legal stakeholders and external advocacy and feminist agencies. Specialist training for criminal justice stakeholders, cultural changes within the courtroom and the minimisation of re-victimisation during cross-examination were also seen to be paramount. Greater participation (of both the victim and then afterwards, of advocacy groups) was seen as desirable, with some survivors stipulating that specialist courts should seek regular consultation with victim-survivors and advocacy groups, and other victim-survivors arguing for a victim's advocate or legal representative within the courtroom.

It is possible that changes can be introduced so that specialist courts meet the specific needs of adult survivors, however, there would also be a need to reconfigure the victim's role through a right's based framework. Specifically, some of these needs can be met through drawing upon existing models of specialist sexual offence courts in Wynberg, South Africa and Cape Town, South Africa (Sadan, Dikweni and Cassiem, 2001; Walker and Louw, 2002; 2005), and specialist family violence courts such as those in Manitoba, Canada (Cossins, 2010; Stewart 2005; Ursel 1992). Ideas on potential specialist courts have also been gathered through the examination of local models proposed by Cossins (2010) and The National Child Sexual Assault Law Reform Committee, the NSW Criminal Justice Sexual Assault Taskforce (2005) and the Aboriginal Child Sexual Assault Taskforce (2005), among others.

The research findings concerning survivors needs which were considered in conjunction with Hudson's justice principles, indicated the necessary direction for reforms that might best meet their interests. Validation had been established as the central justice need, followed by the need to speak and be heard; the findings of this study suggest that their attainment of validation is contingent on the fulfilment of three steps: (i) recognition of the victim-survivor's human rights, which encompasses, (ii) recognition of the right to discourse, and (iii) the right to be heard. In relation to Hudson's justice principles, validation is contingent upon recognition of survivor's human rights and their right to speech³⁶ (Hudson, 2006), which are embodied in the principles of *discursiveness* and *plurivocality*. Conversely,

³⁶ This right to speech need not be in oral form, as will be explored later in this section.

as speech is a dialectical process, it also entails the right to be heard and confers upon stakeholders the duty to listen.³⁷

Rights-based framework

The realisation of victim-survivors' needs may require a reconfiguration of their place in the criminal trial. Hudson's rights regarding principle, upon which the "inviolability of human dignity" is based, would assist with this reconfiguration (Hudson, 2006). Indeed, a rights based framework must recognise that the experience of long-term CSA is a violation of human dignity, and that as victim-survivors of crimes, survivors have a right to a fair trial and a right to be treated with dignity³⁸ (see 1985 *UN Declaration of the Rights of Victims of Crime*; NSW Charter of Victims Rights (*Victims Rights Act 1996 NSW*)). In relation to crimes of dominance, re-evaluating rights for the victim-survivor within the criminal trial is paramount. Being treated with dignity is essential for survivors as it is precisely one's dignity that is lost in experiencing gendered violence and long-term CSA. This was exemplified through Irena's, Nola's and Mary's narratives in Chapter 5. Research on the dehumanising nature of rape trials (Eastwood, Patton and Stacey, 1998; Eastwood, 2003), where evidence is turned into "pornographic vignettes" (Taylor, 2003) suggests that the survivor's right to dignity, is further denied in traditional criminal justice trials. Essentially, the denial of the victim-survivor's dignity occurred through the objectification of the victim-survivor. The objectification consequent to CSA is mirrored by the objectification in the courtroom. In the latter instance, the victim-survivor becomes an object, that is, a tool for the prosecution "as she is not an "end in herself", but a "tool for the satisfaction of one's own desires" (Nussbaum, 1999:223). This objectification of the victim-survivor leads to a form of "Instrumentalising of persons [...] linked to a denial of subjectivity--one stops asking how the other person is thinking or feeling, bent on securing one's own satisfaction" (Nussbaum, 1999:224).

It is this denial of subjectivity, manifested through the exclusion of the victim-survivor from both an official legal status and engagement in courtroom discourse that

³⁷ The notion of listening will be explored through Flax's notion of listening as a process whereby the privileged listener adopts an "uncomfortable double vision"(1995: 507)

³⁸ UN Declaration on the Rights of Victims of Crime, Article 4 "Victims should be treated with compassion and respect for their dignity".

compels the exploration of an avenue for the realisation of survivors' rights within the criminal trial. Hudson cites Minnow's (1990) conception of rights as relationships accompanied by obligations. Moreover, citing Lyotard, she contends that ~~the~~ "universalism of human rights is the right of universal access to discourse", and those rights are conditions of discourse (Hudson, 2006:37). That is, silencing others is a denial of their human rights. In short, denial of the right to discourse translates to denial of one's pathway to validation. Yet, it is not enough to state that in a specialist court, victim-survivors should have rights to discourse, and therefore the right to voice. It is crucial to elucidate the parameters of these rights, and the forms of voice that survivors should have.

Right to subjectivity

Redefinition of this role in the trial process is therefore paramount, and the challenge is to imbue the victim-survivor's role with newfound subjectivity while negotiating the procedural constraints of the legal system. Within the adversarial legal cultures, such as that observed in Australia, certain discourses are mobilised, which at times, stymie the debate regarding the victim-survivor's role and enhancement of her legal status. Often there is presumed to be a zero-sum game (Doak, 2008) which positions victim's rights in diametric opposition to offender's rights. According to this view, to increase rights for victims is said to decrease the offender's rights and his access to a fair trial. However, a recent ALRC Report³⁹ has described this commonly mobilised argument as essentially and merely- *'rhetoric'* (ALRC, 2010:1118). To challenge this problematic dichotomy, Cossins (2010) has attempted to redefine the attributes of the fair trial principle in Australian common law. In addition to concluding that the fair trial principle is dynamic and adaptable to ~~changing~~ "social standards", she also established that ~~the~~ "concept of the trial can even take into account the interests of the victim" (Cossins, 2010:352). While there is no common law justification for preventing an increase in victim's rights, fundamental problems remain in conceptualising an autonomous role for the victim in the adversarial system. While in the past twenty years there has been unprecedented recognition of victim's rights (Doak, 2008), the question remains as to whether we have reached the limits of victim reform for sexual assault survivors within an

³⁹ Australian Law Reform Commission: Family Violence: A National Legal Response, Report 114, 2010:1118

adversarial legal process, and the limits of a larger cultural climate of adversarialism (Freiberg, 2010).

A case for non-adversarialism

To realise victim-survivors' rights to subjectivity within the legal process, a specialist court for sexual assault survivors may need to embrace elements of non-adversarialism (Freiberg, 2004, 2010; King, Freiberg, Batagol and Hyanns, 2010). According to these scholars, particularly Freiberg, a non-adversarial justice system includes:

Justice systems, not simply court systems; the importance of process as well as outcome, the importance of partnership; the role of judges; the importance of an interdisciplinary approach and the need for a comprehensive approach (Freiberg, 2010:304).

While Cossins (2010) is somewhat, to a certain extent, isolated in advocating a less-adversarial approach to specialist sexual offence courts,⁴⁰ Freiberg's support of non-adversarial principles and "for the importance of the elements of voice, validation and respect" (Freiberg, 2010:13) strengthens Cossins' case for a less adversarial model. An examination of victim's rights in non-adversarial jurisdictions illustrates a different role accorded the victim (Walther, 2006; Doak 2005; Ellison, 1999), with Walther suggesting some jurisdictions such as Germany observe a "legal guarantee of human dignity, which requires that victims of crimes be respected and not simply as object like evidence" (2006:113). While its implementation in practice is unclear, human dignity within the courtroom presupposes recognition of the witnesses, victim-survivor and alleged offenders as human beings who are to be treated with a minimum level of respectful treatment. Human dignity would also supersede procedural dogmatism, such that the physical and mental health of court participants supersedes the rigid adherence to procedure.⁴¹

In essence, a less adversarial approach which prioritises the elements of voice, validation and respect, combined with elements of specialisation, may meet some of the needs discussed by survivors in this study and the elements of justice stipulated by Hudson

⁴⁰ See NSW Sexual Offences Taskforce Report, 2005, pg 169

⁴¹ For example, Chapter 5 demonstrated the consequence of rigid adherence to procedure despite the physical consequences of traumatic cross examination (see Lily and Sue's case).

(2003; 2006). The case for a less adversarial approach is strengthened when examining the way in which both the victim-survivor and the notion of truth can become peripheral in the adversarial trial (see Doak, 2008; Eastwood and Patton, 2003; Taylor, 2003; Ellison, 1999; Jackson, 1992; Steffen 1988). The view of truth as secondary to the trial erodes public confidence in the criminal justice system's capacity to deliver procedural justice (Lind and Tyler, 1998; Freiberg, 2010), and meet the expectations of the community. Indeed, many survivors were cognisant of the way in which the witness and truth are typically perceived within the adversarial trial, that is, the witness is there to assist the parties advance their case rather than present evidence as an autonomous actor, and the search for truth is subsumed by each party presenting the most convincing argument, regardless of the factual validity of this argument (Reichel, 2008:171). This was one motivating factor that prevented survivors in this study from engaging with the CJS.

The case for a less-adversarial system is also strengthened when one examines the limited success of the NSW Child Sexual Assault Specialist Jurisdiction, where the adversarial culture of courtroom still created barriers to substantial reform (Cashmore and Trimboli, 2005; Cossins, 2010). While Cossins proposes research into the comparative effectiveness of less-adversarial specialist courts for Indigenous CSA (Cossins, 2010) a suggestion also canvassed by the NSW Aboriginal CSA Taskforce Evaluation (2005), it can be argued that less adversarial specialist courts that are set within a broader justice framework of non-adversarialism (Freiberg, 2010) are needed to accommodate the complex needs of all survivors of intra-familial abuse.

1. Validation through voice: entering into the circle of discourse

If invalidation is a ~~strategy~~ used to ensure victim compliance and silence" (Salter, 2012: 3) then validation and speaking are inherently interconnected. The assertion that survivors' narrative impulse is essential to justice (Phelps, 2000), as well as being an ~~elementary need~~" of trauma survivors (Levi in Kearney, 2007:59), suggest that the needs of validation through voice are potentially compatible with the broader justice principles proposed separately by Hudson (2006) and King et al. (2010). Having a voice denotes the capacity to define one's own harm in one's own narrative. Yet, the dialectic of speaking and hearing first requires that

—those who are presently outside the discursive circle of justice [...] must be given privileged access to discourse” (Young in Hudson, 2006:34). It is important to note that recent initiatives, such as victim impact statements have assisted in creating a greater sense of discursiveness in criminal trials (Erez and Roberts, 2007). However, these are merely one of many potentially useful reforms. Indeed, the benefits of validation and voice should not be underplayed or understated, with King et al (2010) suggesting that enhancing participants’ voice and validation is essential to enhancing overall procedural justice. The three mechanisms through which discursiveness could be achieved—representation, narrative evidence and rules of evidence—will be discussed.

Representation

Ultimately, the constraints of any formal legal process render full discursiveness impossible. The only people who flourish within this institution are those who are socialised, are initiated through legal schooling and training, and are equipped with the appropriate language and discursive capital to negotiate the legal terrain. Even lay people in general find this environment alienating and marginalising (Shapland and Hall, 2012), but for those who are confronting trauma are further alienated by the process. As Sue and Tessa’s cases illustrated in Chapter 5, the pre-trial and trial stages of the criminal justice process were at best daunting, and at worst, unnecessarily traumatising. This resonates with Felman’s notion of the ‘juridicial unconscious’, which is —the paradox between law as an attempt to contain trauma and law as a practice that repeats trauma” (Felman in Henry, 2010:1113), indicating that an intermediary or a buffer is required to protect victim-survivors from further alienation and victimisation in the courtroom, that often stems from the ‘epitaphic harms’⁴² of harsh cross-examination, silencing, and harassment from the offender.

In addition, there is commonly a mismatch between the victim-survivor’s expectations of the trial and the reality of the adversarial trial, where victims often believe that the prosecutor is *their* lawyer who acts on their behalf (Cowdery in Cossins, 2010:320). Such a perception was held by some survivors in this study. This disjunction between public perception and reality leads to the erosion of the public’s belief in procedural fairness (Tyler,

⁴² Defined as “any harm that is caused by the law and “relates to the intrinsic and often inescapable harms caused by the litigation process itself, even when the process is working exactly as it should”(Gutheil, in Grimes, 2006:1712)

2008), as evident among victim-survivors in this study who felt unprotected from a system which they thought would act on their behalf. Also, research has shown that judges are often reluctant to invoke legislative provisions which are intended to protect witnesses from abusive cross-examination (Eastwood and Patton, 2002) and prosecutors often lack the time, resources or compulsion to provide extra support for victim-witnesses; as often repeated, it is not the prosecutor's role to advocate for the victim-witness.⁴³

Validation through discursiveness can potentially be achieved through the use of legal representation and advocacy, in the sense that a representative can assist survivors by both protecting their legal rights and advocating on their behalf. A victim's legal representative, as used in some civil law systems (Cossins, 2011; 2004; Doak, 2005), has been proposed (see Cossins, 2004; Doak 2005; Wemmers, 2007) for common law systems and has been witnessed within some specialist courts for domestic violence (Stewart, 2005; 2011). As discussed earlier, Doak cites the ways in which some continental jurisdictions such as Germany, France and Belgium allow victims to become a party to the trial and gain legal representation (Doak, 2005:310). Participatory rights are also advocated by Wemmers (2007) who cites the need for victims⁴⁴ to have a formal legal status, even though this status need not be on par with the prosecution or defence. Citing the practices of the International Criminal Court, which allows victims' participatory rights and compensation through the court, Wemmers argues that a participatory role through a legal representative who is permitted to speak unless it is prejudicial to the defendant, allows for both a space for the victim's voice. This also protects the victim from re-traumatisation and additional burden (Wemmers, 2007:411). Such a suggestion is not unheard of in specialist courts, with Stewart (2005) citing examples of specialist domestic violence courts such as those in Manitoba, Canada (Ursel, 1992) or that in the Seattle Municipal Domestic Violence Pre-Trial Court in the United States (Stewart, 2005:15).

Similar initiatives in mainstream courts include the Victim's Advocacy Scheme pilot in the UK (Sweeting, Owen, Turley, Rock, Garcia-Sanche, Wilson and Khan, 2008) which aimed to —improvethe support and information available to families in murder and manslaughter cases, and to give them a voice in court” (2008:i). The scheme, present in five Crown Court Centres in the United Kingdom, provides victim's families with pre-trial

⁴³Initiatives such as the NSW DPP run Witness Assistance Scheme or the Victim's Advocacy Scheme in the UK have attempted to ameliorate these concerns.

⁴⁴ The term victim has been used here as the research cited examined “crime victims” rather than survivors of sexual violence.

support in the way of information about the trial process and a pre-trial meeting with the Crown prosecutor, assistance with writing a Family Impact Statement (akin to a victim impact statement) and personal and social legal advice for matters not relating to the trial, but arising from the family member's unforeseen death (2008:ii). Thus, one central change proposed in this thesis is that a specialist court must reconfigure the status of the "victim as witness" and endow them with a participatory role, firstly through their own legal advocate so as to meet part of survivor's discursive needs, and to facilitate their need for validation.

In advancing her case for victims' legal representation, Cossins (2004; 2010) refers to the study conducted by The Dublin Rape Crisis Centre and the School of Law, Trinity College Dublin (1998). The study compared levels of satisfaction between sexual assault complainants from European jurisdictions which provided legal representation, and complainants from Ireland which at the time were not permitted access to legal representation. One of the findings evidenced that, compared to survivors with legal representation, those *without* felt "significantly less confident when testifying" [and] "less articulate when testifying" (The Dublin Rape Crisis Centre and the School of Law, Trinity College Dublin 1998:159 in Cossins, 2004:168). In effect, representation may assist survivors during the court process, particularly in providing survivors with the support needed during the trial to speak articulately and to be protected from cross-examination that replicates patterns of domination and abuse (Taylor, 2003). While the Witness Assistance Scheme (WAS) operated by the DDP in NSW provides victims with a range of services to assist them through the court process, WAS officers do not have the legal mandate to represent the survivor's interests during the trial, nor do they necessarily have legal training.

Some may argue that increasing the number of legal representatives in court may further appropriate the victim's voice through legalese (see Christie's 1977 original argument), may be expensive or may complicate the roles of each legal stakeholder. Yet conversely, to enter into the 'circle of discourse' it can be argued that the victim-survivor is best equipped with the tools to negotiate this foreign and somewhat hostile terrain, when they have added professional support.⁴⁵ Certainly, it is important to revisit Flax's (1995) assertion that justice must address the issue of domination above all else. If we were to

⁴⁵ See also the Sexual Assault Communications Privilege Pro Bono Initiative in NSW (2010), which allows barristers to defend agencies from disclosing confidential sexual assault counselling records in trials; such an initiative allows for the legal rights of agencies, in addition to the rights of victims to have their confidential counselling files protected.

conceive of justice in broader terms, and examine what is needed to reverse the replication of abuse frequently witnessed during the intra-familial CSA trial, then utilising representation may assist in redressing this domination. An interrelated benefit is that legal representation may formalise ~~the~~ complainant's role as the prosecution's chief witness", enshrining the victim-survivor with distinct and enforceable legal rights. Further research and trial programs, as suggested by Cossins (2010) are needed for verification of these claims.

Narrative evidence⁴⁶

While legal representation may improve a survivor's status in the courtroom, and potentially assist in upholding survivor's rights, other mechanisms are needed to support survivors in speaking. Embracing greater discursiveness through testimony and storytelling is one step along the pathway towards validation that some survivors described. Scarry suggests ~~the~~ trial nonetheless enables pain to enter into the realm of shared discourse that is wider, more social" (Scarry in Henry, 2010:1114). This realm of shared discourse may include the degree to which the survivor retains power over her narrative, which would have been formalised through the official police statement and again, retold through the examination in chief, and interrogated through cross examination. This is only half the process, for we must examine the counter-narratives, the stock stories (Schepelle, 1989; Delgado, 1989) mobilised in the courtroom, and the way in which evidentiary rules also allow stock narratives to subsume the survivor's narrative and experiences. This section establishes the broader nature of narrative, before examining specific evidentiary rules that operate to decontextualise and truncate survivor narratives. This leads to the provision of the trier of fact with a narrative only vaguely reminiscent of the truth at hand.

As demonstrated in Chapter 6, survivor narratives of historical intra-familial CSA are complex and relational, defying the linearity of common-sense legal discourse and privileged beliefs in the just-world (Janoff-Bulman, 1985; Herman, 1997). Feiner (1997) suggests that defendants are advantaged in intra-familial CSA trials as they are able to present a simplistic narrative rather than the complexity that characterises survivors' experiences (Feiner in Taylor, 2003; Feiner, 2007). Many scholars have critiqued dominant legal narratives that essentially resonate with Hudson's logic of identity (Hudson, 2006),

⁴⁶ The phrase narrative evidence has been used to simply denote a survivor's ability to tell her story in her own words, and should not be confused with the legal definition.

particularly the use of what Delgado labels —stock standard narratives” (Delgado, 1989) of the dominant groups premised upon rape mythology, misogyny and masculinist trope (see Schepelle, 1989; Delgado, 1989; Smart, 1989; Kaspiew, 1995; *Heroines of Fortitude*, 1996; Lacey, 1998; Young, 1998; Eastwood and Patton, 2002; Taylor, 2003; ALRC Report 114, 2010; Henry, 2010; Shapland and Hall, 2012). Specifically, feminist legal scholars have critiqued the ‘monologic form of dialogue’ desired of witnesses in the criminal trial (Young, 1998: 460); where victim-survivor’s voices are silenced by what Goodrich labels, ‘linguistic authority manifest in [...] imposed forms of dialogue and silence’ (Goodrich in Young, 1998:460). It was precisely this mobilisation of patriarchal defence narratives and truncation of speech that many survivors in this study were cognisant of, and was a major deciding factor in not pursuing legal recourse. Thus, a wider issue beyond the needs of victim-survivors, is the impact such knowledge has on the wider community and public faith in the criminal justice system’s legitimacy (Shapland and Hall, 2012; Lind and Tyler, 1988). From the findings in this study it is clear that what is needed is a forum that privileges truth over insinuation, the fluidity of testimony as opposed to the rigidity of ‘stock standard narratives’. Such widespread criticism of the aforementioned treatment of survivor narratives has given rise to feminist advocacy of restorative justice practices (see Hopkins and Koss, 2000; Daly, 2006; Curtis-Fawley and Daly, 2006) where key participants such as victim-survivors are able to tell their story and maintain control over their narrative. The debate here is to what extent restorative justice principles can permeate the actual trial process, and to what extent restorative justice principles remain merely an ‘add on’ or ‘diversionary option’ (Wemmers, 2009).

Another related option is to utilise the method of testimony, where survivors —~~the~~ tell their stories and voice their suffering”, seen through international responses to crimes against humanity, such as the Women’s International War Crime Tribunal (Henry, 2005:142) or Truth and Reconciliation Commissions in transitional democracies (Cohen, 2001). While full discursiveness may not be wholly possible in domestic criminal trials due to their different remit, what is more achievable is to examine ways in which a survivor’s story can be told without being truncated, decontextualised and being more fully representative of a survivor’s actual experience. Examining certain rules regarding the admissibility of evidence is one step towards greater discursiveness.

Examining 'rules of evidence'

The capacity to provide narrative evidence in a manner that fully gives voice to survivor's experiences of harm partially achieves a sense of procedural and symbolic justice for survivors. Ultimately, providing narrative evidence is problematic as legal barriers exist with regards to the admissibility of evidence. Cossins contends that "rules of evidence have the potential to prevent a child from giving a complete account of the events in question, and to prevent the complainant's evidence from being assessed in the actual context in which the assault is alleged to have occurred" (2010:140). While it is beyond the scope of this thesis to examine the intricacies of each of these rules, it is important to examine the effect that inadmissibility may have on survivors' ability to present their story as comprehensively as possible.

