



Stuck in Suffering: A Philosophical Exploration of Violence^{*}

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ABSTRACT

This article considers and evaluates some of the elastic applications of the term ‘violence’. Some of the most well-known applications are structural, symbolic, epistemic, psychosocial, and linguistic violence. Should these phenomena be understood as violence-proper or are these merely provocative hyperbole? Some scholars are openly resistant to these elastic applications, arguing that calling these phenomena ‘violence’ is no more than conceptual carelessness. The question we are interested in is why people continue to be drawn to the image of violence to typify certain phenomena that cause suffering. We identify that it is the temporal extension (i.e. the experiential duration) of the experience of *stuckedness* in suffering that unifies these conditions. In close, we offer some reflections on the relationship of law to (what is called) violence and where it can mitigate stuckedness.

KEYWORDS Violence; temporality; structural injustice; sexism; racism; phenomenology

1. Introduction

If we asked you to close your eyes and imagine *violence*, what impression would spring to mind? Probably an act of physical force between an agent and a victim (or victims), inflicting some kind of suffering or harm. This is what we shall call *the paradigm conception of violence*. Vittorio Bufacchi and Jools Gilson draw our attention to the typical features of violence so-imagined. Specifically, violence is understood as a phenomenon which is ‘perpetrator-centred, intentionality-centred, and time-specific’.¹ This means our focus is on the agent who acts rather than the victim who (may) suffer(s), on whether the agent deliberately and knowingly undertook to act violently, and *when* the act of violence occurred. In other words, the exemplar image of

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¹Vittorio Bufacchi and Jools Gilson, ‘The Ripples of Violence’ (2016) 112(1) *Feminist Review* 27, 33.

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violence is roughly that of deliberate physical acts of non-consensual force by a perpetrator occasioned against a subject (specifically, that subject's physical body) which produces suffering of some kind.² Put even more simply, 'A hits B, and B hurts'.³ Are there other kinds of violence? Ann Murphy notes that there 'has been a significant expansion of what is thought under the rubric of "violence"', remarking on the 'sheer breadth of phenomena that are currently thought under that moniker'.⁴

The tasks of Sections 1 and 2 of this article are to elaborate, consider, and evaluate some elastic applications of the term 'violence' to phenomena most experienced by groups who are oppressed, such as gender and racial groups. Some of the most well-known elastic (or 'wide')⁵ applications of the term violence are structural, symbolic, epistemic, psychosocial, and linguistic violence.⁶ One may wonder whether these should, indeed, be understood as kinds of violence, or whether the use of 'violence' here is merely a provocative motif/metaphor. Some scholars are openly resistant to this elastic use of 'violence', arguing that its extended application is no more than 'conceptual carelessness'.⁷ But, even if these wide notions of violence ought not to be called such, we wonder: why have people been drawn to the image of violence to typify these particular phenomena?

While we too have concerns about the overuse of violence, we are primarily interested in the temporal extension (i.e. the experiential duration) of the experience of suffering, and through analysis of 'the stuckedness' of suffering in Section 3, we hope to gain insights about the appeal of the image of violence. In Section 4, we offer some reflections of the relationship between law and (what is called) violence and where law can mitigate 'stuckedness' (as detailed in Section 3). In close, we conclude that stuckedness is a symptom

²Note that 'violence is ... one way of coercing, but only one'. See CAJ Coady, 'The Idea of Violence' in Vittorio Bufacchi (ed), *Violence: A Philosophical Anthology* (Palgrave Macmillan 2009) 244, 259.

³Bob Brecher, 'Andrea Dworkin's *Pornography: Men Possessing Women* – A Reassessment' in Herjeet Marway and Heather Widdows (eds), *Women and Violence: The Agency of Victims and Perpetrators* (Palgrave Macmillan 2015) 145, 151.

⁴Ann V Murphy, *Violence and the Philosophical Imaginary* (State University of New York Press 2012) 16.

⁵Coady (n 2, 260) separates 'violence' into three major categories – 'wide', 'restricted', and 'legitimate' – arguing that only the restricted conception of violence is violence. The restricted conception of violence includes psychological injury; however, this is slightly different to the notion of 'psychosocial violence' which we discuss in the text.