Such rules of evidence specifically affecting adult survivors of intra-familial CA include rules related to hearsay, tendency and relationship evidence. For adult survivors of long term intra-familial CSA, the number of incidents a survivor may suffer can be too numerous to remember,⁴⁷ compounded by both the passage of time and the impact of trauma on memory, which can mean that vital parts of the abuse are not easily recalled (see Taylor's (2004) study on intra-familial rape cases). Cossins (2010:176) argues that it is common for only a select number of charges to be prosecuted, yet there are other uncharged acts that may be demonstrative of the defendant's behaviour towards the victim, such as grooming, or other threatening and intimidating behaviour designed to attain the victim's acquiescence. In Chapter 5, many survivors reported concurrent physical violence along with sexual violence occurring in addition to the strategies of silencing and denial (Cohen, 2001; Salter, 2003, 1995). Another contextual issue is the fact that alleged incidents of the defendant abusing other children in the family are often excluded from the evidence, which may render a survivor's story confusing and disjointed. In this study two survivors described being simultaneously abused by siblings, yet evidentiary rules may prevent survivors from mentioning their siblings.

Evidentiary rules relating to the admissibility of propensity/tendency evidence,⁴⁸ coincidence evidence⁴⁹ and the separation of trials for multiple victims of the same offender

⁴⁷ For survivors in this study who were abused for up to 12 years, estimating the counts of abuse would be impracticable.

⁴⁸ Tendency evidence is defined as "evidence that shows that because a person has acted in a certain way on previous occasions, the person is more likely to have acted in a similar way on another occasion. At common law, it is known as "propensity evidence"." (NSW Criminal Justice Sexual Offence Taskforce, 2006:74)

can create substantial problems for a victim-survivor of historical intra-familial CSA, in terms of her capacity to tell her whole story (Cossins, 2010:238). Without the inclusion of evidence that, for example, the accused had abused other children in the family, sometimes simultaneously, and that other family members had known or failed to act when the child disclosed the abuse, or that the child was groomed, or coerced through physical and/or emotional abuse, a survivor's narrative becomes heavily de-contextualised and substantial aspects of her story become stymied. According to Cossins (2010) who cites s101 of the *Uniform Evidence Act* (NSW) 1995, admission of such evidence is subject to the court's assessment of the probative value of the evidence, comparative to its capacity to unfairly impact on the defendant.

If we return to Hudson's (2006) principles of *relationalism* and *reflectiveness*, where ~~reflective~~ justice is open to the full accounts of those concerned, considers circumstances and biographies, and transcends fixed categories and rules of admissibility of law" (Hudson, 2006:39), then there is a philosophical rationale for the inclusion of more evidence. Certainly from the perspective of fairness, one could assume that justice is contingent upon adjudicating upon all relevant information (Jolowicz, 2003:289). Cossins (2010:179) cites a recent Australian Law Reform Commission (ALRC) and Human Rights and Equal Opportunity Commission HREOC (1997) investigation and critique of the aforementioned evidentiary rules, stating ~~when~~ the complainant's credibility is attacked, evidence that would support his/her credibility is disallowed and the jury are kept in ignorance of the fact that there are multiple allegations of abuse against the accused". Similarly, the Women's Legal Service of NSW (NSW Criminal Justice Sexual Offence Taskforce, 2006:78) also raised concerns about the interpretation of propensity/tendency rules, suggesting that the unique features of child sexual assault can warrant accusations that the victim is concocting allegations against the accused. Specifically, multiple victims who know each other, and, in intra-familial cases, are related to each other, can be accused of concocting allegations. Here, it appears that Hudson's notion of *relationalism* would assist in ameliorating these concerns. A relational approach to understanding intra-familial CSA, as evidenced by the findings of this research, would assist in understanding the interconnecting factors that are constitutive of the victim-survivor's experience of intra-familial CSA.

⁴⁹ Coincidence evidence is defined as "evidence that shows that a particular act was not an isolated event, nor occurred by accident. At common law, it is known as "similar fact evidence" (NSW Criminal Justice Sexual Offence Taskforce, 2006:75)

Thus, one possibility is that in order for the court to deem such evidence admissible, the judiciary and legal counsel must have sufficient understanding of the dynamics of not only CSA, but intra-familial CSA. A specialist courtroom where admission of evidence is assessed on the basis of research-based evidence could perhaps enhance the capacity for survivors to provide a more cohesive narrative during the examination-in-chief. Moreover, a less adversarial process, where the judge could adopt a more active role in questioning, and where each party was less concerned with the exclusion of evidence, rather than the search for fact (see Steffen, 1992; Ellision, 1999; Doak, 2008), would also assist in a more discursive handling of survivors' experiences of historical CSA.

Instead, a more realistic reform would be inclusive narrative told in the survivor's voice that may include contextual details, and a sense of *reflectivity* and *relationalism* as outlined by Hudson (2006). Being able to describe, for example, that one was abused simultaneously with one's sibling, or that one's abuser had a history of physical violence and coercion, or the complex relational reasons why someone who has been abused does not officially disclose the abuse until thirty years after its cessation, goes some way to satisfying a survivor's need to tell her whole story, as well as enhancing the probative value of the evidence. One who has been schooled in the dynamics of intra-familial CSA would understand the importance of such evidence.

2. Validation through voice: the right to be heard and the duty to understand

Specialist Court Personnel

In discussing rape law reform, Kaspiew astutely argues that —the opportunity to tell a story is meaningless without a receptive listener” (Kaspiew, 1995: 382). This section explores the converse side of the dialectic of speaking: equipping the listener with both the tools and the will to meaningfully listen. The argument in this section is that the need for validation is fulfilled through a process of discursiveness, where survivors' human rights are recognised through both the right to speak, and the right to be heard. Here, the right to be heard or understood is explored in relation to specialisation and expertise, with an emphasis on the mechanisms by which the court engages in a process of discursive expansion, where those

schooled in legal discourse can come to understand the experiences of survivors beyond “legally recognised offence categories” (Hudson, 2006:34).

The survivors’ right to be understood can be complemented by the corollary, or what Bottoms (2012) terms “the adjudicative tribunal’s duty to understand” (27). The duty to understand “requires the adjudicative body to consider fully all the factual matters relevant to a particular evaluative decision before proceeding to make that decision” (Bottoms, 2012:27). Such a duty, and a right provide a compelling case for the inclusion of additional training to counteract legal ignorance of the dynamics of, not just crimes of dominance, but the complex nature of historical intra-familial CSA. Through examining specialisation, the extent to which discursiveness, and by extension, validation can be realised will be examined.

With regards to the independent elements of specialist courts that survivors in this study discussed, access to specialist court staff was very important for survivors. Cossins proposes that a specialist court should include:

[The] creation of a core group of specialist judges who have sufficient experience in conducting criminal matters (particularly sexual assault trials) and are trained in child development issues; rotation of specialist judges through the sex offences court to minimise burnout; establishment of a specialist prosecutorial unit within the ODPP with prosecutors undergoing the same training as judges; appointment of one prosecutor to each case so that continuity is maintained; and on-going training programs for prosecutors/judges including counselling support services to prevent burn-out and high staff turnover (Cossins, 2006c: 6).

Such suggestions were also canvassed in the NSW Criminal Justice Sexual Offences Court Taskforce Report (2005) with Taskforce Recommendation 69 within this report, calling specifically for specialist training for court personnel on the dynamics of sexual violence. However, for the needs of adult survivors of intra-familial CSA, more targeted training may be required. Specialisation is particularly useful as it is a mechanism by which survivors’ experiences can be better understood. If court staff members are cognisant of the degree of trauma survivors experienced from chronic long term CSA, and its developmental effect throughout survivors’ lives, the likelihood of staff reacting towards survivors with greater understanding, increases. Similar understanding could arise from training on the multigenerational nature of intra-familial child sexual abuse. A key finding from this research also relates to the need for criminal justice responses at all stages to be mindful of the

relationalism that characterises intra-familial child sexual abuse. As this thesis has also shown, understanding the way in which *relationalism* shapes survivors' disclosure patterns and affects the degree of evidence available to criminal justice authorities, can also be facilitated through specialisation.

Stakeholders in this research also emphasised the important element of prosecutors and judges being aware of research-based evidence surrounding CSA. Two stakeholders discussed their experience with judges and prosecutors who possessed very limited knowledge of the prevalence of CSA and mobilised their own schema of dominant rape mythology to make judgements about victim-witnesses (Gabora et al., 1993; Cossins, 2010; Cossins, Goodman-Delahunty and O'Brien, 2009). *Relational* dynamics that prevent official disclosure such as grooming strategies and bystander denial and complicity, may need to be examined through the lens of recent scientific and psychological research (Cossins, 2008; Cossins, Goodman-Delahunty and O'Brien, 2009). Indeed, four of the welfare stakeholders in this research, two of whom were also survivors, advocated for the use of both research-based evidence to be imparted to court staff, and expert evidence to explain the psychological impact of extreme trauma on survivors, such as the phenomena of complex PTSD (Van der kolk et al., 1995), the Stockholm Syndrome (Jülich, 2005), Dissociative Identity Disorder (Rivera, 1994), the False Memory/Recovered Memory debate (Cossins, 1999, 2000) and Child Sexual Abuse Accommodation Syndrome, where a child subjected to chronic sexual abuse learns to acquiesce because they cannot escape (Summit, 1992).

The findings also highlight the need for training to be based on a range of disciplines, rather than presenting to court staff a purely medicalised model of trauma and CSA (O'Donovan, 1993; Armstrong, 1994). While a medical model of trauma which draws upon recent research validated by the research community is helpful (i.e. neuroscience rather than outmoded psychiatric suppositions), the need for a greater diversity of knowledge is paramount, as it has been acknowledged that even research on trauma can be used against survivors (see Henry, 2010). This would involve drawing upon feminist advocacy groups, frontline workers, sexual assault counsellors and other forms of academic knowledge such as sociology or criminology. This could potentially fulfil Hudson's justice aspirations of *plurivocality* and *discursiveness*, and the need cited by at least two survivors for courts to embrace a less patriarchal knowledge base. One particular danger of greater reliance on disciplines such as medicine, science and psychology is their capacity to exert power through 'knowledge claims' which operates to define the victim-witness' subjectivity in the court

room (Smart, 1989). In particular, medical disciplines have “individualised and medicalised trauma” (Antze and Lambek in Henry, 2010:1111), disqualifying women’s experiences that deviate from the conventional medical or trauma model (Armstrong, 1994).⁵⁰ As seen in Chapter 6, this can be most problematic when considering that some survivors may display behaviour and personal agency that defies this model, or that some survivors may have problems in some aspects of their lives (usually interpersonal), but not in others (work, education). An approach that balances a wide variety of accepted knowledge(s) can be achieved through two principles advocated by Freiberg (2011) and King et al.’s (2010) conceptualisation of non-adversarial justice: through partnership with stakeholders beyond the legal system and through interdisciplinary scholarship.

Given the recent innovations in neuroscience on the effect of early trauma on the brain and childhood development and other clinical issues (Anderson, Tomada, Vincow, Valente, Polcari and Teicher, 2008; Bremner, 2005; Heim and Nemeroff, 1999) it would appear that court staff in a specialist sexual offence court would require ongoing training. Similarly, Australia could adopt practices where training is more regular than the three-day of training prosecutors receive in the Wynberg Sexual Offence Courts, or longer in duration than the three week multidisciplinary training course for sexual offences that police receive (Sadan et al, 2001:48). In addition to training needs, previous research has illustrated the high attrition rates of specialist prosecutors and the impact this has on the knowledge and experience base of the organisation (Sadan, Dikweni and Cassiem, 2001), however, Cossins’ proposal to provide ongoing counselling services for court staff may counter the potential for high attrition rates. As in other specialist courts (such as the Children’s Court), it is important that judicial officers and prosecutors be given adequate time off for professional development and ongoing training (Fernandez, Bolitho, Hansen and Hudson, 2012).

An expansive role for the judiciary

In addition to specialist training, judicial officers in a specialist court could be expected to assume additional or expansive roles. In her review of specialist domestic violence courts, Stewart contends that the judge or magistrate often assumes an “expanded role [...] a

⁵⁰ An alternative is Herman’s work (1992, 2005) , which is preferable in that it provides a satisfactory medium between scientific research on trauma, and a macro level approach of the socio-political context that facilitates systemic oppression.

departure from standard judicial practice in that he/she is engaged with the community often through court-user forums, case management, interagency meetings, as considered appropriate” (Stewart, 2005: 10). Some survivors advocated for a judge who would adopt the aforementioned role, with one survivor discussing the need for magistrates/judges who were more consultative with the community, while other survivors desired for the judge to assume a more interactive and interventionist role as they do in some models in problem solving court. For survivors such as Sue, such acknowledgement or recognition even in the face of an acquittal would provide a greater sense of validation. The need that some survivors possessed for validation from a societal authority is commensurate with the needs explicated in Freiberg (2010) and King et al.’s (2010) conception of a non-adversarial justice system, and their assertion that a judge should adopt a more active role, akin to the role of judges in inquisitorial systems. Such a role has a domino effect, in that a more active role may mean they have greater control of the presentation of evidence with an emphasis on examining all of the evidence available, and thereby avoiding monopolisation by any particular party. This would then have an effect on the amount of information survivors could disclose; the rationale for strict evidentiary rules is based on fears that the jury would be unfairly prejudiced. Subsequently, exploring a more active role for judges can open up a different adjudicatory model, a suggestion that is not without precedent (see NSW Aboriginal CSA Taskforce Report 2005; Cossins, 2010).

Returning to Restorative Justice

In addition to specialist courts, when examining potential contemporary justice reforms, restorative justice (RJ) emerges as one of the latest approaches designed to meet dissatisfaction with the mainstream CJS. Hudson (2006) describes RJ as incorporating the principles of discursiveness, reflective and relational justice to a larger extent than other existing justice practices. Given the centrality of Hudson’s (2003; 2006) principles to this thesis, the last section will explore the potential of one specific restorative justice initiative that has addressed varying forms of sexual violence, which is Project Restore NZ (Jülich et al, 2010). Other initiatives which have accepted referrals regarding sexual violence will also be briefly canvassed, and these are: the Canadian First Nations Community of Hollow Waters in the 1980’s (Bushie, 1996; Cormier, 2002); RESTORE Arizona (Hopkins and Koss, 2001);

the South Australian Youth Justice Pilot which included cases of adolescent sex offending (Daly, 2006) and the Victims Voices Heard program in Delaware, US (Miller, 2011).

RJ initiatives can operate within criminal justice systems or can be run outside of the system, that is, in the community. Within criminal justice systems, initiatives that exist divert an offender, who has admitted guilt, to a process or program before sentencing. The outcome of the restorative justice intervention is returned to court where a Magistrate considers the matter and makes a final determination. In other instances, the principles of RJ are used in the formation of separate courts for the purposes of sentencing (for example, Circle Sentencing). Other restorative processes can occur while the offender is incarcerated. Some of these initiatives have a focus on the offender, where the purpose of the restorative intervention is concerned with reducing re-offending and encouraging victim empathy (for example, the Sycamore Tree Project run via Prison Fellowship International). In other cases, RJ meetings have a victim focus, and are convened at the request of a victim while an offender is still in prison, such as the Victims Voices Heard program in Delaware, USA (Miller, 2010). These meetings may be more concerned with meeting the specific needs of those victims. There are also examples of restorative practice that aim to change a culture, for example, of a specific section of a prison, or even amongst affiliated workers such as parole officers (Swanson, 2009). With this in mind, there have been some studies into changing the dynamic of a court room, through the use of particular ‘restorative’ components (see Marchetti and Daly, 2007; Wemmers, 2009; Naylor, 2010). Outside of the criminal justice system there are a small number of programs run in the community that aim to address sexual violence, such as Project Restore NZ (Julich et al, 2010) or the conferencing provided by the Copenhagen Centre for Victims of Sexual Assault (Madsen and Andersson in Naylor, 2010). These programs may be accessed at any point outside of, or alongside of, formal court measures.

There are many understandings of RJ, and many iterations of the practice. Thus, this section will be concerned with where restorative justice can be situated to effectively meet the needs of historical survivors. This section argues that RJ is better suited for historical survivors as an adjunct to formal criminal justice processes, and that expansion of RJ programs such as Project Restore NZ should encompass programs to address bystander complicity, and should also incorporate survivor knowledge(s), such as those observed in the Hollow Waters Community Holistic Circle Healing practices. This section then goes on to argue that cross-fertilisation of RJ principles and specialist court reforms are also likely to be beneficial to transforming formal justice (see Naylor, 2010; Wemmers, 2009). Lastly, it

explores the nature of macro-level conceptualisation of transformative justice, and its possible intersection with micro-level programs of RJ for historical survivors of CSA.

As discussed in Chapter 7, both survivors and stakeholders had a range of responses towards RJ, varying from reticence, ambivalence or conditional support of RJ. Survivors displayed varying interpretations of RJ, with some survivors viewing RJ as more aligned with feminist values (also explored by Van Wormer, 2007), and combating what Hudson (2003) would label law's privileging of the 'logic of identity', and the retributive or punitive mentalities associated with criminal justice (see Braithwaite and Pettit, 1990). Stakeholders were the most cautious about RJ, believing that while theoretically RJ may have some benefit insofar as providing survivors with an alternative to the criminal justice system which they perceived as heavily influenced by rape mythology, as well as being able to provide survivors with a discursive forum, that without formal safeguards, the abusive relationship, and further harm may be perpetuated and replicated within a conference setting. Stakeholders also made the salient point that despite the passage of time, survivors may maintain contact with the abusive perpetrator and not infrequently remain within the abusive dynamic, continuing to suffer abuse well into adulthood. Thus, for some survivors, RJ would be counter-productive, as survivors who are still kept within this relationship of domination are unlikely to enter into the discursive circle and be able to advocate on their own behalf. Lastly, stakeholders believed, as many feminist academics also believe, that widespread use of RJ for sexual offending may minimise the severity of sexual violence and reverse the progressive reforms for which feminists have spent many years campaigning (Coker, 1999, 2002; Stubbs, 2002; 2004; Busch, 2002; Lewis et al in Cossins, 2008).

In this research, not all survivors commented on RJ; however, some survivors specifically discussed RJ as a potentially useful initiative. Support for the development of RJ principles was provided on the grounds that they believed RJ was more discursive, and eschewed the hierarchical and patriarchal nature of traditional criminal justice. Thus, it would be able to respond better to the needs of women who have suffered gendered violence. Some survivors believed RJ was diametrically opposed to the CJS and desired a system that moved away from the punitive nature of the CJS and the penal system. They viewed such a move positively as they perceived the CJS as replicating the dynamic of domination and violence inherent to childhood abuse. In this respect, their views mirrored the anti-retributive sentiments observed amongst some criminologists (see Braithwaite and Pettit, 1990; Braithwaite, 1995).

Yet other survivors feared the discursiveness that RJ offered, believing that to face the offender again in such an intimate context would be inherently destabilising due to the indelible effect of complex trauma.⁵¹ Other survivors did not wish to have the responsibility of decision-making, although this was not a view that they explicitly ascribed to RJ. However, this was a finding observed in earlier studies of general victims of crime (Wemmers, 2007). There was also some doubt about the level of sincerity and authenticity their perpetrator would bring to a conference.

Another point of consideration to be examined is that many survivors desired a process that would transform communities, specifically the structural inequality and violence which has condoned and contributed to multi-generational offending. In this sense, other survivors desired a process akin to Morris' (2000) formulation of *'transformative justice'*, and thus there is merit in exploring either the transformative potential of RJ, or the ways in which RJ could be expanded. Some theorists of RJ discuss its transformative potential (see Braithwaite and Pettit, 1990; Braithwaite, 1995, 2003) and the restorative values of *"non-domination and empowerment"* (Braithwaite, 2003:10) among other values. However, given the extensive power imbalance between the victim and the offender, and the prolonged relationship of *'captivity'*⁵² (Herman, 1992, 1997), the values of non-domination and empowerment are actually threatened by generic RJ practices which fail to recognise that the pre-existing relationship of oppression will only be prolonged without additional intervening practices. Such intervening practices recognise the necessity for this imbalance to be mitigated through victim advocates and a non-neutral facilitator, where the role of the facilitator is to provide *"an even playing field while at the same time treating both victim and offender fairly"* (Boulle et al in Jülich, 2010:249). Jülich (2010) states that a non-neutral facilitator exercises *"balanced partiality"*. Balanced partiality in this sense recognises that the facilitator cannot be neutral, and in order to foster substantive equality, the facilitator should intervene if the perpetrator engages in *'victim blaming'* or gender biased explanations for their behaviour. This challenges the way in which the facilitator operates in other conferences, where there is not a marked power imbalance between victim and perpetrator and it is best practice to appear neutral (unless one party is being bullied or harassed).

⁵² Herman contends that "prolonged repeated trauma occurs only in circumstances of captivity...repeated trauma occurs only when the victim is unable to flee, and under the control of the perpetrator. Such conditions obviously exist in prisons, concentration camps, and slave labour camps. These conditions may also exist in religious cults, in brothels and other institutions of organised sexual exploitation, and in families." (Herman, 1997:74)

Reports of previous conferences, such as the SAJJ pilot showed that some victims felt that their experience was minimised by the perpetrator and his family (Daly and Curtis-Fawley, 2006), or that they were subtly coerced into unsafe agreements (Rubin, 2010). One must question in such situations, as Jülich has, whether a neutral facilitator, who does not intervene unless overt bullying and intimidation occurs, is the most effective stance for the facilitator to adopt. Essentially, the practice of a “non-neutral facilitator” recognises that there are times during the conference where the victim may be subtly pressured by the offender to acquiesce to the offender’s power, or censor one’s own speech or their experience is invalidated by the mobilisation of sexist rationalisations that still may have popular currency in society. While there is a victim support person who is often present, this does not necessarily mean that the offender’s subtle tactics of domination, or rationalisations, are recognised. Thus, this leads us to exploring RJ initiatives that recognise the gendered power imbalance specific to historical intra-familial CSA.

Theorists such as Hudson (2006:40) and Koss and Achilles (2008) have acknowledged the limitations of RJ in its capacity to address wider patterns of systemic inequality and oppression, with Koss and Achilles (2008:10) emphasising the importance of developing restorative justice principles in sites of primary and secondary prevention. Indeed, in the present study survivors’ needs traversed into the realm of transformative justice (Coker, 2002; Morris, 2000) in that they desired broader change addressing the structures that perpetuate gendered social injustice, and as such it is worth discussing the possible intersection between transformative justice and RJ. However, RJ may be modified and situated within specialist court reforms in such a way that would meet the complex needs of this group of survivors.

From the results in this study, it appears that RJ may potentially address survivors’ justice needs of greater discursiveness, validation, perpetrator accountability, other forms of reparation, while accommodating Hudson’s (2003; 2006) justice principles of *discursiveness*, *relationalism* and *plurivocality*. This thesis argues for a revised vision of RJ for survivors of CSA. In this vision, RJ would be expanded in the community, but would ensure that formal safeguards are in place, and would utilise the knowledge and skill base of survivors, emulating aspects of Hollow Waters and Project RESTORE (Sivell-Ferri, 1996; Bushie 1996; Jülich, 2010). Expansion of RJ in the community to address bystander complicity will also be discussed. This section also argues that restorative values have much to offer mainstream

justice practices, and could be incorporated into specialist court reform.⁵³ Lastly, this vision argues that survivors expressed an overwhelming desire for transformative justice, which transcends the micro-level practices of RJ.

Situating Restorative Justice

It may appear that adult survivors of intra-familial CSA may be better placed to engage in RJ conferences than survivors of recent sexual or domestic violence as adult survivors are more likely to be in a position of strength, having attained physical safety and developed other supportive relationships, two factors that Herman (2005) contends operate to help trauma survivors begin to heal from the abuse. The relative suitability of historical CSA compared to domestic violence or recent child or adult sexual assault has been made by some RJ advocates (Jülich, 2006; McAlinden, 2007; Curtis-Fawley and Daly, 2005). This is also accompanied by the fact that conventional CJS processes may be difficult for historical survivors to access. Indeed historical survivors are faced with a number of unique challenges that may effectively preclude involvement with conventional legal processes, including: the absence of physical evidence, memory impairment due to the passage of time or traumatic encoding⁵⁴, familial/bystander collusion and secrecy, and a geriatric perpetrator. Survivors may have to weigh multiple and competing interests when deciding to report their perpetrator. Moreover, it would appear that conditions such as the passage of time and the multi-generational and relational nature of the offence may be addressed more effectively through the use of RJ because RJ does not require the rigid offence categories and the rigid dichotomised victim/offender roles required by the mainstream CJS (Hudson, 2006).

As the goal is not fact finding and is, in the case of Project Restore NZ, largely victim-survivor driven, rather than being driven by the dictates of the CJS, a wider scope of issues can be addressed, as compared to what can be covered with a criminal trial. However, it is the passage of time and the attainment or search for greater interpersonal stability that can ironically compel survivors to revisit or confront for the first time, the impact that the trauma has had on their lives. Sometimes it is not until later middle age that traumatic

⁵³ While some may argue that specialist courts are 'non-mainstream', Daly and Bouhours (2010) contend that specialist courts can be classified within the scope of conventional justice reform.

⁵⁴ "Traumatic encoding" as discussed earlier is a clinical term used to describe the way in which memory is encoded during a traumatic event, such that is fragmented, and the victim-survivor finds it difficult to recall memory in a linear, sequential manner.

symptomology worsens, with two survivors discussing a worsening of symptoms and a recovery of memories in their 40s, 50s and 60s. Research has also confirmed that in the process of moving from middle age to old age, there may be either a “worsening or sudden onset of posttraumatic symptomology, even after decades of adequate coping” (Aarts and den Velde, 1996:373). In either alternative, it is at this stage that survivors may turn their attention to ideas of justice.

The “journey to identity and belonging” of which Zehr (2002:21) speaks, becomes more salient, as survivors may be compelled to resolve traumas in order to transition to a greater sense of self-coherence in later life (Aarts and den Velde, 1996:373). The desire for meaning (Toews, 2006; Zehr, 2006) vindication and validation, can assume greater urgency as the survivor confronts both her own and the perpetrator’s mortality. This is emphasised through one survivor’s statement, “I don’t want him to die with everyone thinking he was a good man”. Exposure of the perpetrator, as well as validation, a need discussed in previous studies (Hopkins and Koss, 2001; Des Rosiers et al, 1998; Herman, 2005; Jülich, 2006) becomes intertwined with validation and vindication of the self while the perpetrator is still alive or has possession of his mental faculties. Thus, it appears that there is a place for RJ in addressing some of the unique needs of adult survivors of intra-familial CSA because RJ can provide survivors with the opportunity to confront their perpetrator about his actions, when other avenues of recourse like a criminal trial would be untenable due to the previously mentioned reasons. Yet, the question becomes where and how RJ can be situated, that is, within the community or in collaboration with criminal justice measures, and furthermore, how can RJ be implemented safely and effectively, given the problems posed by this class of offenders (Salter, 2003).

Expanding RJ: Utilising formal safeguards within the community

One of the key issues for community based restorative justice relates to the absence of formal safeguards which typically provide a sense of physical and emotional safety for the survivor. Perhaps one alternative which may assist some survivors of CSA is to implement an RJ program externally to formal justice (that is, self referred, and is not contingent on formal charges being laid) that still has ties with the criminal justice system. For example, NSW currently allows sexual assault cases to be reported to the police without survivors having to

record their name. The Sexual Assault Reporting Options Questionnaire (SARO) is a form that can be filled out online or submitted in person which provides details of the assault. While it is not regarded as a formal complaint by the police, it assists police with gathering information about the patterns of sexual offending in the community.⁵⁵

Participation in community RJ between victim-survivor and perpetrator could first require a police report to be made, even if anonymously. This creates a police profile of the perpetrator and ensures some degree of visibility. Public accountability has the potential to counter survivors' subjective feelings of still being unsafe from the perpetrator, a longstanding consequence of prolonged trauma (Herman, 1992) and to ensure that, while the offender has not been charged, his actions have been recorded. A degree of symbiosis with CJ safeguards such as online police reporting may mitigate concerns regarding survivor and public safety. The capacity for one's experiences to be on official record was empowering for many survivors, as reported by the eight survivors in this study who made official police complaints, even for those who were unable to pursue the matter further.

Expansion of community RJ programs by drawing on lessons from Hollow Waters, Canada and Project Restore NZ

As discussed earlier, there are lessons that can be learnt from the Hollow Waters practices: the way in which programs are lead by survivors in the community and the way in which familial bystanders can be included into restorative conferences. Indeed, survivors' stories and Judith Herman's extensive scholarship on complex trauma (see Herman, 1992, 1997, 2005) and crimes of domination, emphasise that one cannot understand the full extent of a relationship of captivity and oppression unless one has lived within such a relationship. The degree of learned helplessness, dehumanisation and objectification, such that the self becomes eradicated in the face of terror, cannot be adequately captured in words. Yet, as Chapter 6 illustrated, survivors who have achieved a degree of healing in their lives can contribute tremendously to advocacy and social reform. In much the same way that Foucault (1977) argues that the professional co-opts the subjugated knowledge(s) of the subject, it can be argued that to an extent the helping professions do the same (see Breckenridge, 1999 on this issue).

⁵⁵ For information about SARO, visit http://www.police.nsw.gov.au/community_issues/adult_sexual_assault

Bushie (1996) argues that the strength of the Community Holistic Circle Healing at Hollow Water emerged from drawing upon the knowledge and lived experiences of survivors, simultaneously viewing survivors not just as victims of oppression, but as those who have learned from this oppression and have vital insights to offer. Jülich et al (2010) argue that Project Restore NZ is victim-centred due to its collaboration with ASAH and SAFE and its use of survivor stakeholders. To do justice to Hudson's (2003) principle of *plurivocality*, the stakeholder group must incorporate the actual voices of those whom they are purporting to assist and avoid the over-medicalisation that can eventuate from reliance on the 'psy' professions. Thus, one continued addition to a RJ program that assists historical survivors of intra-familial CSA is support people who are also survivors, or practitioners/advocates who are survivors.

Another unique element facing survivors in this cohort is the multi-generational and multi-victim nature of offending, which emerged in Chapter 5. RJ programs could be developed to account for the fact that more than one victim-survivor may wish to confront the perpetrator simultaneously, and this may require greater preparation and a greater number of staff. Hollow Waters developed their CHCH model in response to growing awareness of the insidiousness of childhood sexual assault. Its success in confronting the multi-generational nature of offending can be attributed to its four circle model premised on a holistic approach which involves family members, community members, other survivors and the victim-survivor (Bushie 1996). Once a disclosure is made and the police notified, the community immediately mobilises. The Aboriginal Child Sexual Assault Taskforce (ACSAT) argues, in support of the CHCH model,

ACSAT draws on Hollow Water Community Holistic Circle Healing process as an example of a model that is working well for Indigenous communities. In Hollow Water, Canada, a disclosure of child sexual assault triggers an immediate *community* response. The police are notified that a disclosure has occurred but it is the community that ensures the safety of, and support for, the child and begins working with the offender. (2005:301)

One of the most striking similarities between the Hollow Waters community and the survivors in this study is the insidiousness of sexual violence, where sexual violence is observed through multiple generations. In the Hollow Water model, the offender is not seen as someone to ostracise, but as someone who is integral to the community and requires an

equal degree of healing to that of the victim. Due to the proliferation of abuse in this community, where 75% were victims and 33% perpetrators, the rigid dichotomy between victim and perpetrator became blurred. It could be argued that the less stigmatising response towards offenders, where they are subjected to censure, treatment and even imprisonment, but not stigmatised shaming (see Braithwaite, 1995) allowed for greater degrees of disclosure and admission of guilt, and therefore awareness of and treatment of these perpetrators. Thus, the silencing and denial inherent to the continued perpetration of sexual violence appeared to be somewhat disrupted through the aforementioned Hollow Waters strategies.

Chapter 5 demonstrated the way in which the perpetrator's strength is generated from his manipulation/grooming of familial bystanders and their tacit acceptance of his behaviour. Familial bystanders have even gone as far as protecting the perpetrator from criminal justice authorities (as seen through Tessa and Jennifer's cases) or protecting the perpetrator's secret from other family members and friends. Whether this acceptance is due to fear of the perpetrator going to gaol or the family fearing stigmatisation, it can be argued that many family members are in denial about the extent of harm caused by the perpetrator. In many ways, they have been vicariously disconnected and disempowered by their refusal to confront this harm. Survivors in Chapter 7 also discussed the need for acknowledgement from familial bystanders, a justice need also found in previous literature (Herman, 2005). What could be useful then, is the practice in Hollow Waters, where a separate conference involves family being made aware of the offender's tactics, victimisation and ultimate admission of responsibility.

It is shifting — shifting people's ways of looking at victimization...There is a ripple effect for all family members. One person taking responsibility for victimization opens doors for all the other members to do the same (Bushie, 1996).

A combination of restorative interventions, as utilised by many RJ programs including Project Restore NZ, the Post Sentencing model of RJ organised by the Restorative Justice Unit, and the Corrective Services NSW, would certainly be beneficial. This could include a family conference, a victim-offender conference and an exchange of letters, for the one case. Thus, an integral part of the vision of expanding RJ to meet the needs of historical intra-familial survivors in Australia is the need for additional RJ program. Ultimately it would be firstly optimal for familial bystanders to be able to witness the offender's admission

of responsibility, replete with admission of tactics of denial and silencing, such that bystanders realise their part in perpetuating the culture of denial within their family.

Consequently, continuing Project Restore NZ's work to address the role of bystanders could be achieved by either developing a community model where the victim-survivor and bystander take part in a restorative conference, or by including an additional conference where the offender, bystander and victim-survivor meet. The purpose of the latter conference would be for the offender to admit to his tactics of coercion and grooming in the bystander's presence⁵⁶, such that the bystander would understand the techniques that were used to groom her as well. In this setting the focus would not necessarily be on bystander culpability, but on the complex interplay where offender tactics and bystander denial operated to prolong the abuse⁵⁷. Caution would need to be taken to ensure that the facilitator does not allow the offender and bystander to align together against the victim-survivor, and that the victim-survivor be given additional support during the conference.

Cross-fertilisation: using RJ to inform specialist court initiatives

Another way forward for survivors who are interested in mainstream criminal justice recourse, may be to explore the ways in which reform of formal justice mechanisms, such as the creation of specialist courts, can learn lessons from the growth of RJ. Ultimately, restorative justice as an adjunct process does not rectify the problems associated with the criminal justice trial and the related barriers that survivors face. It has the potential for creating two alternative systems that operate concurrently- formal or informal, criminal or civil, at the expense of the positive growth that could eventuate from their intersection. Moreover, RJ will never be able to deal with cases where the accused does not accept responsibility (although it may still be able to deal with matters between bystanders and victim-survivors) and as such does not replace the fact finding of the criminal trial. Survivors and stakeholders were also sceptical of RJ as a stand-alone legal reform.

⁵⁶ As this thesis has discussed, it is difficult to persuade offenders to reveal their grooming tactics. However, in therapeutic settings, an integral element is admission of responsibility and admission of the ways in which the victim and other bystanders were manipulated. Alan Jenkins' program for perpetrators in South Australia, as well the work of the NSW Pre Trial Diversion Program achieved this.

⁵⁷ An evaluation of the NSW Pre-trial diversion program (Laing, 1999), which diverted certain cases of intra-familial CSA into therapeutic rehabilitation, demonstrated the success of offending parents revealing their grooming tactics to non offending parents, insofar as the non-offending parent, or bystander developed a greater degree of empathy towards the abused child, thereby being able to validate the victim-survivor's experiences.

Wemmers (2009) suggests that one way of imbuing RJ principles into formal justice mechanism is to explore ways in which RJ values can be emulated throughout the trial process. Hudson (2003, 2006) also discusses the importance of such cross-fertilisation. Indeed, much can be learned by examining the reasons why some survivors were keen to embrace RJ elements, such as the antipathy towards the masculinity of the law, its hierarchical nature, and its exclusion of victim-survivor's voices. Earlier in this chapter, restorative principles such as discursiveness, reflexiveness and relationalism were explored with regards to specialist court reforms. As discussed earlier, by embracing a broader system of reform such as non-adversarial justice elucidated by King et al (2010) and Freiberg (2010), the principles of RJ may become imbued in a larger reform agenda. Non-adversarialism's prioritisation of a legal process, which involves validation and voice, partnerships and creative problem solving of legal, and by extension, social problems (Freiberg, 2010: 304) may allow for some of the aspirations of RJ to be incorporated into substantial reform. For instance, Wemmers (2009:401) contends that the RJ values such as "respect for the dignity of the individual", "participation of victims and offenders" and "reparation" could be integrated into criminal justice reform. The first two values essentially mirror the justice principles that Hudson (2003; 2006) espouses, namely, the *rights regarding framework*, *discursiveness* and *plurivocality*. If we return to the earlier section on specialist courts, these "RJ values" as Wemmers defines them, were discussed at length.

RJ practices could certainly be used to inform practices within specialist court reform. While Wemmers (2009) refers to integration of RJ values within the mainstream CJS, it is apparent from this research that many survivors simply would not interact with the mainstream system. As such, these principles can be added to the specialist court discussion earlier in this chapter. Naylor also advocates for a "collaborative court process ensuring a role for the victim, a more restorative sentencing regime, and a greater role of the judge to actively challenge attitudes of the offender and the community about sexual offending" (2010:682). This approach would see sexual assault cases handled within a hybrid court system, where a specialist court would incorporate "therapeutic and restorative principles, such as problem solving courts with formal court powers but more flexible and collaborative processes." Naylor's approach is commensurate with the principles of non-adversarialism advocated earlier by Freiberg and King (2010) where the judge assumes a more active role, but in this case, also operates to challenge attitudes towards sexual violence. Perhaps then, a policy justification for the reforms discussed earlier in this chapter is that not only can

specialist court reforms be better able to meet the needs of survivors, but that they also include the restorative elements.

Transformative Justice

Ultimately, more than RJ, survivors advocated for a form of justice more akin to transformative or social justice, seen through survivors' desire for community awareness and their participation in grassroots activism. For many, formal justice was desirable for bringing the perpetrator to account, but was insufficient in tackling the values and structures that perpetuate intergenerational CSA. As illustrated in Chapter 7, the desire for social change in relation to the prevalence of child abuse was a key need discussed by survivors.

Perceptions of RJ constructed around notions of social change suggest that some survivors desired a form of justice that transcend the current parameters of RJ practice but are in keeping with the philosophical aspirations of RJ. Hudson has described the gap between RJ's aspirations and RJ's capacities in everyday life to achieve such normative goals (Hudson, 2006). One of the main debates has been whether RJ merely replicates the community's status quo (Pavlich, 2001), with one of the central concerns for feminist advocates being that the community in which gendered violence occurs tacitly condones such structural inequalities. Sullivan and Tift (2005) also contend that relatively few RJ programs aim to —transform structurally violent unjust societies into structurally nonviolent just ones” (499). While it could be argued that philosophically, RJ contains within it the inherent values of transformation and social change (Braithwaite, 1995), an additional dimension must be added to RJ practice in order for the aspirations of transformation to materialise (Gil, 2005; Dyck, 2005). However, transformative justice may be realised independently of RJ.

How can transformative justice be conceptualised?

This additional dimension, for some theorists, can be conceived of as a form of justice known as ‘transformative justice’. Morris (2000) and Coker (2002) discuss “transformative justice,” in relation to gendered violence, which aims at transforming and re-envisioning

communities that engender women's independence. For goals such as disrupting multi-generational violence and altering community complacency at a grass-roots level, —~~anti~~subordination practices” as espoused by Ruth Morris (2000), as well as a practice such as transformative justice are required. In relation to domestic violence, Coker argues that:

Transformative justice differs and expands upon RJ processes in several ways. First, rather than relying on existing community norms, it takes as its aim the transformation and creation of communities that support women's autonomy. Second it considers reintegration of the [perpetrator] important but secondary to enhancing the victim's authority. Third it offers an opportunity to recognise the manner in which systems of oppression in the [perpetrator's] life relate to but do not excuse the use of violence (Coker, 2002:145)

Transformative justice from the above description can be seen as engaging with the concerns of social justice and inequality, and the structural problems that give rise to oppression. Such a conceptualisation indicates that transformative justice utilises a paradigm of both structural depth and temporal breadth. That is, that an individual's experience of victimisation requires a depth of investigation that critically interrogates the societal structures and values that facilitated the offence. For the results of this thesis, such depth is paramount to understanding why three generations of children in the same family can be subjected to chronic sexual abuse, with adult relatives, family friends and neighbours failing to take action. With regards to temporal breadth, transformative justice requires systematic planning and long range future vision for change. Transformation of such deeply embedded values and social structures requires a commitment that can span over decades (Dyck, 2005). Arguably, such a long-term commitment to social justice reflects Hudson's justice principles of deep relationalism and human rights.

Empowerment of the survivor through community partnerships

Examining changes that could be made in the community to empower survivors and promote their autonomy, may be an initial step towards incorporating transformative justice principles into RJ. Dyck (2005) contends that a ~~trans~~transformative practice would see restorative justice agencies investing time and energy in developing accountable relationships with

advocacy and social action groups in our communities” (542). Coker (2002) suggests that transformative justice, in creating communities that support women’s autonomy, should also focus on the material needs of the victim/survivor, a need also cited in Chapter 7. Many survivors lived with wide ranging consequences of CSA well into adulthood, including difficulties sustaining employment, finishing education or developing social networks. The construction of partnerships between a program like Project Restore NZ and other services or advocacy groups, for example, Stepping Out Housing⁵⁸, CASAC Inc (The NSW Peak Body for Child Sexual Assault Counselling and Support Services), Rape Crisis Centres, ASCA (Advocates for Survivors of Child Abuse), may be the first step towards, not only developing transformative justice principles, but allowing this RJ programme to be informed by grassroots agencies and feminist principles⁵⁹.

Research has shown that survivors of CSA often have difficulties in parenting or impaired parenting skills. A restorative program with a transformative program would assist survivors in accessing ‘_skills’ groups that would improve their capacity to parent and reduce their likelihood of perpetuating another generation of childhood (though not necessarily sexual) abuse and neglect, or attracting partners likely to perpetrate child abuse (Roberts et al, 2004; Briere, 1992). It would advocate for non-violent parenting, and for the interpersonal empowerment and skills development of single mothers such that they have other choices than remaining with abusive husbands. Transformative justice would adopt the holistic perspective that educating caregivers about perpetrator tactics and empowering mothers improves the safety of children.

Grassroots campaigning

As with any grassroots movement, transformation needs to occur first on a micro-level. The justice innovation that is being advocated here is an iteration of restorative justice which encompasses transformative justice through partnerships between restorative justice programs, feminist advocacy and other community groups, which could include Indigenous or multicultural community groups (however, these latter suggestions are beyond the scope of

⁵⁸ See Bullen (1999) on Stepping Out Housing, a service based in Sydney which provides accommodation for survivors of CSA who are facing homelessness.

⁵⁹ See Rubin (2010) on the problems of RJ for gendered violence in Nova Scotia where the lack of consultation with feminist agencies saw women/children being coerced into restoration agreements that subjected them to further risk of harm. Also note that while Project Restore NZ connects with grassroots agencies already, the connections proposed here are situated within an Australian context.

the current research). Koss and Achilles advocate for the role of ~~in~~novation and advocacy both within and outside the justice system. Initiatives could be explored in a variety of settings from sexual assault centres, schools, neighbourhoods and prisons [...]”(Koss and Achilles, 2008:10). If Project Restore NZ were to be implemented in an Australian context, building partnerships between Project Restore NZ and women’s health centres and advocacy groups, such as ASCA may be one of the ways in which RJ can extend beyond its own network and realise the aspirations that some RJ theorists possess. Rather than simply accepting support from community organisations, an RJ model that incorporates transformative values would also provide support to these organisations, and become involved in lobbying and organising around issues that exacerbate gendered violence.

Bystander states and promotion of pro-social behaviour

This thesis has also demonstrated the importance of addressing bystander complicity in order to combat the insidiousness of chronic CSA. Exploring the ways in which pro-social and altruistic behaviour can be advanced is vital. A current campaign advanced by the Victorian Health Promotion Foundation in Australia, known as the VicHealth Bystander Research Project (Powell, 2012), provides a framework of the determinants that will increase the likelihood that a bystander will be motivated to take action against gendered violence. Increasing bystander action involves enhancing ~~an~~individual’s knowledge of sexism, discrimination and violence against women, and awareness of the impacts of [...] not taking action” as well as increasing the ~~per~~ceived benefits of intervening” (Powell, 2012:42). These findings could be extended to both combating acquiescence to intra-familial CSA, as well as enhancing action to combat gendered violence. For transformative justice, this would involve agencies that promote bystander action, and also educating the community about the widespread prevalence of CSA, and its correlation with later adverse impacts such as mental illness, social marginalisation and incarceration for women (Herman, 1992; Finkelhor, 1986).