⁶Pierre Bourdieu and Loïc Wacquant, 'Symbolic Violence' in Nancy Scheper-Hughes and Philippe Bourgois (eds), *Violence in War and Peace: An Anthology* (Blackwell 2004) 272; Kristie Dotson, 'Tracking Epistemic Violence, Tracking Practices of Silencing' (2011) 26(2) *Hypatia* 236; Melinda Jones, 'Empowering Victims of Racial Hatred by Outlawing Spirit Murder' (1994) 1(1) *Australian Journal of Human Rights* 299; Johan Galtung, 'Violence, Peace and Peace Research' in Vittorio Bufacchi (ed), *Violence: A Philosophical Anthology* (Palgrave Macmillan 2009) 78; Anastasia Powell and Nicola Henry, *Sexual Violence in a Digital Age* (Palgrave Macmillan 2017); Louise Richardson-Self, *Hate Speech Against Women Online: Concepts and Countermeasures* (Rowman and Littlefield International 2021); Gayatri Chakravorty Spivak, 'Can the Subaltern Speak?' in C. Nelson and L. Grossberg (eds), *Marxism and the Interpretation of Culture* (Macmillan Education 1988) 271; Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press 1990).

⁷Coady (n 2, 244).

of injustice, of which violence is one kind, and the mitigating capacities of the law to affect stuckedness depends on the kind of injustice in question.

2. Violence Beyond the Paradigm

Anastasia Powell and Nicola Henry see violence ‘as not simply a physical act involving a physical injury but also a *psychosocial* and *structural* problem’.⁸ Moreover, they assert that ‘dominant conceptions of violence render other forms of violence invisible or insignificant’.⁹ First to psychosocial violence – to what does it refer? Lacking further elaboration, we might suppose that the ‘psycho’ in psychosocial refers to certain psychological harms experienced by individuals without the presence of physical force, such as terror or emotional distress, due to the actions of some agent.¹⁰ It could also be conceived of as ‘harm to identity and personal dignity’.¹¹ Emphasising the ‘social’ in psychosocial, we might think of certain acts to which certain social groups are more likely to succumb and suffer. Maybe something like the normatively expected submission of wives to husbands in (cis-hetero-)romantic settings would be considered a type of psychosocial violence, by this account.¹² It might also include the phenomenon of such things as ‘moral gaslighting’ (as Kate Manne theorises it),¹³ to which women are especially vulnerable. Notably, in such situations, the ‘force’ in play is not physical; it is perhaps better understood as (societal) coercive pressure.¹⁴

What, then, of the structural aspect of this phenomenon? The notion of *structural violence* originally hails from Johan Galtung. In fact, Galtung also agrees that the paradigm case of violence involves ‘somatic incapacitation, or deprivation of health (along with killing as the extreme form), at the hands of an actor who intends this to be the consequence’.¹⁵ But, as with Powell and Henry, Galtung thinks violence expands beyond this restricted conception. For one thing, there is ‘violence that works on the body, and violence that works on the soul; where the latter would include lies, brainwashing, indoctrination of various kinds, threats, etc. that serve to decrease mental potentialities’.¹⁶ This seems to link up with the psychosocial conception of violence we speculated above

⁸Powell and Henry (n 6, 4), our emphasis.

⁹ibid 65.

¹⁰Elizabeth Frazer and Kimberly Hutchings, *Violence and Political Theory* (Polity Press 2020) 3.

¹¹Jones (n 6, 320).

¹²Maira Gatens, ‘Can Human Rights Accommodate Women’s Rights? Towards an Embodied Account of Social Norms, Social Meaning, and Cultural Change’ (2004) 3 *Contemporary Political Theory* 275, 286–7.

¹³Kate Manne, ‘What is Gaslighting?’ (The Australasian Association of Philosophy Conference, online, 7 July 2021).

¹⁴Powell and Henry write, ‘the basic, common character underlying women’s many and varied experiences of sexual violence is that men use a variety of forms of *abuse*, *coercion*, and *force* in order to control women’ (n 6, 27).

¹⁵Galtung (n 6, 80).

¹⁶ibid 82.

with respect to social group dynamics involving super- and sub-ordination. Structural violence is 'that which is built into the structure [of a society] and shows up as unequal power and consequently unequal life chances'.¹⁷

Take an example. The life expectancy of First Nations Peoples is between 7 and 9 years fewer than settlers.¹⁸ Of such a case, Galtung would remark:

In a society where life expectancy is twice as high in the upper as in the lower classes, violence is exercised even if there are no concrete actors one can point to directly attacking others, as when one person kills another.¹⁹

So, where there is (bodily) suffering affecting a whole group of individuals, but not any others, then there is something built into the structure of that society, enabling unequal 'potentialities' (to use Galtung's term) with respect to both power (i.e. autonomy) and life chances (due to early death). Thus, we see that at least some thinkers believe 'that individual intentionality or agency is not a necessary condition for violence'.²⁰

Sometimes structural violence is hard to spot. Using a metaphor, Galtung says that personal violence registers like 'waves on otherwise tranquil waters' while 'structural violence is silent, it does not show – it is essentially static, it is the tranquil waters'.²¹ But from whose perspective are the waters tranquil? We know that social situatedness reveals certain aspects of our world more clearly to some rather than others. Gaile Pohlhaus explains,

social position has a bearing on what parts of the world are prominent to the knower and what parts of the world are not. Epistemically speaking, *situatedness* is fundamentally about how relations with others position the knower in relation to the world.²²

Thus, the multitude of intersecting factors that result in different life expectancies for First Nations Peoples and settler Australians (among other inequalities), for example, are likely to 'stand out like an enormous rock in a creek' for First Nations Peoples, while the waters are entirely 'tranquil' from settlers' (especially white settlers') perspectives – this is because they do not face the structure (the metaphorical rock), it escapes them; as the structure does not directly harm or hinder them in the same way, they are not attuned to others' suffering in its fullest extent.²³

¹⁷ibid 83.