Bystander inaction, as Powell’s research suggests, often needs to be transformed at an institutional or organisational level. If, as Gil (2005) suggests, the promotion of social justice through social institutions means creating ~~ways~~ of life conducive to the fulfilment of everyone’s inherent needs, and to the realisation of everyone’s innate potential” (502), the goal of transformative justice then is to explore ways in which the family as an institution can

operate to fulfil everyone's potential, rather than obscure the abuses perpetrated by those with the most power. Transformative justice would continue to advocate for a range of family structures, and challenge the longstanding patriarchal belief that the healthiest family is the nuclear family, with the father at its apex (LaFontaine, 1990). It would explore the nexus between masculine violence and the family (Cossins, 2000), and explores ways in which pro-social bystander behaviour can be promoted within the family home. Finally, transformative justice would explore the ways in which the child, who is naturally in a position of dependence on her parent, is often exploited and objectified. Promoting the status of children through partnerships with agencies that currently do this, such as the Commissioner for Children, would help in the transformative goal of allowing others to see that a child has innate rights to selfhood and eventual self-actualisation, a goal which abuse can often prevent.

Viewing RJ as a social movement that is also committed to strategies of anti-subordination (Pennell and Burford, 2002) of transforming structural inequity at the base of gendered violence, and of challenging values that valorise domination and oppression, would require that programs engage with extensive grassroots networks moving beyond individual problems to an examination of the capacity for social change. Within the realm of social policy, as well as formal law reform, the emphasis should be on combating the conditions which give rise to oppression, a subset of which is gendered violence.

Research into social change movements predicated on feminist praxis (Pennell and Burford, 2002) and liberation praxis (Freire, 1970), as well as the development of collective knowledge regarding the dynamics of intra-familial CSA are required. Reform must be decidedly political, with the goal of disrupting systematic cycles of oppression, taking into account both gender and other points of intersection such as race, class and sexuality (Crenshaw in Stubbs, 2002:49) while utilising RJ values of non-domination and empowerment as accompanying guides (Braithwaite, 1995:9), as well as anti-subordination practices which characterise transformative justice (Coker, 2002).

Directions for future research

A range of issues have emerged that future research may explore, from the needs of adult survivors of intra-familial CSA to justice visions and legal reform. Notwithstanding, the necessity for a broader and a more representative sample that elicits the responses of younger survivors and survivors from lower socio-economic backgrounds is present. There is also the need for focused research on particular aspects of the deep *relationalism* inherent to this crime. Specific research on the dynamics of bystander complicity and multi-generational offending, and their effects on help-seeking would be of particular benefit. More research on bystander collusion in general would be of help for all forms of institutional CSA, including intra-familial forms. With regard to legal reform, studies which specifically focus on survivors' responses to specialist courts or RJ alone would be of benefit. Case studies and observational research on adult survivors who engage with specialist court jurisdictions overseas, or RJ conferencing overseas would also provide more specific data on survivors' detailed requirements for legal reform. Other avenues for future research pertain to survivors who utilise the CJS as a critical space of resistance, as uncovered in Chapters 5 and 6. Such research would specifically examine survivors who only sought CJS recourse for this form of resistance, and would seek to elicit whether the CJS plays such a role in a more diverse group of survivors. Lastly, the implications of this research can be extended to all survivors of sexual violence who have been perpetrated by an offender known to them, particularly partners or family members. The need for the criminal justice system to incorporate aspects of *relationalism* becomes more urgent when one considers the number of sexual assaults that occur at the hands of a known offender. Future research could extend to address this broader population and access their particular justice needs as well.

Conclusion: "He learned that he may be able to abuse a child but that child grows up and has a voice" (Tanya)

Literary and visual theorist John Berger once stated, "never again shall a story be told as though it were the only one" (1972/2008). The survivor narratives presented in the thesis encapsulate Berger's erudite statement, illustrating the complex and often interconnecting narratives of survivors. Throughout this PhD journey I have discussed my research with

numerous people. It has not been uncommon for someone to ask questions, fall silent, look uncomfortable and mumble a few words under their breath. Often these words were variations of “this happened to me too” and often these words were followed by a look of relief, that they too were not alone. Half of those who disclosed to me were men, and I regret the assumption made at the beginning of the project that male survivors would be uncomfortable speaking to a young female researcher. Subsequently, I have heard additional narratives that did not make it into this research project. The narratives presented in this thesis speak to the diverse yet common needs of survivors.

What makes intra-familial CSA distinct? The most pervasive theme is that of bystander collusion, coupled by the discursive techniques used as grooming strategies by both perpetrators and familial bystanders. Recovery, for survivors, is not confined to overcoming the trauma of the CSA, but overcoming betrayal by those who purportedly loved and cared for them. This betrayal extends beyond the perpetrator, and extends to the conflicting loyalties of other family members, who may deliberately or unwittingly support the secrecy and silencing surrounding the abuse. Recognition of this relational dynamic is essential to understanding chronic and prolonged intra-familial CSA. This does not mean that the perpetrator is less culpable, but that as family members and community members, accountability must be taken for silencing, collective denial and the reversal of pro-social behaviour. The mythology of the altruistic family must also be problematised, and the role that it plays in perpetuating denial and unwittingly facilitating abuse. Within this, one must recognise the way in which hegemonic masculinity operates in conjunction with the ideologies of familialism. Intrinsic to this is the idealisation of community (Pavlich, 2002) which in a marginalised community can be dangerous to its most vulnerable members. In this sense, power’s circuit board of influence must be recognised.

What roles do justice and resistance play in an adult survivor’s “survival toolkit”? The latter half of this thesis has been devoted to redefining justice according to survivors’ needs and lived experiences. Hudson’s contribution is highly valuable, as are the development of non-adversarial justice (King et al, 2010; Freiberg, 2010) and Braithwaite and Pettit’s (1990) promotion of dominion. The commonality amongst these three theories is that such theories of justice contribute to self-actualisation and empowerment of the survivor. A focus is put on respect, dignity and anti-oppression, with process superseding outcome. Such principles are indeed the antithesis of the mainstream legal system, where procedural fairness relates more to diminishing the possibility of costly retrials and legitimising the legal process, rather than

fairness to either victim or perpetrator. Yet this thesis has also highlighted the way in which survivors are not simply acted upon by the CJS, but act upon the CJS to mobilise “symbolic resistance” (Taylor and Norma, 2011) and generate “a critical space” (McCorkel, 1998). While the CJS in Australia and in most Western countries has been found severely lacking in what it can deliver for sexual assault survivors, one must not forget its non-utilitarian function. In this neo-liberal age where the legal system is not immune to economic rationalism, it is easy to forget the symbolic role such social authorities can play. For survivors, the most oppressive institution is not the CJS, but the family, and resistance begins with utilising other critical spaces.

This is not to suggest that the CJS is a panacea for survivors. For some, the CJS played a minimal or insignificant role, with justice being achieved outside the CJS. Importantly, however, for many the CJS is a space that re-enacts trauma, is patriarchal, and unable to meet survivors’ needs. The needs of adult survivors of intra-familial CSA were seen as particularly distinct. Reforms discussed in this chapter speak to the necessity of cultural change within the courtroom, which are predicated on a shift towards non-adversarialism within specialist courts for sexual assault survivors. Yet, this cultural change itself does not exist in a vacuum, with other survivors reiterating the calls by other scholars (Snider, 1998; Martin, 2000) that change regarding sexual violence must start in the community. Transformative justice then becomes a salient area of further investigation.

Transformation then brings us full circle to what Stanley Cohen (2001) would argue is necessary for the penetration of denial: recognition. This is the recognition that gross violations of human rights continue to occur within society’s foundational institution, the family. Consequently, the family as social institution must be problematised to a greater extent within academic research, if we are to gain a better understanding of intra-familial CSA and the multi-generational transmission of abuse and suffering.

Finally, the value of this thesis lies in giving voice to victim-survivors in a political climate which privileges increasingly punitive and adversarial responses to sexual violence. Alternatives to traditional adversarial justice and innovative justice models are themselves inherently controversial, in light of this political climate. Historically, survivors’ voices have been co-opted by various powerful interest groups, often to enhance law and order platforms. In accessing a sub-section of victim-survivors’ voices, I have examined the potential of

innovative justice models from the perspective of those who are most likely to be affected by the procedural model adopted: victim-survivors.

References

Legislation and Policy documents

Australian Bureau of Statistics (1997) *Australian Standard Offence Classification (ASOC)* ABS cat no. 1234.0. Canberra: ABS.

Australian Bureau of Statistics (2012). *Recorded Crime-Victims Australia*, ABS cat no. 4510. Canberra: ABS

Australian Bureau of Statistics(2004) *Sexual Assault in Australia: A Statistical Overview* ABS cat no. 4523.0. Melbourne: ABS

Australian Bureau of Statistics 1997-2007. *Recorded crime, victims, Australia*(various years; title varies). ABS cat. no. 4510.0. Canberra: ABS

Australian Bureau of Statistics(2007) *Crime and Safety NSW*, ABS cat no. 4509.1. Sydney: ABS.

Australian Bureau of Statistics(2005) *National Crime and Safety Survey*, cat no 4509.0, Canberra: ABS.

Australian Institute of Criminology(2008) *Victims of Sexual Assault Statistics* <<http://www.aic.gov.au/>> accessed 12/5/08.

Australian Law Reform Commission (2010) *Family Violence: A National Legal Response*, Report 114, 2010:111

NSW Criminal Justice Sexual Offences Taskforce Report, (2006). *Responding to sexual assault: the way forward*, Sydney: NSW Attorney Generals Department.

NSW Adult Sexual Assault Interagency Committee (2004) 'A Fair Chance: Proposals for Sexual Assault Law Reform in NSW'

NSW Aboriginal Child Sexual Assault Taskforce ASCAT, 2006

Office of the Director of Public Prosecutions Current Guidelines, 2010

Royal Commission into the NSW Police Service Final Report, Volume V: The Pedophile Inquiry 1997

Standing Committee on Law and Justice (2002) *Child Sexual Assault Prosecutions in NSW*, Parliamentary Paper no. 208.

'Charter of Victim's Rights: NSW Victim's Rights Act' (2008) from http://www.lawlink.nsw.gov.au/lawlink/victimsservices/ll_voc.nsf/pages/voc_victims_rightschartersummary.

1900. Crimes Act, NSW, Australia

1985 *UN Declaration of the Rights of Victims of Crime*

(1995) Uniform Evidence Act (NSW) Australia.

1985 *UN Declaration of the Rights of Victims of Crime*

1995 Uniform Evidence Act, NSW, Australia

Academic Sources

Abrams, K. (1988). "Law's Republicanism." *Yale Law Journal* **97**(8): 1591-1608.

Acker, J., Barry, K., and Esseveld, J. (1983). Objectivity and truth: Problems in doing feminist research. *Women's Studies International Forum*, Vol. 6, No. 4, pp. 423-435.

Adams, R. (1998). *The Abuses of Punishment*. New York, St Martin's Press.

Ainsworth, M. S. (1989). Attachments beyond infancy. *American psychologist*, *44*(4), 709.

Ajzenstadt, M., Cavaglion, G., (2005). "Stories About Child Sexual Abuse: Textual Analysis of Instruction Manuals in Israel." *Qualitative Sociology* **28**(3): 255-279.

Alaggia, R. (2004). "Many ways of telling: expanding conceptualizations of child sexual abuse disclosure." *Child Abuse and Neglect* **18**: 1213-1227.

Alaggia R and Kirshenbaum, S (2005) Speaking the Unspeakable: Examining the Impact of Family Dynamics on Child Sexual Abuse Disclosures, *Families in Society: The Journal of Contemporary Social Services* Volume 86, Number 2 / 2005

Alcoff, L., and Gray, L. (1993). Survivor discourse: transgression or recuperation? *Signs*, 18(2), 260-290.

Alcoff, L. (1988). Cultural feminism versus post-structuralism: The identity crisis in feminist theory. *Signs*, 13(3), 405-436.

Adler, N. A., and Schutz, J. (1995). Sibling incest offenders. *Child abuse and neglect*, 19(7), 811-819.

Anthony, T. C. C., Ed. (2008). *The Critical Criminology Companion*. Sydney, Hawkins Press.

Aarts, P. G., & Op Op den Velde, W. (1996). Prior traumatization and the process of aging: Theory and clinical implications.

Asberg and Renk, (2012) Substance Use Coping as a Mediator of the Relationship Between Trauma Symptoms and Substance Use Consequences Among Incarcerated Females With Childhood Sexual Abuse Histories, *Substance Use and Misuse*, Vol. 47, No. 7 , Pages 799-808

Armstrong, L. (1994). *Rocking the cradle of sexual politics: What happened when women said incest*. Reading, MA: Addison-Wesley.

Bahr, T. (1995). Aboriginal community healing in action: The Hollow Water approach, *Justice as Healing: A Newsletter on Aboriginal Concepts of Justice*, Spring 1995.

Balfour, G. (2008). Falling between the cracks of retributive and restorative justice: The Victimization and Punishment of Aboriginal Women, *Feminist Criminology* 3(2): 101-120

Bazemore, G., and Earle, T. H. (2002). Balance in the response to family violence: Challenging restorative principles. *Restorative justice and family violence*, 153-177.

Behrendt, L., Cunneen, C., and Libesman, T. (2008). *Indigenous legal relations in Australia*. Oxford University Press.

Bannenberg, B. R., D (2003). New Developments in Restorative Justice to Handle Family Violence. Restorative Justice in Context: International Practice and Directions. E. Weitekamp, and Kerner, H.,. UK, Willan Publishing.

Bargai, N., Ben-Shakar, G., Shalev, A (2007). Posttraumatic Stress Disorder and Depression in Battered Women: The Mediating Role of Learned Helplessness. *Journal of Family Violence*, 22: 267-275.

Bargen, J & Fishwick, E (1995). *Sexual Assault Law Reform: A National Perspective*. National Office of the Status of Women. Sydney.

Barri-Flowers, R. (2003). *Male Crime and Deviance: Exploring Its Causes, Dynamics and Nature*. Springfield, Charles C Thomas Publisher.

Barrett, M., and McIntosh, M. (1980). The anti-social family. *Families in the US: Kinships and Domestic Politics*, 219-229.

Balboni, J. M., and Bishop, D. M. (2010). Transformative justice: survivor perspectives on clergy sexual abuse litigation. *Contemporary Justice Review*, 13(2), 133-154.

Bazemore, G., and Earle, T (2002). 'Balance in the Response to Family Violence: Challenging Restorative Justice Principles' in (eds). Braithwaite, J and Strang, H. *Restorative Justice and Family Violence*, Cambridge, Cambridge University Press.

Bell, D., and Bansal, P (1988). The Republican Revival and Racial Politics. *Yale Law Journal*, 97(8): 1609-1621.

Bell, V. (1993). *Interrogating incest: Feminism, Foucault and the law*. Routledge

Benhabib, S. (1992). Situating the self. *Polity*, 9-10.

Berliner, L., and Conte, J. R. (1990). The process of victimization: The victims' perspective. *Child Abuse and Neglect*, 14(1), 29-40.

Berger, J (2008) *Ways of Seeing*. Penguin: UK.

Biderman, A. D. (1956). *Communist techniques of coercive interrogation*. Office for Social Science Programs, Air Force Personnel and Training Research Center.

Bittman, M., and Pixley, J. (1997). *The double life of the family*. Sydney: Allen and Unwin.

Birchmore, K. (2005). Moment by Moment I coped: South Australian Women on the Subject of Child Sexual Abuse. South Australian Health Service. Adelaide.

Birgden, A. (2004). Therapeutic Jurisprudence and Sex Offenders: A Psych-Legal Approach to Protection. *Sexual Abuse: A Journal of Research and Treatment*, 16(4).

Blagg, H. (2002). 'Restorative Justice and Aboriginal Family Violence: Opening a Space for Healing' in (eds). Braithwaite, J and Strang, H. *Restorative Justice and Family Violence*, Cambridge, Cambridge University Press.

Bletzer, K. V., and Koss, M. P. (2012). From parallel to intersecting narratives in cases of sexual assault. *Qualitative health research*, 22(3), 291-303.

Boniface, D. (1994). Ruining a Good Boy for the sake of a Bad Girl: False Accusation Theory in Sexual Offences and NSW Limitations Periods-Gone But Not Forgotten. *UNSW Law Journal* 6(i).

Boniface, D. (2005). The common sense of jurors vs the wisdom of the law: judicial directions and warnings in sexual assault trials. *UNSW Law Journal* 28(1).

Boyd, C. (2007). Attachment theory and sexual offending: Critical considerations. *Developing Practice: The Child, Youth and Family Work Journal*, (19), 44.

Braithwaite, J. (1989). *Crime, Shame and Reintegration*. New York, Cambridge University Press.

Braithwaite, J., and Pettit, P (1990). *Not Just Deserts: A Republican Theory of Criminal Justice*. Oxford, Clarendon Press.

Braithwaite, J. (1995). 'Inequality and Republican Criminology' in (eds) Hagan, R. *Crime and Inequality*. Stanford, Stanford University Press.

Braithwaite, J. (2000). The New Regulatory State and the Transformation of Criminology. *British Journal of Criminology*. 40: 222-238.

Braithwaite, J. (2003). Principles of Restorative Justice in (eds) Von Hirsch, A. R.; Bottoms, A; Roach, K; Schiff, M. *Restorative Justice*. Oxford, Hart Publishing.

Breckenridge, J., and Carmody, M (1992). *Crimes of Violence: Australian Responses to Rape and Child Sexual Assault*. Sydney, Allen and Unwin.

Breckenridge, J., and Laing, L (1999). *Challenging Silence: Innovative responses to sexual and domestic violence*. Sydney, Allen and Unwin.

Brest, P. (1988). Further Beyond the Republican Revival: Toward Radical Republicanism. *Yale Law Journal* 97(8): 1623-1631.

Briere. (1992). Child abuse trauma: Theory and treatment of the lasting effects (Vol. 2). SAGE: New York.

Brewer, K. (1997). Factors related to prosecution of child sexual abuse cases. *Journal of Child Sexual Abuse* 6(1).

Briere J and Runtz, M (1993) Childhood Sexual Abuse Long-Term Sequelae and Implications for Psychological Assessment, *Journal of Interpersonal Violence* (8) 3. 312-330

Briere, J. N., and Elliott, D. M. (1994). Immediate and long-term impacts of child sexual abuse. *The future of children*, 54-69.

Bosworth, M. (1999). Agency and choice in women's prisons: Toward a constitutive penology. *Constitutive criminology at work: Applications to crime and justice*, 205-226.

Bosworth and Carrabine (2001) Reassessing Resistance Race, Gender and Sexuality in Prison. *Punishment and Society*, October 2001 vol. 3 no. 4, 501-515

Bottoms A and Tankebe, J. (2012). Criminology: Beyond Procedural Justice: A dialogic approach to legitimacy in criminal justice, *Criminal Law and Criminology*, 102, 119-1323.

Bowlby, J. (1977). The making and breaking of affectional bonds. Aetiology and psychopathology in the light of attachment theory. An expanded version of the Fiftieth Maudsley Lecture, delivered before the Royal College of Psychiatrists, 19 November 1976. *The British Journal of Psychiatry*, 130(3), 201-210.

Broach, J. L., & Petretic, P. A. (2006). Beyond traditional definitions of assault: Expanding our focus to include sexually coercive experiences. *Journal of family violence*, 21(8), 477-486.

Bromfield, L., and Higgins, D (2005). National comparison of child protection systems. *National Child Protection Clearinghouse* 22.

Brown, D., Farrier, D., Egger, S., and McNamara, L (2000). *Criminal Laws: Materials and Commentary on Criminal Law and Process in New South Wales*. Sydney, The Federation Press.

Brownmiller, S. (1975). *Against Our Will*. USA, Bantam Books.

Brunk, C. (2001). Restorative Justice in (eds) Hadley, M.L. *The Spiritual Roots of Restorative Justice*. New York, State University of New York.

Bunch, C. (1990). Women's rights as human rights: Toward a re-vision of human rights. *Human Rights Quarterly*, 12(4), 486-498.

Bunting, L. (2008). Sexual offences against children : An exploration of attrition in the Northern Ireland Criminal Justice System. *Child Abuse and Neglect* 32: 1109-1118.

Busch, R. (2002). Domestic Violence and Restorative Justice Initiatives: Who pays if we get it wrong? in (eds) Strang, H and Braithwaite, J. *Restorative Justice and Family Violence*. Cambridge, Cambridge University Press.

Cameron, A. (2005). Restorative justice: A literature review. *British Columbia Institute Against Family Violence*.

Calvert, G. (2003). Perspectives from the commissioner on alternative models for prosecuting offenders. *Child Sexual Abuse: Justice Response or Alternative Resolution Conference*. Canberra: Australian Institute of Criminology

Cameron, A. (2005). *Restorative Justice: A Literature Review*. Vancouver, The British Columbia Institute Against Family Violence.

Cameron, A. (2006). "Stopping the violence: Canadian feminist debates on restorative justice and intimate violence. *Theoretical Criminology* 10(1): 9–66.

Campbell, M. L. (1998). Institutional Ethnography and Experience as Data. *Qualitative Sociology* 21(1): 55-73.

Campbell, R. (1998). The Community Response to Rape: Victims' experiences with the legal, medical and mental health systems. *American Journal of Community Psychology* 26(3): 355-379.

Cardena, E. (1994). The Domain of Dissociation in (eds) Lynn, S and Rhue, J.M. *Dissociation: Clinical and Theoretical Perspectives*. New York, The Guildford Press.

Carmody, M. (2003). Keynote address: New approaches to sexual assault prevention *Practice and Prevention: Contemporary Issues in Adult Sexual Assault in NSW Conference*. Sydney.

Carrington, K. (2002). Feminism and Critical Criminology: Confronting Genealogies. *Critical Criminology: Issues, debates and Challenges*. UK, Willan Publishing.

Carrington, K. W., P (1996). Policing Sexual Violence: Feminism, Criminal Justice and Governmentality. *International Journal of the Sociology of Law*. 24: 253-272.

Cary, L. (1999). Unexpected Stories: Life History and the Limits of Representation. *Qualitative Inquiry*, 5(3): 411-427.

Cashmore, J., and Trimboli, L (2006). Child Sexual Assault trials: a survey of juror perceptions. *Crime and Justice Bulletin*. Sydney: NSW Bureau of Crime Statistics and Research.

Cashmore J. (1995). The prosecution of child sexual assault: A survey of NSW DPP solicitors. *Australian and New Zealand Journal of Criminology*, 28(1), 32-54.