¹⁸Australian Institute of Health and Welfare, 'Indigenous Life Expectancy and Deaths' (online, 23 July 2020) <<https://www.aihw.gov.au/reports/australias-health/indigenous-life-expectancy-and-deaths>> accessed 9 September 2021.

¹⁹Galtung (n 6, 84), our emphasis.

²⁰Frazer and Hutchings (n 10, 2).

²¹Galtung (n 6, 86), original emphasis.

²²Gaile Pohlhaus Jr., 'Relational Knowing and Epistemic Injustice: Toward a Theory of Willful Hermeneutical Ignorance' (2012) 27(4) *Hypatia* 715, 717, original emphasis.

²³Galtung (n 6, 86).

In this respect, the notion of structural violence seems to overlap with both the notions of epistemic and symbolic violence. *Epistemic violence* describes attempts at ‘a complete overhaul of the episteme’²⁴ of a group categorised as ‘Other’ by a dominant Subject(ivity), with ‘the devastating effect of the “disappearing” of knowledge’ of the Other.²⁵ Common in colonial projects, the following statement by Thomas Macaulay on the aims of the British Raj starkly demonstrates this: ‘We must at present do our best to form a class ... of persons, Indian in blood and colour, but English in taste, in opinions, in morals, and in intellect’.²⁶ Epistemic violence is frequently intentional; it is no mere forgivable accident (though it can be a consequence of ignorance), for its function is to *eliminate* what the Other knows from their situated perspective. The imposition of a dominant episteme is also not unique to the project of colonisation. It is increasingly argued that theory itself, as well as institutions and interpersonal encounters, can result in (*cause*), or be instances of (*constitute*) epistemic violence. Note, in the discussion below, how power relations (including social identity power)²⁷ and contextual factors are at work.²⁸

The problem, as it regards theory, is that the scholar – an outsider – speaks of the world as though the scholar is able to extract themselves from their own situated context to behold objective Truths. And yet, that Truth is necessarily a distortion because the theorist cannot transcend their situated agency. Hence, when ossifying Truths in scholarship, this does violence to those who are *spoken for*, but who do not get to authoritatively *speak for themselves*.²⁹ This can also occur in interpersonal encounters. For example, if one is a wealthy woman and another a poor man, the woman may be able to use her economic status to disregard, ignore, or actively reject the knowledge of the poor man on the severity of economic hardship. Yet the man may be able to ignore the woman’s knowledge of how regular sexual harassment is because it is outside his purview. Both testify, neither are heard, and each does violence to the other constitutively in their respective failures. Then, institutionally, for example, refusing students or workers more than two sex-gender³⁰ categories into which they must assign is another form of epistemic violence: the Truth maintained by the institution is that

²⁴Spivak (n 6, 281).

²⁵Dotson (n 6, 236). Readers may be familiar with Miranda Fricker’s notions of testimonial and hermeneutical injustice. For the sake of brevity, we will merely add that testimonial and hermeneutical injustices are likely components of epistemic violence, though not the only ones. See: Miranda Fricker, *Epistemic Injustice: Power & the Ethics of Knowing* (Oxford University Press 2007).

²⁶Spivak (n 6, 282).

²⁷Fricker (n 25, 14–17).

²⁸Dotson (n 6, 239).

²⁹Spivak (n 6, 285).

³⁰We use the connected word ‘sex-gender’ to signal the interrelationship of both ‘sex’ and ‘gender’ at the level of social meaning (both dominant meaning and marginal meanings). See JR Latham, ‘Axiomatic: Constituting “Transsexuality” and Trans Sexualities in Medicine’ (2019) 22(1–2) *Sexualities*, 13.

there are two, and only two, sex-genders – (cis)man or (cis)woman. In short, we can see from these examples that epistemic violence is actually a practice of silencing – it is not always done deliberately, but it is always intentional (in the phenomenological sense).³¹

Moving on, Pierre Bourdieu and Loïc Wacquant define *symbolic violence* as ‘the violence which is exercised upon a social agent with his or her [i.e. the agent’s] complicity’.³² To be more explicit, they explain, ‘social agents are knowing agents who, even when they are subjected to determinisms, *contribute to producing the efficacy of that which determines them* insofar as they structure what determines them’.³³ A ready *material* (i.e. structural) example here would be capitalist exploitation. As the worker works, they contribute to their own class oppression by reinforcing the structure that is capitalist exploitation. This agent is suffering violence (capitalist exploitation) and is complicit in their own suffering (through participation).

What, then, is an example of symbolic violence? It is not to do with the material conditions of the world as such – these are, in a sense, secondary to the society’s *shared impression* of how the world is. Symbolic violence is about systems of representations and principles of normality; it is violence done by unreflective uptake of the content of an oppressive and dominant social imaginary. We act in accordance with a dominant social imaginary via:

the fundamental, prereflexive assumptions that social agents engage by the mere fact of taking the world for granted, of accepting the world as it is, and of finding it natural ... [This is problematic] because *their mind is constructed according to cognitive structures that are issued out of the very structures of the world*.³⁴

To return to our worker, above. They may not *recognise* that they are part of a system that exploits them, that does violence unto them. They may take the world as they find it – with these capitalist social structures already in place at the time of birth – and thus think that it is perfectly normal, natural, ordinary, to work for a wage in a system which pays out big to some, but much less to others. If this is the case, then the worker is in a state of *misrecognition*: they cannot recognise their own subjection to symbolic violence. Said another way: one sees the thing which is violence (namely, capitalist organisation of one’s shared world), but does not recognise that it *is* violence.

Powell and Henry articulate their understanding of symbolic violence ‘as power and domination that is naturalised, universalised and internalised by the dominator and the dominated’.³⁵ Interestingly, Bourdieu and Wacquant go on to argue that, in fact, ‘gender domination ... seems ... to be the

³¹Dotson (n 6, 239).

³²Bourdieu and Wacquant (n 6, 272).

³³ibid 272, emphasis added.

³⁴ibid, original emphasis.

³⁵Powell and Henry (n 6, 65).

paradigmatic form of symbolic violence'.³⁶ This is not because men structurally dominate women (though they do); rather, it is because 'the male vision of the world' is the vision that dominates as not only 'self-evident', but also *universal*: 'man ... is this *particular* being who *experiences himself as universal*, who holds a monopoly over the human'.³⁷ To put it simply: symbolically, it is a man's world, but he (and perhaps also she, they) do(es) not recognise it as such; he misrecognises that his is a *subjective perspective*, – he thinks his perspective *is* universal, ordinary, natural, impartial, normal: the way *every* (rational) *body* thinks, but it's not.

It is interesting to note the compatibility of Bourdieu and Wacquant's symbolic violence with Iris Marion Young's concept of *cultural imperialism*, which she argues is a form of oppression. Young says, 'to experience cultural imperialism means to experience how the dominant meanings of a society render the particular perspective of one's own group invisible at the same time as they stereotype one's group and mark it out as the Other'.³⁸ This is a paradoxical social position where an identity-based group (like women) *stand out* as Other (as 'Woman', according to the stereotypes of that milieu), yet they remain invisible given the universalising logic according to which men understand the world and its subjects, where the 'subjects' of the social world are imagined to be 'Individuals' with no explicit corporeal features such as sex-gender.

However, Young argues that violence is separate from cultural imperialism. She clarifies that there are five faces of oppression, of which cultural imperialism is only one and violence another. Young describes violence as including not only physical attack (the paradigm concept), but also 'less severe incidents of harassment, intimidation, or ridicule simply for the purpose of degrading, humiliating, or stigmatizing group members'.³⁹ It seems, then, that Young endorses some notion of violence as existing on a continuum. Another way of saying this is that the aforementioned 'less severe' acts are *logical extensions of paradigmatic violence*.⁴⁰ That said, in practice these faces of oppression may well overlap. Young explains, an Other's difference 'may put the lie to the dominant culture's implicit claim to universality. The

³⁶Bourdieu and Wacquant (n 6, 272).

³⁷*ibid* 273, emphasis added.

³⁸Young (n 6, 58–9).

³⁹*ibid* 61. When systemically aimed at groups – that is, when isolated acts of violence turn into persistent group-targeted acts of violence – then we diagnose that 'violence is a social practice. It is a social given that everyone knows happens and will happen again. It is always at the horizon of social imagination' (62). This, in turn, means that we – the community members – find certain acts of violence unsurprising and even tolerable; we see them as 'still waters'.