Caudill, O. (1997). Repressed memory and the attack on the therapist: pitfalls in practice from the legal perspective. *Journal of Child Sexual Abuse*, 6(3).

Cervone, F. (1995). To be fair: Evaluators in a lawyer's world. *Journal of Child Sexual Abuse*, 4(4).

Chesney-Lind, M. (2006). Patriarchy, Crime and Justice: Feminist Criminology in an Era of Backlash. *Feminist Criminology*, 1(1): 6-26.

Christie, N. (1977). Conflicts as property. *British journal of Criminology*, 17(1), 1-15.

Chowdhury, R. (2002). Kadic v Karadzic-Rape as a Crime Against Women as a Class. *Law and Inequality*, 20(91).

Clark, H. (2007). Judging rape: Public attitudes and sentencing. *ACSSA Newsletter*, 14.

Clark, M. C., & Sharf, B. F. (2007). The Dark Side of Truth (s) Ethical Dilemmas in Researching the Personal. *Qualitative Inquiry*, 13(3), 399-416.

Cohen, S (2001) *States of Denial: Knowing about atrocities and suffering*, Cambridge: Polity Press.

Coker, D. (2000). Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review. *Buffalo Criminal Law Review*, 4: 801-860

Coker, D. (2002). Transformative Justice: Anti-Subordination Processes in the Cases of Domestic Violence in (eds) Strang, H and Braithwaite, J. *Restorative Justice and Family Violence*. Cambridge, Cambridge University Press.

Coker, D. (2006). Restorative justice, Navajo Peacemaking and domestic violence. *Theoretical Criminology*, 10(1): 67-85.

Collier, R (1995) *Masculinity, Law and the Family*, Routledge, London.

Collins, P. H. (2000). *Black feminist thought: Knowledge, consciousness, and the politics of empowerment*. Psychology Press.

Colarusso, C.A (2010) *The Long Shadow of Sexual Abuse: Developmental Effects Across the Life Cycle*, Jason Arunson, United Kingdom.

Connolly, K., and Reilly, R.C (2007). Emergent Issues When Researching Trauma: A Confessional Tale. *Qualitative Inquiry*, 13: 522-538.

Connolly, D. A., and Read, J. D. (2006). Delayed prosecutions of historic child sexual abuse: Analyses of 2064 Canadian criminal complaints. *Law and human behavior*, 30(4), 409-434.

Connor, K. M., Davidson, J and Lee L (2003). Spirituality, Resilience, and Anger in Survivors of Violent Trauma: A Community Survey. *Journal of Traumatic Stress*, 16(5).

Cook, B., David, F., and Grant, A (2001). *Sexual Violence in Australia*. Canberra: Australian Institute of Criminology: Research and Public Policy Series.

Cook, K. J. (2006). Doing difference and accountability in restorative justice conferences. *Theoretical Criminology*, 10(1): 107–124.

Cook, K., and Powell, C (2003). Christianity and Punitive Mentalities. *Crime, Law and Social Change*, 39: 69-89.

Cook, Alexandra, Joseph Spinazzola, Julian Ford, Cheryl Lanktree, Margaret Blaustein, Marylene Cloitre, Ruth DeRosa et al. (2005) Complex Trauma. *Psychiatric Annals*, (35) 5.

Cooley, D. (2002). Restorative Justice in Canada: Lessons Learned. *Practical Approaches to Appropriate Dispute Resolution*. Vancouver, BC, Law Commission of Canada.

Corbin, J., and Morse, J.M (2003). The Unstructured Interactive Interview: Issues of Reciprocity and Risks When Dealing With Sensitive Topics. *Qualitative Inquiry*. 9: 335-353.

Cormier, R. B. (2002). *Restorative Justice: Directions and Principles –Developments in Canada*. Canada: Public Works and Government Services Canada.

Cossins, A. (2000). *Masculinities, Sexualities and Child Sexual Abuse*. The Hague, Kluwer Law International.

Cossins, A. (2003). The National Child Sexual Assault Reform Committee. *Child Sexual Abuse: Justice Response or Alternative Resolution*, 1-2.

Cossins, A. (2006). Prosecuting Child Sexual Assault Cases: To specialise or not, that is the question. *Current Issues in Criminal Justice* 18(2).

Cossins, A. (2008). Restorative Justice and Child Sex Offences: The Theory and the Practice. *British Journal of Criminology* 48: 359-378.

Cossins, A., Goodman-Delahunty, J., and O'Brien, K. (2009). Uncertainty and misconceptions about child sexual abuse: Implications for the criminal justice system. *Psychiatry, Psychology and Law*, 16(3), 435-452.

Cossins A (2010). Alternative models for prosecuting child sex offences in Australia. *Sydney, Australia: National Child Sexual Assault Reform Committee*.

Cossins, A. (2011) Time Out for Longman: Myths, Science and the Common Law. *Melbourne University Law Review*, 34, 69.

Corwin, D. L., and Keeshin, B. R. (2011). Estimating present and future damages following child maltreatment. *Child and Adolescent Psychiatric Clinics of North America*, 20(3), 505-518.

Cook, K. J. (2006) Doing difference and accountability in restorative justice conferences. *Theoretical Criminology*, 10(1), 107-124.

Cotterrell, R. (1992). *The Sociology of Law: An Introduction*. London, Butterworths

Courtin, J. (2006). Judging the Judges: How the Victorian Court of Appeal is dealing with appeals against conviction i child sexual assault matters. *Current Issues in Criminal Justice* 18(2)

Cowdery, N. (2005). Current Issues in the Prosecution of Sexual Assault. *UNSW Law Journal*, 28(1).

Cowburn, M ; Dominelli, L (2001) Masking hegemonic masculinity: reconstructing the paedophile as the dangerous stranger *British Journal of Social Work*, 31(3), pp.399-41

Creswell, J., W (2003). *Research Design: Qualitative, Quantitative and Mixed Method Approaches*. London, SAGE Publications.

Crisma, M., Bascelli, E., Paci, D., and Romito, P (2004). Adolescents who experienced sexual abuse: fears, needs and impediments to disclosure. *Child Abuse and Neglect*, 28: 1035-1048.

Cripps, K., and McGlade, H. (2008). Indigenous family violence and sexual abuse: Considering pathways forward. *Journal of Family Studies*, 14(2-3), 240-253.

Cross, T., Whitcomb, D., and DeVos, E (1995). Criminal Justice Outcomes of Prosecution of Child Sexual Abuse: A Case Flow Analysis. *Child Abuse and Neglect* 19(12): 1431-1442.

Crossley, M. L. (2000). Narrative psychology, trauma and the study of self/identity. *Theory and Psychology*, 10(4), 527-546.

Crossley, M(1998) Deconstructing Autobiographical Accounts of Childhood Sexual Abuse: Some Critical Reflections, *Feminism and Psychology*, 10(1): 73–90.

Crowley, M. S. (2007). Memories of Childhood Sexual Abuse: Narrative Analyses of Types, Experiences and Processes of Remembering. *Journal of Interpersonal Violence* 22(9): 1095-1113.

Cunneen, C., and Anthony, T (2008). Understanding Restorative Justice through the lens of Critical Criminology, *The Critical Criminology Companion*. Sydney, Hawkins Press.

Curtis-Fawley, S., and Daly, K (2005). Gendered Violence and Restorative Justice: The Views of Victim Advocates. *Violence Against Women*, 11(5): 603-638.

Dalenberg, C. J., and Epstein, J.J (1999). Interviewing the Survivor of the Holocaust: Lessons for the Advancement of the Understanding of the Extreme Effects of Child Trauma in (eds) Memon, A and Bull, R, *Handbook of the Psychology of Interviewing*. USA, John Wiley and Sons Ltd.

Daly, K. (1994). Men's Violence, Victim Advocacy and Feminist Redress: Comment. *Law and Society Review*, 4: 777-786.

Daly, K. (1997). Different ways of conceptualising sex/gender in feminist theory and their implications for criminology. *Theoretical Criminology* 1(1): 25-51.

Daly, K. (2001). Sexual Assault and Restorative Justice. *Restorative Justice and Family Violence Conference*, Australian National University, Canberra, Cambridge University Press.

Daly, K. (2002). Sexual Assault and Restorative Justice. in (eds) Strang, H and Braithwaite, J. *Restorative Justice and Family Violence*. Cambridge, Cambridge University Press.

Daly, K., and Curtis-Fawley, S (2006). Justice for victims of sexual assault: court or conference? in (eds) Heimer, K & Kruttschnitt, C., *Gender and Crime: Patterns of Victimization and Offending*. New York, New York University Press: 230-265.

Daly, K., and Stubbs, J., (2006). Feminist Engagement with Restorative Justice. *Theoretical Criminology* 10(1): 9-28.

Daly, K. (2006). Restorative Justice and Sexual Assault: An Archival Study of Court and Conference Cases. *British Journal of Criminology* 46 (2)334-356.

Daly, K., Bouhours, B., Curtis-Fawley, S (2007). *Sexual Assault Archival Study (SAAS): An Archival Study of Sexual Offence Cases Disposed in Youth Court and by Conference and Formal Caution in South Australia*. South Australia Juvenile Justice and Criminal Justice Research on Conferencing and Sentencing.

Daly, K. (2008). Setting the Record Straight: A Reply to Annie Cossins on 'Restorative Justice and Child Sex Offences' *British Journal of Criminology* 48: 557-566.

Daly, K., and Bouhours, B. (2010). Rape and attrition in the legal process: A comparative analysis of five countries. *Crime and justice*, 39(1), 565-650.

Delgado, R. (1989). Storytelling for oppositionists and others: A plea for narrative. *Michigan Law Review*, 87(2411).

Dutton, D. G., and Painter, S. (1993). Emotional attachments in abusive relationships: A test of traumatic bonding theory. *Violence and Victims*, 8(2), 105-120.

Dutton, D. G., and Painter, S. (1993). The battered woman syndrome: Effects of severity and intermittency of abuse. *American Journal of Orthopsychiatry*, 63(4), 614-622.

Latane, B and Darley, J.M (1968) Bystander Intervention in Emergencies: Diffusion of Responsibility, *Journal of Personality and Social Psychology*, (8), 4, 377-383.

Latane, B and Darley, J.M (1969) Bystander Apathy, *American Scientist*, 57, 2 pp. 244-268.

De Brouwer, A. (2007). Reparation to Victims of Sexual Violence: Possibilities at the International Criminal Court and at the Trust Fund for Victims and Their Families. *Leiden Journal of International Law* 20: 207-237.

Denzin, N., and Lincoln, Y (1994). *Handbook of Qualitative Research*. London, SAGE Publications.

Des Rosiers, N., Hankivsky, O and Feldthusen, B (1998). Legal Compensation for Sexual Violence: Therapeutic Consequences and Consequences for the Judicial System. *Psychology, Public Policy and Law*, 4(1/2): 433-458.

Doak, J. (2008). *Victims' Rights, Human Rights and Criminal Justice*. Oxford, Hart Publishing.

Doak, J. (2005). Victims' rights in criminal trials: prospects for participation. *Journal of Law and Society*, 32(2), 294-316.

Doak, J. (2003). The victim and the criminal process: an analysis of recent trends in regional and international tribunals. *Legal Studies*, 23(1), 1-32.

Doan, C. (2004). *Justice for Whom? Criminal, Civil and Restorative Responses to Child Sexual Assault*. Western Political Science Association.

Dominelli, L. (1989). Betrayal of Trust: A feminist analysis of power relationships in incest abuse and its relevance in social work practice. *British Journal of Social Work*, 19: 291-307.

Dobash, R. P., Dobash, R. E., Cavanagh, K., and Lewis, R. (1998). Separate and Intersecting Realities A Comparison of Men's and Women's Accounts of Violence Against Women. *Violence Against Women*, 4(4), 382-414.

Driver E and Droisen A (1989) *Child Sexual Abuse - Feminist Perspectives*, Macmillan Education Ltd: London.

Duff, A. (2003). 'Restorative and retribution' in (eds) Von Hirsch, A. R., Bottoms, A., Roach, K., and Schiff, M. Restorative Justice Oxford, Hart Publishing.

The Dublin Rape Crisis Centre and the School of Law, Trinity College Dublin (1998)

Dyck, D (2005) Reaching towards a structurally responsive training and practice of restorative justice (eds) Sullivan, D and Tifft (2008) *Handbook of restorative justice: a global perspective*, Routledge, New York.

Eastwood, C. J., Kift, S. M., and Grace, R. (2006). Attrition in child sexual assault cases: Why Lord Chief Justice Hale got it wrong. *Journal of Judicial Administration*, 16(2), 81-91.

Eastwood, C., Patton, W (2003). *The experiences of child complainants of sexual abuse in the criminal justice system*, Criminology Research Council.

Eastwood, C., Patton, W. and Stacy, H. (2000). Children seeking justice: Surviving child sexual abuse and the criminal justice system. *Queensland Journal of Educational Research*, 16(2): 158-182.

Edwards, R. (2002). Violence Against Women and Crime Prevention. *Expanding our Horizons: Understanding the Complexities of Violence Against Women*. University of Sydney, Australia.

Edwards, J. J., and Alexander, P. C. (1992). The contribution of family background to the long-term adjustment of women sexually abused as children. *Journal of Interpersonal Violence*, 7(3), 306-320.

Eglash, A (1957). Creative Restitution. *Journal of Criminal Law, Criminology and Police*, 48.

Ellison, L (2001) *The Adversarial Process and the Vulnerable Witness*. Basil Blackwell Publishing Ltd.

Ellison, L. (1999). Protection of Vulnerable Witnesses in Court: An Anglo-Dutch Comparison, *The International Journal of Evidence and Proof*, 3, 29.

Elliott, M., Browne, K., and Kilcoyne, J. (1995). Child sexual abuse prevention: What offenders tell us. *Child Abuse and Neglect*, 19(5), 579-594.

Engel, B. (1989) *The Right to Innocence*, New York, Random House Publishing Group

Enosh, G., and Buchbinder, E (2005). The Interactive Construction of Narrative Styles in Sensitive Interviews: The Case of Domestic Violence Research. *Qualitative Inquiry*, 11: 588-617.

Epstein, R. (1988). Modern Republicanism: Or Flight from Substance. *Yale Law Journal* 97(8): 1633-1650.

Erikson, E. H. (1959). Identity and the life cycle (Vol. 1). *Psychological Issues. Monograph, 1*.

Etherington, K. (2007). Ethical Research in Reflective Relationships. *Qualitative Inquiry* 13(5): 559-616.

Ezzy, D. (2000). Fate and Agency in Job Loss Narratives. *Qualitative Sociology*, 23(1): 121-134.

Fattah, E. (2002). From philosophical abstraction to restorative action: from senseless retribution to meaningfulness restitution: just deserts and restorative justice revisited. In (eds) Weitekamp, E and Kerner, H., *Restorative Justice: Theoretical Foundations*. UK, Willan Publishing.

Fergus, L. (2004). Making rights a reality: The human rights approach to stopping violence against women. *ACSSA Newsletter* 4.

Fergus, L., and Keel, M (2005). *Adult victims/survivors of childhood sexual assault*, Australian Centre for the Study of Sexual Assault.

Fergus, L. (2005). Trafficking in women for sexual exploitation. *ACSSA Newsletter* 5.

Fergusson, D., and Mullen, P.E (1999). *Childhood Sexual Abuse: An Evidence Based Perspective*. London, SAGE.

Finkelhor, D. (1984). *Child Sexual Abuse: New Theory and Research*. New York, The Free Press.

Finkelhor, D., and Browne S. (1985) Initial and Long term effects a review of the research in (eds) Finkelhor, D *A Sourcebook on Child Sexual Abuse*, SAGE Publications: USA.

Finkelhor, D., and Gerrod, P (2006). *Moving the law towards a coherent emotion and culpability story*. Washington, American Psychological Association.

Fitts, M. A. (1988). Look Before You Leap:Some Cautionary Notes on Civic Republicanism. *Yale Law Journal*, 97(8): 1651-1662.

Fitzgerald, J. (2006). The attrition of sexual offences from the New South Wales criminal justice system. *Crime and Justice Bulletin: NSW Bureau of Crime Statistics and Research* Number 92.

Fitzpatrick, P. (1992). *The Mythology of Modern Law*. London, Routledge.

Fleming,J Mullen, P E. Sibthorpe, B Bammer, G (1999) The long-term impact of childhood sexual abuse in Australian women, *Child Abuse and Neglect*, 23, 2, pp145–159.

Flax, J. (1995). Race/Gender and the Ethics of Difference: A Reply to Okin's" Gender Inequality and Cultural Differences". *Political Theory*, 23(3), 500-510.

Flick, E. (2006). *An Introduction to Qualitative Research*. London, Sage Publications.

Freiberg A, (2004) –Innovations in the Court System” Paper presented to the conference *Crime in Australia: International Connections*, Melbourne, 29-30 November, 2004.

Freire, P (1970) *Pedagogy of the oppressed*, The Continuum International Publishing Group, New York.

Foote, W. (2000). I want to be able to talk without being judged: issues confronting mothers of child sexual assault survivors. *Women Against Violence*(9).

Foote-Whyte, W. (1991). *Participatory Action Research*. New York, Sage Publications.

Foreman, C. (2000). Integrated Response To Domestic Violence By The Criminal Justice System And Support Agencies in Dubbo. *Expanding Our Horizons: Understanding the Complexities of Violence Against Women*, University of Sydney.

Fraser, M. (2004-5). Working with women who have experienced child sexual assault. *Women Against Violence*(17).

Freiberg, A. (2010). Psychiatry, psychology and non-adversarial justice: from integration to transformation. *RG Myers Memorial Lecture–Australian and New Zealand Association of Psychiatry, Psychology and Law*.

Freiberg, A. (2011). Post-adversarial and post-inquisitorial justice: Transcending traditional penological paradigms. *European Journal of Criminology*, 8(1), 82-101.

Friedrichs, D. (2005). Restorative Justice and the Criminological Enterprise in (eds) Sullivan, D., and Tift, L., *Handbook of Restorative Justice: A Global Perspective*. Routledge.

Frohmman, L. (1991). Discrediting Victims' Allegations of Sexual Assault: Prosecutorial Accounts of Case Rejections. *Social Problems* 38(2): 213-226.

Gadd, D. J., T (2007). *Psychosocial Criminology*. London, SAGE.

Gabora, N. J., Spanos, N. P., and Joab, A. (1993). The effects of complainant age and expert psychological testimony in a simulated child sexual abuse trial. *Law and Human Behavior*, 17(1), 103.

Gaarder, E., and Presser, L (2002). A feminist vision of justice? The problems and possibilities of restorative justice for girls and women in (eds) Weitekamp, E and Kerner, H., *Restorative Justice: Theoretical Foundations*. UK, Willan Publishing.

Geske, J. (2006). Restorative justice and the sexual abuse scandal in the Catholic Church. *Cardozo Journal of Conflict Resolution's 2006 Symposium: Restorative Justice-Choosing Restoration of Retribution*.

Gilfus, 1999, The Price of the Ticket : A Survivor-Centered Appraisal of Trauma Theory, *Violence Against Women* 1999 5: 1238

Gil,D (2005) Toward a radical paradigm of restorative justice in (eds) Sullivan, D and Tift (2008) *Handbook of restorative justice: a global perspective*, Routledge, New York.

Gleaves, D. (1996). The evidence for "repression": An examination of Holmes (1990) and the implications for the recovered memory controversy. *Journal of Child Sexual Abuse* 5(1).

Gleeson, K. (2004). From Centenary to the Olympics, Gang Rape in Sydney. *Current Issues in Criminal Justice* 16(2).

Gold, S., Hyman, S., and Andres-Hyman, S (2004). Family of origin environments in two clinical samples of survivors of intra-familial, extra-familial and both types of sexual abuse. *Child Abuse and Neglect*, 28: 1199-1212.

Goodman-Delahunty, J., Cossins, A., and O'Brien, K. (2010). Enhancing the credibility of complainants in child sexual assault trials: The effect of expert evidence and judicial directions. *Behavioral Sciences and the Law*, 28(6), 769-783.

Graham, L., Rogers, P., Davies, M (2007). Attributions in a Hypothetical Child Sexual Abuse Case: Roles of Abuse Type, Family Response and Respondent Gender. *Journal of Family Violence* 22: 733-745.

Graycar, R., and Morgan, J (1992). *The Hidden Gender of Law*. Sydney, The Federation Press.

Gregory, J., and Lees, S., (1996). Attrition in Rape and Sexual Assault Cases. *British Journal of Criminology*, 36(1): 1-17

Grimes, D. (2006). Practice what you preach: How Restorative Justice could solve the judicial problems in Clergy Sexual Abuse Cases. *Washington and Lee Law Review*, 63(4)

Hacking, I. (1991). The Making and Molding of Child Abuse. *Critical Inquiry* 17(2): 253-288.

Habermas, J (1989) Morality and Ethical Life, Does Hegel's critique of Kant apply to discourse ethics? *Northwestern University School of Law Journal*, Vol 8, No1-2.

Harris, M. K. (2004). An expansive, transformative view of restorative justice. *Contemporary Justice Review*, 7(1), 117-141.

Hampton, J. (1991). A new theory of retribution. *Liability and Responsibility: Essays in Law and Morals*, 390-92.

Harvey, M., and Herman, J (1994). Amnesia, Partial Amnesia and Delayed Recall among Adult Survivors of Childhood Trauma. *Consciousness and Cognition*, 3: 295-306.

Heath, I. (1985). *Incest, a crime against children*. Melbourne, Victorian Government Printing Office.

Heath, M. (2005). The law and sexual offences against adults in Australia. *ACSSA Newsletter* 4.

Hebenton, B., and Thomas, T (1996). Sexual Offenders in the Community: Reflections on Problems of Law, Community and Risk Management in the USA, England and Wales. *International Journal of the Sociology of Law*, 24: 427-443.

Henry, N. M (2005) *Disclosure, sexual violence and international jurisprudence: a therapeutic approach*, Doctoral Thesis, University of Melbourne: Melbourne.

Henry, N. (2010). The impossibility of bearing witness: Wartime rape and the promise of justice. *Violence against women*, 16(10), 1098-1119.

Herman, J. (1997). *Trauma and Recovery*. Basic Books, New York.

Herman, J. (2005). Justice from the Victim's Perspective. *Violence Against Women*, 11(5): 571-602.

Herman, J and Hirschman, L (1977) Father-Daughter Incest, *Signs* , Vol. 2, No. 4 pp. 735-756

Herman, J.L (1992) Complex PTSD: A syndrome in survivors of prolonged and repeated trauma, *Journal of Traumatic Stress*, 5, 3, pp 377–391.

Hercus, C. (1999). Identity, emotion, and feminist collective action. *Gender and Society*, 13(1), 34-55.

Hess-Biber, S., and Leavy, P., (2006). *The Practice of Qualitative Research*. Thousand Oaks, SAGE Publications.

Hickey, J., Gallagher, P., and Ash, D. (1997). An analysis of matters determined in the District Court of NSW during 1994. *Child Sexual Assault Monograph Series*. Sydney, Judicial Commission of NSW.

Holden, T. (2002). *It's Still Not My Shame: Adult Survivors of Childhood Sexual Abuse Report*. Women's Health Statewide. Adelaide.

Hollander, J.A (2002) Resisting Vulnerability: The Social Reconstruction of Gender in Interaction, *Social Problems*, Vol. 49, No. 4.

Hopkins, C., and Koss, M., (2005). Incorporating Feminist Theory and Insights Into a Restorative Justice Response to Sex Offences. *Violence Against Women* 11(5): 693-723.

Horney, J., and Spohn, C., (1992). *Rape Law Reform: A Grassroots Revolution and Its Impact*. New York, Plenum Press.

Hough, M., and Roberts, J (2007). *Understanding Public Attitudes to Criminal Justice*. Maidenhead, Open University Press.

Hudson, B. (1998). Restorative Justice: The Challenge of Sexual and Racial Violence. *Journal of Law and Society*, 25(2): 237-256.

Hudson, B. (2002). Restorative Justice and Gendered Violence: Diversion or effective justice? *British Journal of Criminology*, 42: 616-634.

Hudson, B. (2006). Beyond White Man's Justice. *Theoretical Criminology*, 10(1): 29-47.

Hunt, A. (1993). *Explorations in Law and Society*. New York, Routledge.

Irwin, K. (2006). Into the Dark Heart of Ethnography: The Lived Ethics and Inequality of Intimate Field Relationships. *Qualitative Sociology*. 29: 155-175.

International Violence Against Women Survey (2004)

Jacobs, J. L. (1994). *Victimized daughters: Incest and the development of the female self*. New York: Routledge.

Jackson, J. D. (1992). Law's truth, lay truth and lawyers' truth: The representation of evidence in adversary trials. *Law and Critique*, 3(1), 29-49.

Jago, B. J. (2006). A Primary Act of Imagination: An Autoethnography of father-absence. *Qualitative Inquiry*. 12(2): 398-426.

Janoff-Bulman, R. (1985). The aftermath of victimization: Rebuilding shattered assumptions. *Trauma and its wake*, 1, 15-35.

Jordan, J. (2001). Worlds Apart? Women, Rape and the Police Reporting Process. *British Journal of Criminology*, 41: 679-706.

Jordan, J. (2004). Beyond belief? Police, rape and women's credibility. *Criminal Justice*, 4(1), 29-59.

Jolowicz, J. A. (2003) Adversarial and Inquisitorial Models of Civil Procedure *International and Comparative Law Quarterly*, 52, 281.

Johnstone, C (2009) Teenager to face full trial, *The Age*,
<http://www.theage.com.au/national/teenager-to-face-kill-trial-20090113-7g3z.html>,
accessed 16/6/2013.

Julich, S. (2001). *Breaking the silence: Restorative justice and child sexual abuse*. Unpublished Ph. D, Massey University.

Julich, S (2005) Stockholm Syndrome and Child Sexual Abuse, *Journal of Child Sexual Abuse* 14(3): 10-29

Julich, S. (2006). Views of Justice Among Survivors of Historical Child Sexual Abuse. *Theoretical Criminology*, 10(1): 125-138.

Julich, S., Buttle, J., Cummins, C and Freeborn, E (2010) *Project Restore NZ: An exploratory study of restorative justice and sexual violence*, Auckland University of Technology.

Julich, S. (2010). Restorative justice and gendered violence in New Zealand: A glimmer of hope. *Feminism, restorative justice, and violence against women*, 239-54.

Jolowicz, J. A. (2003). Adversarial and inquisitorial models of civil procedure. *International and Comparative Law Quarterly*, 52(2), 281-295.

Kaspiew, R. (1995). Rape lore: legal narrative and sexual violence. *Melbourne University Law Review*, 20, 350.

Kaveny, C. (2004). Unspeakable Sins. *Commonweal*. 12-13.

Keel, M. (2004). Family Violence and Sexual Assault in Indigenous Communities. *ACSSA Newsletter* 4.

Kelly, L. (2002). Using restorative justice principles to address family violence in Aboriginal communities. in (eds). Braithwaite, J and Strang, H. *Restorative Justice and Family Violence*, Cambridge, Cambridge University Press.

Kelly, C., and Breinlinger, S. (1995). Identity and injustice: Exploring women's participation in collective action. *Journal of Community and Applied Social Psychology*, 5(1), 41-57.

Kerber, L. (1988). Making Republicanism Useful. *Yale Law Journal*, 97(8): 1663-1672.

Kerr, D. (2003). Legally abused: the child sexual assault victim in the adult criminal court. *Child Sexual Abuse: Justice Response or Alternative Resolution Conference*. Australian Institute of Criminology Conference, Adelaide

Kersten, J. (1996). Culture, Masculinities and Violence Against Women. *British Journal of Criminology* ,36(3): 381-395.

Kerstetter, W. A. (1990). Gateway to justice: Police and prosecutorial response to sexual assaults against women. *The Journal of Criminal Law and Criminology* ,81(2), 267-313.

Kezar, A. (2003). Transformational Elite Interviews: Principles and Problems. *Qualitative Inquiry*, 9: 395-415.

King, M; Freiberg, A; Bagatol, B and Hyams, R (2010), *Non-adversarial Justice*, Federation Press: Melbourne.

Kogan, S. M. (2004). Disclosing unwanted sexual experiences: results from a national sample of adolescent women. *Child Abuse and Neglect*, 28: 147-165.

Koss, M. P., and Achilles, M. (2008). Restorative justice responses to sexual assault. *a Project of the National Resource Centre on Domestic Violence/Pennsylvania Coalition against Domestic Violence*, Harrisburg, PA.

Koss, M. P., Bachar, K. J., & Hopkins, C. Q. (2003). *An innovative application of restorative justice to the adjudication of selected sexual offenses* (pp. 321-333). Weisser Ring.

Koss, M. (2000). Blame, Shame and Community: Justice Responses to Violence Against Women. *American Psychologist*. 1332-1343.

Krone, T. (2005). Does Thinking Make It So? Defining Online Child Pornography Possession Offences. *Trends and Issues in Crime and Criminal Justice*, 299.

Kutnjack-Ivkovic, S., and Hans, V (2003). Jurors' evaluations of expert testimony: Judging the messenger and the message. *Law and Social Inquiry*, 28(2).

Lacey, N. (1998). Unspeakable Subjects, Impossible Rights: Sexuality, Integrity and Criminal Law. *Canadian Journal of Law and Jurisprudence*, 11(1): 47-68.

Lacey, N., and Zedner, L. (1995). Discourses of community in criminal justice. *Journal of Law and Society*, 22(3), 301-325.

LaFontaine, J. (1990). *Child Sexual Abuse*. Cambridge, Polity Press.

Lamb, S., and Edgar-Smith, S (1994). Aspects of Disclosure: Mediators of Outcome of Childhood Sexual Abuse. *Journal of Interpersonal Violence*, 9(3): 307-326

Laster, K., and O'Malley, P (1996). Sensitive New-Age Laws: The Reassertion of Emotionality in Law. *International Journal of the Sociology of Law*, 24: 21-40.

Latimer, J., Dowden, C., Muise, K., (2001). *The effectiveness of restorative justice practices: a meta-analysis*, Department of Justice, Canada.

Lee, G. (1996). Defining Traditional Healing. *Justice as Healing*
A Newsletter on Aboriginal Concepts of Justice, 1(4).

Lee, R. M. (1993). *Doing Research on Sensitive Topics*. London, SAGE Publications.

Lerum, K. (2001). Subjects of Desire: Academic Armor, Intimate Ethnography, and the Production of Critical Knowledge. *Qualitative Inquiry*, 7(4): 466-483.

Liamputtong, P. (2006). Motherhood and “Moral Career”: Discourses of Good Motherhood Among Southeast Asian Immigrant Women in Australia. *Qualitative Sociology*, 29(1): 29-53.

Liebmann, M. (2007). *Restorative Justice: How it Works*. London, Jessica Kingsley Publishers.

Lievore, D. (2004). *Recidivism of Sexual Assault Offenders: Rates, Risk Factors and Treatment Efficacy*. Canberra, Australian Institute of Criminology.

Lievore, D. (2005). *No Longer Silent: A study of women’s help-seeking decisions and service responses to sexual assault*. Canberra, Australian Institute of Criminology.

Lind, E. A., and Tyler, T. R. (1988). *The social psychology of procedural justice*. Plenum Publishing Corporation.

Lisak, D. (1991). Sexual Aggression, Masculinity and Fathers. *Signs* 16(2).

London, K., Bruck, M., Ceci, S., Schuman, D., (2005). Disclosure of child sexual abuse: What Does the Research Tell Us About the Ways That Children Tell? *Psychology, Public Policy, and Law*, 11(1): 194-226.

Loseke, D. (2005). Through sociological lens: the complexities of family violence. *Current Controversies on Family Violence*. USA, SAGE Publication.

Losel F and Schumacher, M. (2005). The effectiveness of treatment for sexual offenders: A comprehensive meta-analysis. *Journal of Experimental Criminology*, 1: 117-146.

Loy, D. (2001). Healing Justice in (ed) Hadley. M.L, *The Spiritual Roots of Restorative Justice*, New York, State University of New York.

Lussier, P., Proulx, J., Leblanc, M., (2005). Criminal Propensity, Deviant Sexual Interests and Criminal Activity of Sexual Aggressors Against Women: A Comparison of Explanatory Models. *Criminology* ,43(1).

Lugones, M. C. (1990). *Structure/antistructure and agency under oppression*.

Lugones, M. (1987). Playfulness, –World”-Travelling, and Loving Perception. *Hypatia*, 2(2), 3-19.

Lyon, TD, Ahern, EC, and Scurich, N.(2012). Interviewing children vs. tossing coins: Accurately assessing the diagnosticity of children’s disclosures of abuse. *Journal of Child Sexual Abuse*, 21, 19-44.

Lyon, T. (2002). Applying Suggestibility Research to the Real World: The case of repeated questions. *Law and Contemporary Problems* 65(1).

Lyon, T. D. (2011). Assessing the competency of child witnesses: Best practice informed by psychology and law. *Children’s testimony: A handbook of psychological research and forensic practice*, 69-85.

Macey, J. (1988). The Missing Element in the Republican Revival. *Yale Law Journal* 97(8): 1673-1684.

McKenzie N and Baker R (2013) Pedophile Priest returns to duty, *The Sydney Morning Herald*. <http://www.smh.com.au/national/predator-priest-returns-to-duty-20130119-2czy4.html>, accessed 4/5/2013.

Mackay, R. (2003). Punishment, guilt and spirit in restorative justice: an essay in legal and religious anthropology in (eds) A. R. Von Hirsch, A; Bottoms, A; Roach, K; Schiff, M. *Restorative Justice*. Oxford, Hart Publishing.

Mackinnon, C. (1983). Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence. *8 Signs: Journal of Women in Culture and Society* 635.

Macmartin, C. (2002). Unreasonable Doubt? The invocation of children's consent in sexual abuse trial judgements. *Discourse and Society* 13(1): 9-40.

Macy, R., Nurius, P., and Norris, J (2007). Latent Profiles Among Sexual Assault Survivors. *Journal of Interpersonal Violence*, 22(5): 543-565.

Mahoney, D. (2007). Constructing Reflexive Fieldwork Relationships: Narrating My Collaborative Storytelling Methodology, *Qualitative Inquiry*, 13: 573-594.

Mann, R. (2008). Men's Rights and Feminist Advocacy in Canadian Domestic Violence Policy Areas. *Feminist Criminology*, 3(1): 44-75.

Marshall, C., and Rossman, G (2006). *Designing Qualitative Research*. London, SAGE Publications.

Mason, G and Stubbs, J (2012) Feminist Research Methods in (eds) Gadd, D Karstedt, S and Messner, S., *The SAGE Handbook of Criminological Research Methods*, SAGE: London.

Marshaw, J. (1988). As If Republican Interpretation. *Yale Law Journal*, 97(8): 1685-1701.

Martin, D. L. (1997). Retribution Revisited: A Reconsideration of Feminist Criminal Law Reform Strategies. *Osgoode Hall Law Journal* 36(1): 151-188.

Martin, F. (2000). Activism in action: the women's incest survivors network. *Women Against Violence* (9).

Maslow, A. H. (1943). A theory of human motivation. *Psychological review*, 50(4), 370.

Mathews, R. (2005). The Myth of Punitiveness. *Theoretical Criminology*, 9(2): 1362-4806.

Maxwell, J. A. (2005). *Qualitative Research Design: An Interactive Approach*. USA, SAGE Publications.

Maynes, M., Pierce, J and Laslett, B (2008). *Telling Stories: The Use of Personal Narratives in the Social Sciences and History*. London, Cornell University Press.

McAlinden, A. (2005). Are there limits to restorative justice? The case of child sexual abuse in (eds) D. Sullivan, and Tift, L *Handbook of Restorative Justice: A Global Perspective*, Routledge.

McAlinden, A. (2007). *The Shaming of Sexual Offenders: Risk, Retribution and Reintegration*. Oxford, Hart Publishing.

MacLeod, M., Saraga, E., Polytechnic of North London, and Dept of Applied Social Studies. (1988). *Child Sexual Abuse: Towards a Feminist Professional Practice*. Child Sexual Abuse Unit, Polytechnic of North London (PNL) Press, UK.

McCold, P., and Wachtel, T (2002). Restorative Justice theory validation in (eds) E. Weitekamp, and Kerner, H., *Restorative Justice: Theoretical Foundations*. UK, Willan Publishing.

McCorkel, J. A. (1998). Going to the crackhouse: Critical space as a form of resistance in total institutions and everyday life. *Symbolic Interaction*, 21(3), 227-252.

McCormack, K. (2005). Stratified reproduction and poor women's resistance. *Gender and Society*, 19(5), 660-679.

McCoy, M., and Gray, J.M (2007). The Impact of Defendant Gender and Relationship to Victim on Juror Decisions in a Child Sexual Abuse Case. *Journal of Applied Social Psychology*, 37(7): 1578-1593.

McDaniels-Wilson, C., and Belknap, J., (2008). The Extensive Sexual Violation and Sexual Abuse Histories of Incarcerated Women. *Violence Against Women*, 14(10): 1090-1127.

McGlade, H. (2006). Aboriginal Women, Girls and Sexual Assault. *ACSSA Newsletter* 12.

McGlade, H. (2007). Justice as Healing: Developing Aboriginal Justice Models to Address Child Sexual Assault. *Indigenous Law Bulletin*, 7(1): 10-13.

McAlinden, A. M. (2006). 'Setting 'Em Up': Personal, Familial and Institutional Grooming in the Sexual Abuse of Children. *Social and Legal Studies*, 15(3), 339-362.

McLellan, B. (2004-5). Embedded with the perpetrators: a feminist critique of the role of psychotherapy in domestic and family violence. *Women Against Violence* (16)

Michelman, M. (1988). Law's Republic. *Yale Law Journal*, 97(8): 1493-1537.

Miller, M. K., Dietrich, H., Chamberlain, J., Singer, J.A., (2008). How EMOTION affects the trial process. *Judicature* 92(2).

Mischler, E. G. (1986). *Research Interviewing: Context and Narrative*. Boston, Harvard University Press.

Moon, D. (2005). Emotion Language and Social Power: Homosexuality and Narratives of Pain in Church. *Qualitative Sociology*, 28(4): 327-349.

Morris, A. (2002). Children and Family Violence: Restorative Messages from New Zealand in (eds). Braithwaite, J and Strang, H. *Restorative Justice and Family Violence*, Cambridge, Cambridge University Press.

Morris, A. (2002). Critiquing the Critics: A Brief Response to Critics of Restorative Justice. *British Journal of Criminology*, 42(3).

Morrison, Z. (2006). Family violence and sexual assault: Aspects of a new report in Victoria on law reform. *ACSSA Newsletter* 13.

Morrison, Z., Quadara, A., Boyd, C., (2007). *"Ripple effects" of sexual assault*. Melbourne: Australian Institute of Family Studies.

Mosteller, R. (2002). The maturation and disintegration of the hearsay exception for statements for medical examination in child sexual abuse cases. *Law and Contemporary Problems* 65(1).

Mouzos, J., and Makkai, T (2004). Women's experiences of male violence: findings from the Australian component of the International Violence Against Women Survey (IVAWS). *Research and public policy series*. Canberra: Australian Institute of Criminology, 56.

Miller, A (1998) *The truth will set you free*, Pantheon Books, New York.

Mullen, P. E., Martin, J. L., Anderson, J. C., Romans, S. E., and Herbison, G. P. (1996). The long-term impact of the physical, emotional, and sexual abuse of children: a community study. *Child abuse and neglect*, 20(1), 7-21.

Mullen, P. E., and Fleming, J. (1998). *Long-term effects of child sexual abuse*. Melbourne: Australian Institute of Family Studies.

Myers, J. (1996). Societal Self Defense: New Laws to Protect Children From Sexual Abuse. *Child Abuse and Neglect* 20(4): 255-258.

Myhil, A., and Allen, J. (2000). *Rape and Sexual Assault: Findings from the British Crime Survey*. London: Home Office.

Nancarrow, H. (2006). In search of justice for domestic and family violence: Indigenous and non-Indigenous Australian women's perspectives. *Theoretical Criminology* 10(1): 87-106.

Naples, N. A. (2003). Deconstructing and locating survivor discourse: Dynamics of narrative, empowerment, and resistance for survivors of childhood sexual abuse. *Signs*, 28(4), 1151-1185.

Naylor, B. (1989). Dealing with child sexual assault: Recent Developments. *British Journal of Criminology* 29(4): 395-407.

Naylor, B. (2010). Effective justice for victims of sexual assault: Taking up the debate on alternative pathways. *UNSW Law Journal*, 33, 662.

Neame, A., and Heenan, M (2003). What hides behind the hidden figure of sexual assault: prevalence and disclosure? *Australian Centre for the Study of Sexual Assault*.

Nelson, E. D. (1994). Females Who Sexually Abuse Children: A Discussion of Gender Stereotypes and Symbolic Assailants. *Qualitative Sociology*, 17(1).

Nicholas, S., Kershaw, C., and Walker, A (2007). *Crime in England and Wales 2006/7*. Home Office Statistical Bulletin. London: Home Office.

Norum, K. E. (2000). Black (w)Holes: A Researcher's Place in Her Research. *Qualitative Sociology*, 23(3): 319-340.

Nussbaum, M (1999) *Sex and Social Justice*, Oxford University Press, Oxford.

Okin, S. M. (1997). Families and feminist theory: some past and present issues. *Feminism and families*, 13-26.

O'Brien, L., Henderson, C., and Bateman, J., (2007). Finding a place for healing: Women survivors of childhood sexual abuse and their experience of accessing services. *Australian e-Journal for the Advancement of Mental Health (AeJAMH)*, 6(2).

Olafson, E., Corwin, D.L and Summit, R.C (1993). Modern History of Child Sexual Abuse Awareness: Cycles of Discovery and Suppression. *Child Abuse and Neglect* 17(7-24)

O'Neill, M., and Harindranath, R (2006). Theorising narratives of exile and belonging: the importance of Biography and Ethno-mimesis in "understanding" asylum." *Qualitative Sociology Review*, 2(1).

Parkinson, P., Oates, K., Jayakody, A., (2009). *Study of Reported Child Sexual Abuse in the Anglican Church*.

Parkinson, P. N., Shrimpton, S., Swanston, H. Y., O'Toole, B. I., and Oates, R. K. (2002). The process of attrition in child sexual assault cases: A case flow analysis of criminal investigations and prosecutions. *Australian and New Zealand Journal of Criminology*, 35(3), 347-362.

Pavlich, G. (2002). Deconstructing restoration: the promise of restorative justice. In eds E. Weitekamp, and Kerner, H., *Restorative Justice: Theoretical Foundations*. UK, Willan Publishing.

Pember, M. A. (2007). A Painful Remembrance. *Diverse Issues in Higher Education* 24(21).

Pennell, J., and Burford, G (2002). Feminist Praxis: Making Family Group Conferencing Work in (eds). Braithwaite, J and Strang, H. *Restorative Justice and Family Violence*, Cambridge, Cambridge University Press.

Pennell, J., and Francis, S., (2005). Safety Conferencing: Toward a Coordinated and Inclusive Response to Safeguard Women and Children. *Violence Against Women* 11(5): 666-692.

Pennell, J. (2005). Stopping domestic violence or protecting children? Contributions from restorative justice. *Handbook of Restorative Justice: A Global Perspective*. D. Sullivan, and Tift, L, Routledge.

Peter, T. (2008). Speaking About the Unspeakable: Exploring the Impact of Mother-Daughter Sexual Abuse. *Violence Against Women*, 14(9): 1033-1053.

Pettit, P., Goodin, R., and Pogge, T (2007). *A companion to contemporary political philosophy*. Oxford, Blackwell Publishing.

Piaget, J., Inhelder, B., and Szeminska, A. (1960). *The child's conception of geometry*. New York: Basic.

Putnam (2003) Ten-Year Research Update Review: Child Sexual Abuse, *Journal of the American Academy of Child and Adolescent Psychiatry* 42, 3, pp 269–278.

Ptacek, J. (Ed.). (2009). *Restorative justice and violence against women*. Oxford University Press.

Pranis, K. (2007). Restorative values. *Handbook of restorative justice*, 59-74.

Petrila, J. (2003). An Introduction to Special Jurisdiction Courts. *International Journal of Law and Psychiatry*, 26: 3-12

Phelan, P. (1994). Incest and Its Meaning: The Perspectives of Fathers and Daughters. *Child Abuse and Neglect*, 19(1): 7-24.