⁴⁰Coady (n 2, 249–56, 259) cites Galtung (n 6, 249), who writes: 'an extended concept of violence is indispensable but that concept *should be a logical extension* [of paradigm violence], not merely a list of undesirables', not to reject the idea of logical extension altogether, but to argue that Galtung's structural violence and what he calls 'restricted' (i.e. paradigm) violence are too dissimilar to be a logical extension. He does, however, think that psychological violence is a coherent category, and that it is 'tinged with physical violence' (i.e. logically extended).

dissonance generated by such a challenge to the hegemonic cultural meanings can ... be a source of irrational violence'.⁴¹ While this overlap might account for the elasticity of the concept 'violence' as used by others, for Young it remains the case that violence is primarily imagined to be an interpersonal, relatively restricted type of phenomenon.

However, building on the notion of 'less severe' interpersonal acts constituting oppressive violence, Louise Richardson-Self has argued that when harassment, intimidation, and ridicule take linguistic form in targeting oppressed groups, then this is *linguistic violence*: that which we (ought to) call 'hate speech'. Put the other way around, she defines hate speech as 'those expressions which systemically subordinate target[s] through linguistic violence'.⁴² Powell and Henry also argue that gender-based hate speech is a form of sexual violence.⁴³ After all, hate speech is abusive, and 'abusive comments are not intended to facilitate or begin a dialogue with the victim'.⁴⁴ They intend to (and do) instantiate harm. To bring this discussion full circle, note also that Melinda Jones' take on vilification – a term often used interchangeably with 'hate speech' – is that 'words that vilify constitute "*psychic violence*" and *emotional abuse* that undermine a victim's right to subjective integrity and/or sense of self',⁴⁵ bringing us back to the notion of psychosocial violence.

3. Questioning Expansions Beyond Paradigm Violence

Whether anything beyond non-consensual force occasioning assault should be considered violence is an important question. Are the above *types* of violence, or is 'violence' used as a metaphor, icon, trope, or motif to amplify certain harms or wrongs?⁴⁶ Some argue it is the latter 'to the point of irresponsibility'.⁴⁷ But these phenomena are not totally disconnected to paradigm violence. What the notions of structural, symbolic, linguistic, and epistemic violence all seem to share is the problem of 'managing symbols and meanings in order to discount the voices and standpoints of some'. This is violent because it 'has injurious effects on the discounted',⁴⁸ just what those injurious effects are, however, is unclear. For now, we shall call this *suffering*. Still, suffering is opaque, and opacity is a problem if we intend to utilise law to redress these phenomena.

⁴¹Young (n 6, 63).

⁴²Richardson-Self (n 6, 5).

⁴³Powell and Henry (n 6, 167–73).

⁴⁴Jessica Megarry, 'Online Incivility or Sexual Harassment? Conceptualising Women's Experiences in the Digital Age' (2014) 47 *Women's Studies International Forum* 46, 52.

⁴⁵Jones (n 6, 308), emphasis added.

⁴⁶Murphy (n 4, 15); Vasti Roodt, 'Violence as Metaphor' in Lode Lauwaert, Laura Katherine Smith, and Christian Stenard (eds), *Violence and Meaning* (Palgrave Macmillan 2019) 3.

⁴⁷Murphy (n 4, 15).

⁴⁸Frazer and Hutchings (n 10, 3).

On the side of those who question the elastic application of violence, Vasti Roodt points out that ‘describing an action, event or state of affairs as a form of violence is often shorthand for condemning whatever falls under that description’.⁴⁹ Likewise, C. A. J. Coady believes that ‘various metaphorical or otherwise extended uses of “violence”’ are ‘an attempt to dramatize the awfulness’ of the phenomena said to be violent.⁵⁰ Indeed, we have seen ‘the extension of the term “violence” [to] a great range of social injustices and inequalities’.⁵¹ Though paradigm violence and social injustice ‘both involve the production of some sort of hurt or injury broadly construed’ – i.e. suffering – Coady still maintains it is not right to typify these injustices as violence, for ‘the type of harm and the conditions of its production are terribly different’.⁵²

Interestingly, it seems as though each scholar with an elastic conception of ‘violence’ might actually agree with Coady and Roodt, for they each provide alternate language for the respective phenomena they call violence. This suggests that they think these phenomena are *like* and are *as bad as* violence, rather than being *types* of violence. Witness: Galtung wrote, ‘In order not to overwork the word violence we shall sometimes refer to the condition of structural violence as *social injustice*’.⁵³ He also refers to *unequal power* as the significant issue at hand (as seen above). Bourdieu and Wacquant, speaking of gender relations specifically, use the alternate term ‘*symbolic domination*’, and are particularly concerned with those who misrecognise this social situation.⁵⁴ Powell and Henry describe violence – specifically, sexual violence – as existing on a continuum (making theirs quite similar to Young).⁵⁵ Importantly, what counts among their progression from less to more severe on this continuum is determined by ‘a victim-centred approach, informed in part by what the victim deems to be a *harm*’.⁵⁶ They use the term ‘harm’ deliberately, ‘because such a term captures acts that may not be deemed a criminal offense or a civil wrong under law’.⁵⁷ Young understands ‘violence’ as both paradigmatic *and* logically extended, including acts of a denigrating and subordinating kind (like harassment, intimidation, and ridicule). But Young’s core interest lies in understanding *oppression*, of which violence is only one face. Richardson-Self, who classifies ‘hate speech’ as linguistic violence targeting groups, says that the act ‘is perhaps better termed “abuse”’⁵⁸ – *abuse* notably being a broader concept that does not automatically connote

⁴⁹Roodt (n 46, 3).