Pipe, M., Lamb, M.E, Orbach, Y, Cederborg, A, Ed. (2007). *Child Sexual Abuse: Disclosure, Delay and Denial*. London, Lawrence Erlbaum Associates, Publishers.

Poland, B., and Pederson, A (1998). Reading Between the Lines: Interpreting Silences in Qualitative Research. *Qualitative Inquiry*, 4: 293-311.

Polusny, M. A., and Follette, V. M. (1995). Long-term correlates of child sexual abuse: Theory and review of the empirical literature. *Applied and Preventive Psychology*, 4(3), 143-166.

Powell, J. (1988). Revising Republicanism. *Yale Law Journal* 97(8): 1703-1711

Pranis, K. (2002). Restorative Values and Confronting Family Violence in (eds). Braithwaite, J and Strang, H. *Restorative Justice and Family Violence*, Cambridge, Cambridge University Press.

Presser, L., and Gunnison, E. (1999). Strange Bedfellows: Is Sex Offender Notification a Form of Community Justice? *Crime and Delinquency*, 45(3): 299-315.

Rayment-McHugh, S., and Nisbet, I (2003). Sibling Incest Offenders as a Subset of Adolescent Sexual Offenders. *Child Sexual Abuse: Justice Response or Alternative Resolution Conference*. Australian Institute of Criminology Conference, Adelaide.

Reamer, F. (2005). *Heinous Crime: Cases, Causes and Consequences*. New York, Columbia University Press.

Reichel, P. L. (2008). *Comparative Criminal Justice Systems: A Topical Approach*. New Jersey, Pearson Prentice Hall.

RESTORE: Justice That Heals, *Overview Manual*, published by the University of Arizona, Oasis Program for Sexual Violence and Relationship Violence and Tucson City Attorney's Office.

Riessman, C (2000) Stigma and Everyday Resistance Practices: Childless Women in South India, *Gender and Society*, Vol. 14, No. 1. 111-135

Rivera, M. (1996). *More Alike Than Different: Treating Severely Dissociative Trauma Survivors*. Toronto, University of Toronto Press.

Roach Anleu, S. (2000). *Law and Social Change*. London, SAGE Publications.

Robinson, A., Hudson, K., Brookman, F., (2008). Multi-Agency Work on Sexual Violence: Challenges and Prospects Identified From the Implementation of a Sexual Assault Referral Centre (SARC). *The Howard Journal* ,47(4).

Rodger, R. (2003). NSW Specialist Child Sexual Jurisdiction. *Child Sexual Abuse: Justice Response or Alternative Resolution Conference*. Australian Institute of Criminology Conference: Adelaide.

Rodger, R. (2006). *An evaluation of the NSW Child Sexual Assault Specialist Jurisdiction Pilot*. Sydney: Attorney Generals Department.

Rodriguez, N., Ryan, S. W., Rowan, A. B., and Foy, D. W. (1996). Posttraumatic stress disorder in a clinical sample of adult survivors of childhood sexual abuse. *Child abuse and neglect*, 20(10), 943-952.

Roesler, T. A., and Weissman-Wind T (1994). Telling the secret: Adult women describe their disclosures of incest. *Journal of Interpersonal Violence*, 9(3): 327-338.

Rogers, P., and Davies, M (2007). Perceptions of Victims and Perpetrators in a Depicted Child Sexual Assault Case. *Journal of Interpersonal Violence*, 22(5): 566-584.

Rokvic, D. (2003). Betrayal of Trust: the experiences of adult women victim/survivors of child sexual assault. *8th Australian Institute of Family Studies Conference*. Melbourne.

Rokvic(2005). *Moment by Moment I Coped: South Australian Women on the Subject of Childhood Sexual Abuse*. Adelaide, Women's Health Statewide and Research and Education Unit on Gendered Violence, University of South Australia.

Ronai , C.R and Cross, R (1998) Dancing with identity: Narrative resistance strategies of male and female stripteasers, *Deviant Behaviour*, 19:2, 99-119

Ronai, C.R (1995) Multiple reflections of Child Sexual Abuse: An argument for a layered account, *Journal of Contemporary Ethnography*, 23: 395

Rosenthal, G. (2003). The Healing Effects of Storytelling: On the Conditions of Curative Storytelling in the Context of Research and Counselling. *Qualitative Inquiry*, 9(915-933).

Ross, H. (2001). *Law as a Social Institution*. Oxford, Hart Publishing.

Ross, R. (1995). Justice as Healing: Aboriginal community healing in action: The Hollow Water Approach. *Native Law Centre*_(Spring).

Ruddick, S. (1997). The Idea of Fathethood. *Feminism and families*, 205.

Rush, F (1980) *Best Kept Secret - Sexual Abuse of Children*, New Jersey:Prentice Hall Englewood Cliffs.

Russell D (1986) *The secret trauma: incest in the lives of girls and women*. New York: Basic Books,

Sadan, M., Cassiem, S., and Dikweni, L. (2001). *Pilot assessment: The sexual offences court in Wynberg and Cape Town and related services*. IDASA.

Salter, A (1995) *Predators: Pedophiles, Rapists, and Other Sex Offenders : who They Are, how we can protect ourselves and our children*, New York :Basic Books.

Salter, A (1988) *Treating Child Sex Offenders and Victims: A Practical Guide*, UK: SAGE.

Saukko, P. (2006). Between Voice and Discourse: Quilting Interviews on Anorexia. *Qualitative Inquiry*,6(3): 299-317.

Savage, J. (2003). Refugee Women, Sexual Assault, and Communities_Practice and Prevention: Contemporary Issues in Adult Sexual Assault in NSW Conference, Sydney.

Scheppele, K. L. (1994). Legal theory and social theory. *Annual Review of Sociology*, 383-406.

Scheppele, K. L. (1989). Legal Storytelling. *Michigan Law Review*, 87, 2073.

Schultz, P. (2005). *Not Monsters:Analysing the Stories of Child Molesters*. Oxford, Rowman and Littlefield Publishers Inc.

Scott, J.C (1985) *Weapons of the Weak: Everyday Forms of Peasant Resistance*. Yale University Press: Yale.

Scully, D. (1990). *Understanding Sexual Violence: A Study of Convicted Rapists*. Boston, Unwin Hyman.

Sebba, L. (2001). On the Relationship between Criminological Research and Policy: The case of crime victims. *Criminology and Criminal Justice*, 1(27).

Shah, R., Dail, P., and Heinrichs, T (1995). Familial influences upon the occurrence of child sexual abuse. *Journal of Child Sexual Abuse* ,4(4).

Shahidian, H. (2001). "To Be Recorded in History": Researching Iranian Underground Political Activists in Exile. *Qualitative Sociology*, 24(1): 55-81.

Shakel, R. (2007). Judicial Perceptions of Jurors' Understanding of How Children Respond to Sexual Victimization. *Psychiatry, Psychology and Law*, 14(1): 130-137.

Shapland, J., Atkinson, A., Atkinson, H., College, E., Dignan, J., Howes, M., Johnstone, J., Robinson G and S. A (2006). Situating restorative justice within criminal justice. *Theoretical Criminology*, 10(1): 505-532.

Strang, H., and Sherman, L. W. (2003). Repairing the harm: Victims and restorative justice. *Utah Law Review*, 15.

Strang, H. (2001). Restorative justice programs in Australia. *A report to the Criminological Research Council*.

Sherman, L., Strang, H., Angel, C., Woods, D., Barnes, G.C., Bennett, S., Inkpen, N. (2005). Effects of face-to-face restorative justice on victims of crime in four randomized, controlled trials. *Journal of Experimental Criminology*, 1: 367-395.

Sigler, R. (1995). Preferred Labels and Penalties for Forced Sexual Intercourse. *International Journal of the Sociology of Law*, 23: 171-187.

Simmons, C. A., Lehmann, P and Collier-Tenison, S (2008). Men's use of controlling behaviours: a comparison of reports by women in a domestic violence shelter and women in a domestic violence offender program. *Journal of Family Violence*, 23: 387-394.

Sivell-Ferri, C. (1997). *The Four Circles of Hollow Water: Aboriginal Peoples Collection*. Ottawa, Ministry of the Solicitor General, Ottawa.

Skinner, T. T., H (2009). Being Shut Out in the Dark: Young Survivors' Experiences of Reporting a Sexual Offence. *Feminist Criminology* 4(2): 130-150.

Smallbone and Wortley (2000) *Child Sex Abuse: Offender Characteristics and Modus Operandi*, Australian Institute of Criminology: Trends and Issues in Criminal Justice, No 193.

Smart, C (1990) *Feminism and the Power of Law*, London: Routledge,

Smith, S., Cook, S.L., (2008). Disclosing Sexual Assault to Parents: The Influence of Parental Messages About Sex. *Violence Against Women*, 14(11): 1326-1348.

Snider, L. (1998). Toward Safer Societies: Punishment, Masculinities and Violence Against Women. *British Journal of Criminology* 38(1): 1-32.

Snider, L. (1998). Feminism, Punishment and the Potential of Empowerment in (Eds) K. Daly, and Maher, L. *Criminology at the Crossroads: Feminist Readings in Crime and Justice*. Oxford, Oxford University Press.

Sperry and Widom, 2003, Child abuse and neglect, social support, and psychopathology in adulthood: A prospective investigation , *Child Abuse and Neglect*, Volume 37, Issue 6, June 2013, Pages 415–425

Spohn, C., Beichner, D and Davis-Frenzel, E (2001). Prosecutorial justifications for sexual assault case rejection: Guarding the gateway to justice. *Social Problems* 48(2): 206-235.

Staller, K. (2007). To Get Her Heart in Hand Passing Words Between an Abused Child and Social Worker Practitioner. *Qualitative Inquiry* 13(6): 766-786.

Stanley, J. (2003). Child Sexual Abuse in Indigenous Communities. *Child Sexual Abuse: Justice Response or Alternative Resolution Conference*. Australian Institute of Criminology Conference, Adelaide.

Stewart, J. (2005). *Specialist Domestic/Family Violence Courts within the Australian Context*, Australian Domestic and Family Violence Clearinghouse, Sydney: University of New South Wales School of Social Work.

Stojadinovic, T. (2003). 16 Days of Activism Against Gender Violence: Adult Survivors of Childhood Sexual Abuse. *Child Sexual Abuse: Justice Response or Alternative Resolution Conference*. AIC. Adelaide.

Strang, H. (2001). *RESTORATIVE JUSTICE PROGRAMS IN AUSTRALIA: A Report to the Criminology Research Council*. Canberra, Centre for Restorative Justice, Research School of Social Sciences, Australian National University.

Strauss, A., and Corbin, J (1998). *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory*. London, SAGE Publications.

Steffen, T. L. (1988). Truth as Second Fiddle: Reevaluating the Place of Truth in the Adversarial Trial Ensemble. *Utah Law Review*, 799.

Stubbs, J. (2002). Domestic Violence and Women's Safety: Feminist Challenges to Restorative Justice in (eds). Braithwaite, J and Strang, H. *Restorative Justice and Family Violence*, Cambridge, Cambridge University Press.

Stubbs, J. (2004). Restorative Justice, Domestic Violence and Family Violence. *Australian Domestic and Family Violence Clearinghouse* (Paper 9): 1-24.

Daly, K., and Stubbs, J. (2006). Feminist engagement with restorative justice. *Theoretical Criminology*, 10(1), 9-28.

Stevens, A. (2012). 'I am the person now I was always meant to be': Identity reconstruction and narrative reframing in therapeutic community prisons. *Criminology and Criminal Justice*, 12(5), 527-547.

Sullivan, D., and Tift, L (2005). *Handbook of Restorative Justice: A Global Perspective*. Hoboken, Routledge.

Sullivan, K. (1988). Rainbow Republicanism. *Yale Law Journal*, 97(8): 1713-1723.

Summit, R. C. (1983). The Child Abuse Accomodation Syndrome. *Child Abuse and Neglect*, 7: 177-193.

Sumner, C. (2007). *The Blackwell Companion to Criminology*. Oxford, Wiley-Blackwell.

Sustein, C. (1988). Beyond the Republican Revival. *Yale Law Journal*, 97(8): 1539-1590.

Sweeting, Owen, Turley, Rock, Garcia-Sanche, Wilson and Khan, (2008) *Evaluation of the Victims' Advocate Scheme Pilots*. Ministry of Justice, 2008.

Sykes, G. M., and Matza, D. (1957). Techniques of neutralization: A theory of delinquency. *American sociological review*, 22(6), 664-670.

Tarczon, C and Quadara, A (2012) *The nature and extent of sexual assault and abuse in Australia*, Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies, Melbourne.

Taslitz, A. (1999). *Rape and the Culture of the Courtroom*. New York, New York University Press.

Taylor, C. (2002). Intra-familial Rape and the Law In Australia: Upholding the Lore of the Father. *Townsville International Women's Conference - AUSTRALIA*. Townsville.

Taylor, C. (2004). *Court Licensed Abuse: Patriarchal Lore and the Legal Response to Intra-familial Sexual Abuse of Children*. New York, Peter Lang Publishing.

Taylor, S. C., and Gassner, L. (2010). Stemming the flow: challenges for policing adult sexual assault with regard to attrition rates and under-reporting of sexual offences. *Police Practice and Research: An International Journal*, 11(3), 240-255.

Taylor, S. C., and Norma, C. (2012) The ties that bind: Family barriers for adult women seeking to report childhood sexual assault in Australia. In *Women's Studies International Forum*, Pergamon.

Taylor, S. C., and Norma, C. (2012). The “symbolic protest” behind women’s reporting of sexual assault crime to police. *Feminist Criminology*, 7(1), 24-47.

Taylor, V. (1998). Feminist Methodology in Social Movements Research. *Qualitative Inquiry*, 21(4).

Temkin, J. (1997). Plus ça change: Reporting rape in the 1990s. *British Journal of Criminology*, 37(4), 507-528.

Thompson, B. (2002). Multiracial Feminism: Recasting the Chronology of Second Wave Feminism. *Feminist Studies*, 28(2): 337-352

Tjaden, P., and Thoennes, N (2006). *Extent, Nature and Consequence of Rape Victimization: Findings from the National Violence Against Women Survey*. USA: National Institute of Justice.

Trethewey, A (1997): Resistance, identity, and empowerment: A postmodern feminist analysis of clients in a human service organization, *Communication Monographs*, 64:4, 281-301

Toews, B. (2006). *The little book of restorative justice for people in prison: Rebuilding the web of relationships*. Good Books.

Tyler, T. R. (1990). *Why people obey the law: Procedural justice, legitimacy, and compliance*. Yale University Press: New Haven.

Tyler, T. R. (2009). Legitimacy and criminal justice: The benefits of self-regulation. *Ohio Journal of Criminal Law*, 7, 307.

Umbreit, M., Bradshaw, W., and Coates, R (2003). Victims of severe violence in dialogue with the offender: key principles, practices, outcomes and implications in (eds) E. Weitekamp, and Kerner, H., *Restorative Justice in Context: International Practice and Directions*. UK, Willan Publishing.

Umbreit, M., Vos, B., Coates, R.B., Lightfoot, E (2005). "Restorative Justice in the 21st Century: A social movement full of opportunities and pitfalls." *Marquette Law Review* 89: 253-304.

Umbreit, M. (2005) *Peacemaking and Spirituality: Touching the Soul Within the Energy of Conflict and Trauma*. St. Paul, MN: Center for Restorative Justice and Peacemaking.

Umbreit, M. S., Vos, B., Coates, R.B. and Brown, K. (2002). Executive Summary: *Victim Offender dialogue in crimes of severe violence: A Multi site study of programs in Texas and Ohio*. St. Paul, MN: Center for Restorative Justice and Peacemaking.

Van Wormer, K. (2009). Restorative Justice as Social Justice for Victims of Gendered Violence: A Standpoint Feminist Perspective. *Social Work* 54(2): 107-116.

Van de Zandt, P. (1996). *Heroines of Fortitude: the experiences of women in court as victims of sexual assault*. Sydney: NSW Department of Women.

Van der Kolk, B. A., McFarlane, A. C., and Weisaeth, L. (Eds.). (1996). *Traumatic stress: The effects of overwhelming experience on mind, body, and society*. Guilford Press.

Varia, R., Abidin, R.R., Dass, P (1996). Perceptions of abuse: effects on adult psychological and social adjustment. *Child Abuse and Neglect* 20(6): 511-526.

von Hirsch, A. R., A; Bottoms, A; Roach, K; Schiff, M (2003). *Restorative Justice*. Oxford, Hart Publishing.

Walgrave, L. (2002). From community to dominion: in search of social values for restorative justice. eds) E. Weitekamp, and Kerner, H., *Restorative Justice in Context: International Practice and Directions*. UK, Willan Publishing.

Walkate, S. (1989). *Victimology: The Victim and The Criminal Justice Process*. London, Unwin Hyman Ltd.

Walker, S. P., and Louw, D. (2007). The court for sexual offences: Perceptions of the professionals involved. *International Journal of Law and Psychiatry* 30: 136-14

Walker, S. P., and Louw, D. A. (2003). The South African court for sexual offences. *International journal of law and psychiatry*, 26(1), 73-85.

Walker, S. P., and Louw, D. (2005). The Court for Sexual Offences: Perceptions of the victims of sexual offences. *International Journal of Law and Psychiatry*, 28(3), 231-245.

Walther, S (2006) Victims' Rights in the German Court System, *Federal Sentencing Reporter*, 1(2), pp. 113-118

Wang, X., and Ho, P. S. Y. (2007). Violence and Desire in Beijing A Young Chinese Woman's Strategies of Resistance in Father–Daughter Incest and Dating Relationships. *Violence against women*, 13(12), 1319-1338.

Ward, E. (1984). *Father Daughter Rape*. London, The Women's Press.

Watchel, T. (1999). Restorative Justice in Everyday Life: Beyond the Formal Ritual. *Reshaping Australian Institutions Conference: Restorative Justice and Civil Society*. The Australian National University, Canberra.

Weedon (1987) *Feminist Practice and Post-structural Theory*, Blackwell: UK.

Wemmers, J (2009) Where do they belong? Giving Victims a place in the criminal justice process, *Criminal Law Forum* (2009) 20:395–416

Wemmers, J. A. (2007). Victim participation and therapeutic jurisprudence: a Canadian perspective, *International Institute for the Sociology of Law*, Spain.

Wemmers, J and Cyr, K (2006) What fairness means to crime victims: a social psychological perspective on victim-offender mediation. *Applied Psychology in Criminal Justice*, 2006, 2(2)

Wemmers J and Cyr, K (2005) Can Mediation Be Therapeutic for Crime Victims? An Evaluation of Victims' Experiences in Mediation, *Canadian Journal of Criminology and Criminal Justice*; 47 (3) pg. 527

Wenger, C. (1987). *The Research Relationship: Practice and Politics in Social Policy Research*. London, Allen and Unwin.

Wengraf, T. (2001). *Qualitative Research Interviewing*. London, SAGE Publications.

Wenzel, M., Okimoto, T.G., Feather, N.T, Platow, M.J (2007). Retributive and Restorative Justice. *Law and Human Behaviour* 32: 375-389.

Whitfield, C. (1997). Internal verification and corroboration of traumatic memories of child sexual abuse. *Journal of Child Sexual Abuse* 6(3).

Whittam, A., and Ehrat, H (2003). Child Witnesses in the Criminal Justice System-The Issue of Vulnerability. *Child Sexual Abuse: Justice Response or Alternative Resolution Conference*. Adelaide: Australian Institute of Criminology Conference.

Wolgemuth, J., and Donohue, R (2006). Towards an Inquiry of Discomfort: Guiding Transformation in 'Emancipatory' Narrative Research. *Qualitative Inquiry* 12: 1012-1039.

Wolhuter, L., Olley, N., and Denham, D (2008). *Victimology: Victimisation and Victims' Rights*. Hoboken, Routledge-Cavendish.

Wood, E., and Riggs, S (2008). Predictors of Child Molestation: Adult attachment, Cognitive Distortions and Empathy. *Journal of Interpersonal Violence* 23(2): 259-275.

Wood, J. (2003). Sexual Assault and the Admission of Evidence *Practice and Prevention: Contemporary Issues in Adult Sexual Assault in NSW Conference*.

Wright, M. (2002). The Court as Last Resort: Victim-Sensitive, Community-Based Responses to Crime. *British Journal of Criminology*, 42: 654-667.

Wright, S. (2003). Managing unacceptable risk: the risk assessment and management of child sexual offenders. *Child Sexual Abuse: Justice Response or Alternative Resolution Conference*. Adelaide: Australian Institute of Criminology Conference

Yllo, K. (2005). Through a feminist lens: Gender, Diversity and Violence-Extending the feminist framework in (eds) D. Loseke, Gelles, R., and Cavanagh, M. *Current Controversies on Family Violence*. USA, SAGE

Young, A. (1998). The Wasteland of Law. *Melbourne University Law Review* 22: 442-465.

Young, M. (2007). *Aboriginal healing circle models, addressing child sexual assault: an examination of community based healing circles used to address child sexual assault within Aboriginal communities in Canada*, The Winston Churchill Memorial Trust of Australia.

Young, M., Harford, K., Kinder, B., and Savell, J (2007). The relationship between childhood sexual abuse and adult mental health among undergraduates. *Journal of Interpersonal Violence* 22(10): 1315-1331.

Young, I (1990) *Justice and the politics of difference*, Princeton University Press, Princeton.

Zehr, H. (2002). Journey to Belonging. in (eds) E. Weitekamp, and Kerner, H., *Restorative Justice in Context: International Practice and Directions*. UK, Willan Publishing.

Zollinger Giele, J. (1997). Introduction: Windows on New Family Forms: Insights from Feminist and Familist Perspectives. *Qualitative Sociology*, 20(2): 143-152.

Zehr, H. (2002). *The little book of restorative justice*. Intercourse, PA: Good Books.

Appendix One: Recruitment poster and pamphlet

ARE YOU A SURVIVOR OF CHILDHOOD SEXUAL ASSAULT?

Are you female and 18 years or over? Was the abuse perpetrated by a family member?

PARTICIPANTS NEEDED



To take part in a UNSW PhD research study exploring the needs, perceptions and experiences of justice in NSW for women survivors of intra-familial child sexual assault and possible pathways to justice

This information will be used both for my thesis and in an attempt to improve justice options open to women such as your selves.

What we require of you:

- **To fill in a voluntary survey which you can pick up from this centre/agency. This will take about 10-15 minutes.**

Your contribution is vital to the success of the study. It is through the participation of women like yourselves that we have the potential to achieve positive changes in social policy and law reform!