⁵⁰Coady (n 2, 247).

⁵¹*ibid* 246.

⁵²*ibid* 251.

⁵³Galtung (n 6, 84), emphasis added.

⁵⁴Bourdieu and Wacquant (n 6, 273), emphasis added.

⁵⁵Powell and Henry (n 6, 27).

⁵⁶*ibid* 5, emphasis added.

⁵⁷Powell and Henry (n 6, 5).

⁵⁸Richardson-Self (n 6, 64).

physical injury. And, finally, Jones treats vilification as something which can lead to 'actual violence',⁵⁹ by which she presumably means the paradigm kind. In short, these scholars are concerned with social injustice, domination, misrecognition, cultural imperialism, sexual harms (including psychological harms) not necessarily recognised under law, oppression, and group-oriented abuse. All of these involve a kind of suffering from which the subject cannot escape – and the term 'violence' has been used for impact.

We cannot deny that 'violence is a term of scandalization', and this could at least partly explain why it is applied 'to a whole range of abstract categories' as we have seen here.⁶⁰ We can sympathise with the above-discussed phenomena being called violence, but it is true that some applications of the term go too far. To provide an example, Ann Murphy directs our attention to the 'legacy of much of the feminist theory of the 1990s ... [which is] that the *recognition* of a gendered or raced identity itself *constituted a violence* insofar as it involved concepts, norms, and stereotypes'.⁶¹ This legacy is present in Legacy Russell's 2020 book *Glitch Feminism*, where she states, of her identity-based recognition, that out in the world 'there was no pressing pause, no reprieve', but via digital refusal she 'commenced to push back against the violence of this uncontested visibility' of her black, female body.⁶² Elsewhere, feminists have alternately argued that 'a *lack of social recognition* is conceived of as *the gravest sort of violence* – what Judith Butler would call "social death"'.⁶³ It is impossible for both of these conceptualisation to constitute violence; they are contradictory.

To cite Marilyn Frye, writing in another context, it is as if 'violence' 'is being stretched to meaninglessness; it is treated as though its scope includes any and all human experience of limitation and suffering, no matter the cause, degree or consequence'.⁶⁴ When all you have is a hammer, everything starts to look like a nail. This is a problem, Roodt says, because 'the limitless extension of the concept violence diminishes the moral value of each instance of its application'.⁶⁵ This makes a strong case for retaining the restricted paradigmatic definition of violence, treating all other uses as a metaphor or motif. Helpfully, Roodt suggests we ought to categorise structural rather than agent-to-agent suffering as issues of *injustice* rather than violence-proper.⁶⁶

⁵⁹Jones (n 6, 301).

⁶⁰Roodt (n 46, 3).

⁶¹Murphy (n 4, 20), emphasis added.

⁶²Legacy Russell, *Glitch Feminism: A Manifesto* (Verso 2020) 4, 6.

⁶³Murphy (n 4, 5), emphasis added.

⁶⁴Marilyn Frye, *The Politics of Reality: Essays in Feminist Theory* (Crossing Press 1983) 1. Roodt makes a similar point (n 46, 17–18).

⁶⁵Roodt (n 46, 21).

⁶⁶*ibid* 20.

4. The Temporal Affectivity of 'Violence'

Whether 'violence' should be restricted or elastic, this overview raises a supremely interesting question: *why is 'violence' so discursively appealing?* There must be a reason for the gravitational pull, the affective resonance of the term 'violence'. We suspect the resonance has to do with the *temporality of suffering* caused or constituted by the phenomena described above. Bufacchi and Gilson offer a useful conceptual division that enables a better understanding of 'violence' as a phenomenon which, we think, should be highlighted: there is violence *as act*, and violence *as experience*.⁶⁷ Focusing on the agent's *act* of violence is what we (and laws) generally do. *Andy hits Brenda, and Brenda hurts*. We want to know when this assault took place, why Andy exerted force over Brenda, and whether Andy's action was deliberate. As we have already noted, this is the perpetrator-centred, intentionality-centred, and time-specific conception of violence.

However, Bufacchi and Gilson take issue with this framing. On this matter, we quote them at length:

The standard definition of violence as an act wrongly assumes that violence has a fixed temporal existence, which can be tracked by a starting point and an end point: an act of violence starts when both intentionality [i.e. deliberateness] and force are present ... and ends when intentionality and force dissipate. This temporal restriction is undermined once we reassess violence as an event or experience rather than an act: violence starts with the act, but *lives on* after the act has ceased. Thus, while sometimes it is appropriate to refer to violence as an act, it is also necessary to think about violence beyond the parameters of an action.⁶⁸

So, what happens when we focus instead on the nature of the victims' experiences of (what has been labelled) violence? The extension of suffering is now brought into focus from a victim-centred perspective, and we are able to bear witness to the *ongoing* impact of the event called 'violence'. To be more specific, the *temporal* aspect of suffering, we think, reveals the allure of the term 'violence' in these wider contexts. So, we must attempt to articulate the temporal experience of suffering. We must say more about how (what is called) 'violence' *lives on presently* as suffering though the external force has ceased. To do this, we detour through some of Edmund Husserl's phenomenological insights.

4.1. Retention, Protention, and the Primary Impression

Husserl explores temporality by considering how our perceptions of the world around us must contain three interconnected components: *retention*, *protention*, and the *primary impression*. Things in our environment appear

⁶⁷Bufacchi and Gilson (n 1, 32).

⁶⁸*ibid* 34, emphasis added.

to us as enduring, familiar, and meaningful as a result of the workings of these components. Consider your experience of your current surroundings: chair, table, screen or page, glass of water. These objects remain stable as we shift our perceptions around the room, and we find that we do not need to actively remember or recall what the room has just looked like (or what it looked like yesterday) in order to have the sense that they are all the same objects as before.⁶⁹ It is *retention* which accomplishes this in our experience of perception. Without the need for any other act of consciousness, we retain what we have just perceived and connect it with what is still occurring in our *primary impression*, so that we can say that this chair, this table, are the very same things which we have just seen or felt moments ago. Husserl's preferred example to demonstrate this is the case is musical: when we listen to music, we do not hear an unconnected series of notes in isolation from each other, but rather a succession of notes which remain in the present within our current perception of what is happening (a song is playing), rather than immediately passing away from our consciousness. That the retained impression of what we have just perceived *remains in our present* (rather than immediately moving into the past, now being *over*) is crucial for our experience of temporality. Though the specific musical note has ended, its relationship with the other notes that are still playing (and to those notes yet to be played) has not, and so *we still perceive, in the present, those now-passed notes*.⁷⁰

Imagine a song we have not heard before. As we are listening, we are not only hearing this music, but also *synthesising* this song with what we have experienced of music in the past. Rather than hearing this song in isolation to the rest of the songs in the world, it is heard in *relation* to what we have learned about music in general, and maybe even more specifically with the artist's existing oeuvre. Though we have not heard *this song* before, we do not register it as a completely new experience, but rather as a particular instantiation of *a form* – songs – which we are familiar with because we have experienced songs before. Our families sang songs for us as children, we hear songs on the radio and at live events – these are all particular instantiations of the same type of thing. Maybe this new song does not do anything particularly avant-garde, so what we have experienced of music in the past is confirmed by this new song, and our retentions keep their shape. Or maybe the song does something we have never heard before, and our past experiences of what music is like takes on a new valence. My familiarity with what songs are like *in general* gets challenged by *the new*, and my perceptual scope for what songs can be likewise *widens* in response.⁷¹

⁶⁹Edmund Husserl, 'A Phenomenology of the Consciousness of Internal Time' in Donn Welton (ed), *The Essential Husserl: Basic Writings in Transcendental Phenomenology* (Indiana University Press 1999) 186.

⁷⁰*ibid* 208.

⁷¹*ibid* 186.

Now, retentions extend right back through people's personal histories. They are not limited just to our immediate experiences. This means that for our whole lives we have been building up a store of experiences (of songs, and of everything else in the social world), and that each new instantiation has confirmed or modified our sense of what certain things are like. We can call this a process of *sedimentation*.⁷² In a sentence: *retention sediments our expectations*. All of those prior experiences which give us the capacity to know that a song *is* a song when we hear it are because of the sedimentation of all the songs gone before. Sedimentation means that we can hear *this* new song as a *new song*. Hence, we see that retentions of *things now passed*, which are sedimented, *are always present* in our currently occurring experience of perception.⁷³ This is how it is possible, when a specific song starts playing, for that song to carry more meaning for us than what is simply heard. It is not just noise, it is a song, and if previously experienced, it will be affectively evocative. Again, in a sentence: *retentions structure present experiences by organising 'the now' in relation to the experiences we have already had*. The key claim here as it relates to the experience of suffering, then, is that the presence of our past is necessarily and inescapably always *in* each and every one of our current 'now' experiences. This very process is a fundamental part of what enables everyone to experience being part of an enduring, familiar, and meaningful world.