All information collected will remain anonymous and confidential. You will not be required to provide information that may upset you.

For more information contact Mif on 0424026041 or email m_hudson40@hotmail.com

Appendix Two: Information and Consent Form



PARTICIPANT INFORMATION STATEMENT AND CONSENT FORM

An exploration of the needs, perceptions and experiences of justice in NSW for women survivors of intra-familial child sexual assault and possible pathways to justice.

You are invited to participate in a survey entitled “Women survivors of child sexual assault and their views on justice.” The purpose of this survey is to gather information from women, who have experienced childhood sexual abuse by a family member, concerning their ideas about and experiences of justice. I am conducting this survey as a PhD student at the University of New South Wales, and the data will be used towards my thesis.

If you decide to participate, this survey will give you the opportunity to voice your opinions about the needs of women who have experienced childhood sexual assault. It will also give you the opportunity to speak about your experiences and perceptions of justice. **This survey will not ask you to describe the abuse you have suffered as a child.** This survey will take approximately 10-15 minutes to complete.

Your participation in this survey is important to the success of this study. Often the experiences of women who have survived childhood sexual assault go unheard, and your contribution will be valuable to this study. My intention is to learn from you, in an attempt to improve justice options open to women such as yourself. However, I cannot guarantee an improvement in justice options.

Any information that is obtained in connection with this study and that can be identified with you will remain confidential and will be disclosed only with your permission, except as required by law. By completing this survey, you will be giving your consent for me to use this information in my thesis and related publications. In any publication, information will be provided in such a way that you cannot be identified.

Complaints may be directed to the Ethics Secretariat, The University of New South Wales, SYDNEY 2052 AUSTRALIA (phone 9385 4234, fax 9385 6648, email ethics.sec@unsw.edu.au). Any complaint you make will be investigated promptly and you will be informed of the outcome.

Feedback on the results of the final study will be made available in a newsletter that will be distributed to all participating agencies and health centres. If you would like results sent directly to your mail or email address, please contact the researcher using the number below.

Your decision whether or not to participate will not affect your future relations with the University of New South Wales or the agency where this survey is located. If you decide to fill in this survey, you are free to withdraw your consent and to discontinue participation at any time without prejudice.

If you have questions about this survey or would like to discuss any related issues, please contact Myvanwy Hudson on 0424026041.

Thank you for your participation in this survey.

Appendix Three: Survivor Survey

SECTION A: Selection Criteria

Because we need more information about female survivors of child sexual assault within the family, it is important that you answer the following questions first.

A. Are you female and over 18?

Yes ☐

No ☐

B. Are you a survivor of childhood sexual assault? This involves any unwanted sexual contact experienced as a child (anyone under the age of 18).

Yes ☐

No ☐

C. Was the assault committed by someone within your immediate or extended family? This could include foster families, step families and adopted families.

Yes ☐

No ☐

If you answered 'No' to any of the above, please do not complete this survey.

SECTION B: General Information

This section asks you to tell us a bit about yourself. This information is important because it will tell us a bit more about the age groups, cultural and educational backgrounds of the women who are answering this survey.

1. Please tick the age group that you are in:

18-25 ☐ 26-35 ☐ 36-45 ☐ 46-55 ☐ 56+ ☐

2. It is important that we hear from women from many cultural backgrounds. If you feel comfortable, can you please tell us what cultural background you are from?

3. It is also important that we hear from women from different educational backgrounds. What is the highest level of education that you have completed?

Did not finish high school ... ☐ Trade Certificate/Diploma ... ☐

High School... .. ☐ Degree ☐

4. What type of region do you live in?

Metropolitan city ☐ Regional city... .. ☐

Town ☐

Remote/Rural ☐

Other (please specify) ☐ _____

5. Is there anything else you would like to tell us about yourself that you think we should know?

6 a) People deal with their experiences of child sexual assault in many ways. What is helpful to one person might not be helpful to another person. What has helped/would help you to deal with what happened to you? (Tick as many that apply)

	Has helped	May be helpful in future
Counselling	<input type="checkbox"/>	<input type="checkbox"/>
Telephone counselling.....	<input type="checkbox"/>	<input type="checkbox"/>
Friendships	<input type="checkbox"/>	<input type="checkbox"/>
Partner(s).....	<input type="checkbox"/>	<input type="checkbox"/>
Reporting to the police	<input type="checkbox"/>	<input type="checkbox"/>
Going to court.....	<input type="checkbox"/>	<input type="checkbox"/>
Speaking out publically	<input type="checkbox"/>	<input type="checkbox"/>

Helping other survivors	<input type="checkbox"/>	<input type="checkbox"/>
Talking to other survivors	<input type="checkbox"/>	<input type="checkbox"/>
Spirituality/Religion	<input type="checkbox"/>	<input type="checkbox"/>

6b) Is there anything else you would like to add about what has helped you or might help you deal with your experiences of child sexual assault?

7. a) Some people feel they need to report the abuse to the police while many people choose not to. What have you done?

I have reported the abuse to the police ☐

Someone else has reported the abuse to the police ... ☐

I have not reported the abuse to the police... .. ☐

7.b) Is there anything you would like to tell us about the decision to report or not report the abuse to the police?

[illegible]

*If the abuse was not reported to the police, go to **Section E, Pg 12***

SECTION C: Experiences with the Police

COMPLETE THIS SECTION ONLY IF YOU HAD DEALINGS WITH THE
POLICE

8.a What year was the abuse reported to the police? _____

8.b Were you an adult (18 and over) when the abuse was reported to the police?

Yes ☐

No ☐

9. What led to the abuse being reported to the police?

10 i) This question will be about what it was like to give your statement. Please tick if you were able to (tick as many that apply):

Give your statement to a female officer... .. ☐

Give your statement to an officer who has specialized training ☐

Have a support person with you... .. ☐

10 ii) In your own words, can you tell us what it was like to give your statement?

11. How long (approximately) did it take for the police to take your statement?

_____ mins/hours/days

12. How satisfied or dissatisfied were you with the length of time the police took to take your statement?

Very dissatisfied... .. ☐

Slightly dissatisfied ☐

Neither dissatisfied or satisfied ☐

Slightly satisfied ☐

Very satisfied ☐

13. Did you feel that the police believed you?

Yes ☐

Unsure ☐

No ☐

14. Did the police conduct an investigation?

Yes ☐

No ☐ What were their reasons? _____

15. How long (approximately) did the investigation take?

_____ days/weeks/months

16. Research tells us that only a small percentage of child sexual assault cases make it to court. Did the police decide to press charges? What were their reasons for this decision?

17. Overall, how satisfied or dissatisfied were you with the way you were treated by the police?

- Very dissatisfied ☐
- Slightly dissatisfied ☐
- Neither dissatisfied or satisfied ☐
- Slightly satisfied ☐
- Very satisfied ☐
- Unsure/Can't remember ☐

18. Is there anything else you would like to tell us about your experiences with the police?

SECTION D: Court Experience

COMPLETE THIS SECTION ONLY IF YOUR CASE WENT TO COURT

19a. How long after you went to the police did it take for the case to get to court?

_____ weeks/months/years

19b. What year did the case go to court? _____

20. Were you an adult when the case went to court?

Yes ☐

No ☐

21. Where was the case held?

NSW ... ☐

TAS ... ☐

ACT ... ☐

WA ... ☐

VIC ... ☐

SA ... ☐

QLD ... ☐

NT ... ☐

Overseas ... ☐

22. How long did the trial run for? _____ (weeks/months/years)

23. What was the outcome of the case?

Acquittal/Not Guilty ... ☐

Guilty (to a lesser charge)... ☐

Guilty ☐

Trial did not finish ☐

24. What were your expectations of the trial? (*This might include things like what you wanted the outcome to be or how you wanted to be treated*).

25. Did you have a support person with you during the trial? (Tick all that apply)

Parent ☐

Other Relative ☐

Social Worker ☐

Friend ☐

Counsellor ☐

Partner ☐

Other ☐ _____ (*please specify*)

26. Please tick how satisfied or dissatisfied you were with the following:

	Very Dissatisfied	Slightly Dissatisfied	Neither Dissatisfied or satisfied	Slightly Satisfied	Very Satisfied
Outcome of the trial	<input type="checkbox"/>				<input type="checkbox"/>
Length of the trial	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>
Court procedure	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>

27. How did you feel you were treated by the following people?

	Very Badly	Badly	Neither well or badly	Well	Very Well
Crown Prosecutor	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Defense Counsel	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judge/Magistrate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Court Officials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Police	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

28. Court processes can be difficult to understand sometimes. Did you understand what was happening during the court process?

29. Would you tell other adult survivors of child sexual assault to go through the court process? (Please use the lines below if you would like to tell us a bit more about your reasons).

Yes ☐

Unsure ☐

No ☐

30. In your own words, can you please describe your court experience? (Feel free to write as little or as much as you like. All information is important to us).

[illegible]

[illegible]

SECTION E: Perceptions of Justice

This section asks about your ideas of justice, and what you think the consequences should be for offenders of child sexual assault. It is important that we hear from people like yourself because the needs of survivors are often ignored in the justice system.

31. People choose many paths to help them heal from child sexual assault. Justice is only one of many paths that people may choose. How important is justice to you?

Very Important ☐

Important ☐

Neither ☐

Unimportant ☐

Very unimportant ☐

Unsure... .. ☐

32. Justice looks like different things to different people. Do you know what justice would look like to you? *(For more room, use the lines at the back of the survey)*

33. People have different ideas about justice. Please tell us how helpful or unhelpful these justice options would be for you:

	Very unhelpful	Unhelpful	Unsure	Helpful	Very helpful
Prison sentence for offender	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Offender makes public apology	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
Offender provides financial compensation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Offender completes rehabilitation program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Offender is placed on a sex offender registry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Offender takes the blame for what he has done	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

Offender's family ☐ ☐ ☐ ☐

knows what he

has done

Being involved ☐ ☐ ☐ ☐

in the decision

making process

of what happens

to the offender

Being able to ☐ ☐ ☐ ☐

tell your whole

story to the court

Being able to ☐ ☐ ☐ ☐

tell your whole

story in front

of people who

are important

to you

Having ☐ ☐ ☐ ☐

access to

a specialist court

that has understanding

of child sexual

abuse issues

34. Is there anything else that you feel you might need from the justice system?

[illegible]

**This section may be upsetting-please do not answer this section if you find it upsetting.*

SECTION F: Characteristics of Abuse

- This section will ask you some general questions about the abuse and the effect it may have had on your life.
- This section is important because it will provide information that often goes unheard about the abuse children experience.
- *You will not be asked to describe the abuse.*

35. i) How old were you when the abuse first started?

Under 5 ☐

5-8 years old..... ☐

9-12 years old..... ☐

13-16 years old..... ☐

Can't remember..... ☐

35.ii) How long did the abuse last for?

Single incident ☐

6-8 years ☐

Under 12 months ☐

9-11 years ☐

1-2 years ☐

11+ years ☐

3-5 years ☐

Can't remember ☐

36. Have you ever had times in your life when you have forgotten the abuse happened (i.e repressed memory)? Can you tell us a bit more about this?

37. How long after the abuse ended did you first tell someone? _____


38. How did you feel after you first told someone about the abuse?

39. In your own words, can you please describe the effects the abuse has had on your life? (*Feel free to write as much or as little as you would like. All information is valuable to us.*)

[illegible]

40. Is there anything else you would like to tell us?

41. Are you interested in participating in a face to face interview where you will be able to discuss these issues in more detail?

Yes ☐  Please turn to the following page for more details.

No ☐

Thank you for completing this survey

SECTION G: WILLINGNESS TO BE INTERVIEWED

This in-depth interview will expand on the issues discussed in this survey. This is the next step in the research process and will give you the opportunity to discuss your experiences and ideas in greater detail. Your participation is valuable to this research and will provide us with information that is often not heard by policy makers and government agencies.

All interviews will take place either at ASCA in North Sydney, the University of New South Wales, Kensington campus or via phone and will be an hour long. You will be compensated for your travel expenses to and from the interview venue.

If you are currently experiencing persistent emotional distress or an ongoing mental health issue, it is preferable that you do not participate in the interview. Again, you will not be asked to answer any questions that may cause you distress.

Your responses will remain private and confidential.

If you would like further information about the interview, please contact Mif Hudson on 0424026041. Please fill in your preferred contact details below and return this sheet with the survey in the supplied envelope

.....

Contact Name: _____

Phone No: _____

Email: _____

Would you prefer to be contacted by email or phone? _____

When is the best time to contact you? _____

Appendix Four: Survivor Interview Schedule

Interviewer Script:

<p>Interviewer Introduction</p>	<p>Thank you for agreeing to participate in this interview. The purpose of this survey is to expand on the topics touched on in the survey you completed. I'm interested in women's experiences and getting women's opinions about what they think is needed for survivors who have experienced child sexual assault within the family to achieve justice.</p> <p>This interview will be divided into three sections, which focus on the harms you have suffered, whether you have been involved with the criminal justice system and your concept of justice. Each section will take about 20 minutes and we will have a break between each section.</p> <p>However, you do not have to discuss any aspect of the actual abuse with me or describe any traumatic memory. You do not have to describe anything that is upsetting or you feel is too personal. If at any stage you would like to stop for a while, or stop the interview entirely, please let me know.</p>
<p>Generative Narrative Question 1: Harms Suffered</p>	<p>Some survivors report that they suffer from the effects of child sexual assault long into adulthood, whereas some people report that their experiences have had little impact on their adult lives.</p> <p>Everyone has different reactions, so there really is no one right way of reacting. Please tell me about whether your experiences of child sexual assault have impacted upon your life now. You can take your time in doing this, and please go into detail if you would like to, because for me everything is of interest that is important to you.</p>
<p>Specific Probes:</p>	<p>Have you suffered:</p> <ul style="list-style-type: none"> ▪ Physical harm? (e.g sleeplessness? Hyper-vigilism? Anxiety? Depression? Etc) ▪ Psychological harm (thoughts AND emotions) ▪ Interpersonal (e.g issues forming and maintaining relationships) ▪ financial harms <p>as a result of the abuse?</p> <p>What, if anything, have you done to achieve closure?</p> <p>What advice would you give others who have experienced the same thing?</p> <p>Are there things you'd like other people to know about child sexual assault in</p>

	general?
Generative Narrative Question 2: Involvement with the Criminal Justice System	<p>Research shows that only a small percentage of survivors report their abuse to the police. An even smaller percentage actually takes the matter to court. This is quite understandable. Please tell me about any experiences you may have had with the criminal justice system as a result of being a survivor? I'm interested to know whether or not you've been to the police and whether the case was taken to court.</p> <p>Again, take your time, and feel free to stop if you need to.</p>
Specific Probes	<p><u>For those who have reported to the police:</u></p> <p>Have you reported your experiences to the police? What influenced your decision to report the abuse to the police?</p> <p>What happened when you contacted the police?</p> <p>How did you feel you were treated by the police?</p> <p>Did the case go to trial? Why/ Why not?</p> <p><u>For those whose cases went to court</u></p> <p>Can you describe what happened when the case went to court?</p> <p>Is there anything you would change about the justice process?</p> <p>Were you satisfied with the outcome of the trial?</p> <p>Would you recommend that others go through this process? Why/ Why not?</p> <p><u>For those who haven't taken reported to the police</u></p> <p>If you haven't been involved with the police or court system, please tell me why you have chosen not to get involved with the justice system?</p> <p>What influenced your decision not to report the abuse?</p> <p>Would you report the abuse to the police in the future?</p>
Generative Narrative Question 3: Ideas of Justice	<p>Finally, I'd like to ask you about how you see the way justice can be achieved for survivors of child sexual assault. This information is important because at present there are many theories about how justice can be achieved for survivors. Some experts believe specialist courts* are important, others believe that harsher sentencing is important, while some researchers believe that restorative justice ** is important. At present, there are many different beliefs about what approach/es are useful for survivors.</p> <p>What is important for you in terms of justice? What would justice mean to you?</p> <p>*(Restorative Justice involves all parties involved coming together to deal with the aftermath of the offence and its implications for the future.)</p>

Specific Probes	<p>How do you think justice can be achieved for survivors?</p> <p>What should be the consequences for perpetrators of child sexual assault?</p> <p>Would you feel comfortable confronting the offender?</p> <p>Do you know of other survivors who have achieved justice? How have they achieved justice?</p> <p>Do you think having justice is important to achieve resolution?</p> <p>What do you think are some alternatives to the current criminal justice process?</p>
Interviewer Conclusion	<p>Thank you very much for your participation and contribution to this study. I will be contacting you over the next couple of days in case the interview raised questions or issues for you. Once I have completed all my interviews I will create a written interview transcript, which I will send to you. At that stage, you will have the opportunity to comment upon your interview, make changes or add additional information if you would like to.</p> <p>If you are interested I can send you a draft copy of my thesis, and you will have the opportunity to comment upon how your interview has been used. If you don't want to see the study, that's fine too.</p> <p>Thank you again for participating in this study.</p>

** A specialist court is a court established for the purpose of prosecuting a particular crime. Legal counsel, magistrates, judges and court officials are given specialist training and knowledge about the nature of the crime.*

A specialist court would have the same authority as a regular district court, and would enforce both the same criminal and evidentiary law.

*** Restorative Justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.*

Appendix Five: Stakeholder Interviews

Stakeholder Interview

1. Interviewer Introduction	<p>Thank you for agreeing to be interviewed. The purpose of this survey is to interview a range of stakeholders about their views on the justice system's response to adult survivors of child sexual assault. By the justice system, I mean every stage of the justice process from policing, the court process and the way the offender is dealt with.</p> <p>I am particularly interested in your views on whether there are any problems within the justice system, and your views about what reforms may be needed. I will also be asking you about your views on alternative pathways to justice.</p> <p>This interview will take approximately an hour.</p>
2. Work role	<p>2.1 Can you briefly describe the functions of your agency? [Not applicable to all stakeholders].</p> <p>2.2 Can you tell me about your [role in the agency/work that you do]?</p> <p>2.3 How long have you worked in this capacity?</p>
3. Knowledge of survivors' needs	<p>3.1 What do you think are some of the main challenges that adult survivors of CSA face?</p> <p>3.2 What do you think some of their [adult survivors of CSA] needs are when it comes to dealing with their past?</p>
4. Knowledge and views about the justice system	<p>4.1 What views do you have about the way the justice system treats adult survivors of child sexual assault?</p> <p>4.2 What, if any, are some of the problems within the justice system (in relation to handling child sexual assault matters)?</p> <p>4.3 What improvements/reforms should be made? Why?</p> <p>4.4. What improvements could realistically be made? Why?</p>

5. Views on alternative pathways to justice [specialist courts]	<p>5.1 To what extent do you believe a specialist sexual offences court* would be useful for adult survivors of CSA?</p> <p>5.1 What would be the advantages of creating a specialist sexual offence court?</p> <p>5.2 What would be the disadvantages of creating a specialist sexual offence court?</p>
6. Views on alternative pathways to justice [restorative justice]	<p>6.1 What are your views about offering a restorative justice program** for adult survivors of CSA/offenders instead of incarceration?</p> <p>6.2 What are your views about offering a restorative justice programme for adult survivors of CSA/offenders in addition to a prison sentence?</p> <p>6.3 What would be the advantages of offering either of these programs?</p> <p>6.4 What would the disadvantages of offering either of these programs?</p>
7. Other innovative programs	<p>7.1 Do you know of other jurisdictions in Australia or overseas that may be implementing more innovative justice programs for survivors of CSA?</p> <p>7.2 Can you briefly describe the strengths and weaknesses of this innovative approach?</p>
8. Barriers to Law Reform/ implementation	<p>8.1 In your opinion, what are some of the barriers to any of the reform measures we have discussed? (For example financial constraints, resistance from policy makers, legal practitioners etc)</p> <p>-8.1a What would be the barriers to implementing a specialist sexual assault court in NSW?</p> <p>-8.1b What would be the barriers to implementing a specialised restorative justice program for adult survivors of child sexual assault in NSW?</p> <p>8.2 Do you have any suggestions as to how these barriers could be overcome?</p>

9. Additional comments	9.1 Is there anything else that you would like to discuss?
10. Conclusion	Thank you very much for your participation and contribution to this study. At the end of this research, your organisation will be given a copy of the research findings.

** A specialist court is a court established for the purpose of prosecuting a particular crime. Legal counsel, magistrates, judges and court officials are given specialist training and knowledge about the nature of the crime.*

A specialist court would have the same authority as a regular district court, and would enforce both the same criminal and evidentiary law.

*** Restorative Justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.*

Appendix Six: Table 5 Quantitative Table

Table 5: Questionnaire responses to usefulness of legal options in achieving a sense of justice

Consequences and practices that may be useful	Very unhelpful	Unhelpful	Unsure	Helpful	Very helpful
Prison sentence for offender	3 (13.6%)	3 (13.6%)	3 (13.6%)	2 (9%)	10 (45.5%)
Offender makes public apology	4 (18%)	6 (27%)	2 (9%)	3 (13.6%)	5 (22.7%)
Offender provides financial compensation	4 (18%)	4 (18%)	1 (4.5%)	5 (22.7%)	8 (36.3%)
Offender completes rehab program	6 (27%)	1 (4.5%)	5 (22.7%)	5 (22.7%)	4 (18%)
Offender is placed on sex offender registry	1 (4.5%)	1 (4.5%)	0	7 (31.8%)	12 (54.5%)
Offender admits responsibility	1 (4.5%)	0	2 (9%)	1 (4.5%)	17 (77.3%)
Offender's family knows about the abuse	2 (9%)	0	1 (4.5%)	4 (18%)	14 (63.6%)
Being involved in the decision making process of what happens to the offender	1 (4.5%)	1 (4.5%)	5 (22.7%)	3 (13.6%)	11 (50%)
Being able to tell your whole story to the court	3 (13.6%)	4 (18%)	4 (18%)	4 (18%)	6 (27%)
Being able to tell your whole story in front of people who are important to you	2 (9%)	1 (4.5%)	5 (22.7%)	3 (13.6%)	10 (45.5%)
Access to a specialist court	1 (4.5%)	0	3 (13.6%)	2 (9%)	15 (68.2%)

*As participants were given the opportunity to select what would or would not be helpful, not all participants answered this item, which accounts for the numerical discrepancies.

** Percentages indicate the number of participants who indicated their preference compared to the cohort of twenty two survivors.