Retentions operate as a kind of schema which guides how we organise our present sensory impressions of our current environment. When we are listening to a new song, we still have a vague background sense of what might come next. For example, we anticipate that it is going to finish within a couple of minutes, as most songs do. This is a very specific anticipation, and we can only have it on the basis of familiarity with the songs that we have heard before and from which we built our expectations over time, but what we anticipate may not come to be. The new song either conforms to our expectations, or it surprises us, and those affective dimensions of our experience are retained along with the impression of the song itself.⁷⁴ To translate this to the paradigm case of violence: people build up retentions of bodily autonomy and of being consensually and enjoyably touched by others and anticipate that this will continue. But when Andy hits Brenda and Brenda hurts, Brenda will be surprised (to say the least!) because this new experience does not conform to her past experiences. Now, Brenda will retain the possibility of assault to some degree, which is to say it will

⁷²ibid 282.

⁷³ibid 212. In Husserl's own words (207),

The whole now-point, the whole original impression, under-goes the modification of the past; and only by means of this modification have we exhausted the complete concept of the now, since it is a relative concept and refers to a 'past', just as 'past' refers to the 'now'.

⁷⁴ibid 233.

'sediment' and will thus unavoidably organise Brenda's 'now'. The past is always in the present.

There is a technical and complicated relationship between retention and Husserl's third notion, *protention*, which we should also highlight for the sake of this analysis. Retention delineates the range of possibilities I am open to or ready for, and it is this future-oriented dimension of perception that is called protention. Protention can be understood as a *readiness (preparedness)* for the incoming phases of, say, the song we're listening to – for example, we are hearing the first verse of this new song and we are prepared for a chorus to follow. The chorus has not yet arrived in the present moment, nor has its other verses or end point, *et cetera*, but we are still expecting them to eventuate. Now, protention is what facilitates surprise when something happens that we had not anticipated. For example, you're listening to Cold Chisel's *Khe Sanh* for the very first time and after the first verse you are expecting a chorus. But a chorus does not come, only another verse. Surprise! That's protention. Or, if the radio mysteriously disconnects and you do not get to hear the last of the song you are listening to – surprise! – that, too, is protention.

Like retention, protention is always operating in the present experience as well. Just as the past is always in the present (through retention) so too are possible paths to anticipated futures (protention). This means our perceptions are never completely finished or entirely fulfilled. Because of protention, we are always anticipating more to come. We can anticipate *certain* paths (some of them very specific, others more open) because we are already generally familiar with the world within which we have grown up, a world of experience which has sedimented certain expectations into us, even if we are not consciously aware of what those expectations are. Thanks to retention and sedimentation, we often correctly anticipate that the world of our experience will operate in the same generally predictable ways as before, though, with room for surprise and disappointment.⁷⁵ Brenda was surprised by Andy's assault because this was an 'out of the ordinary' experience. However, now assault (a form of suffering) has become part of Brenda's realm of possible futures, and this may have closed down others.

We must emphasise here the significance of this characterisation of our temporal experiences: this relationship between *past experiences*, *future possibilities*, and *the now* matters because it generates a sense of what is possible *for me* in the future as I move through the world. Each of us has, over time, experienced surprises, disappointments, and developed a general familiarity with the way our lives might plausibly unfold in the future, and how we might bring a certain future about. We have also been developing our range of possible responses to familiar and new situations – a roadmap for taking

⁷⁵ibid.

up what comes into our field of experience and organising it in relation to what has come before (so that it makes sense to us), and through which we can see our possible future(s). Much of the texture of our lives, the ease with which we do our daily tasks, our familiarity with and trust in the enduring stability of the world that characterises most daily life, stems from retentions and protentions and their interconnection in the primary impression.⁷⁶

4.2. *The Temporality of Suffering and the Ripples of Violence*

We now have in place the phenomenological tools we need to understand that the experience of 'violence' is temporally indeterminate. Bufacchi and Gilson lament of the experience that

the suffering brings echoes long after the act has ceased. *These are the ripples of violence.* These ripples of violence are an essential element of the meaning of violence, and to discard them is to miss the point of what an analysis of violence should be about.⁷⁷

This connects us back to Galtung's metaphor. Paradigm violence (the act) registers like 'waves on otherwise tranquil waters' while 'structural violence is silent, it does not show – it is essentially static, it *is* the tranquil waters'.⁷⁸ What Bufacchi and Gilson seem to be saying is, actually, if you just look, *you will see the ripples* of this very violence – its after-effects that are ongoing.

It must be said that Bufacchi and Gilson's analysis also assumes it is *paradigm violence* that has been experienced. However, we think that they have inadvertently captured what it is that makes wide applications of 'violence' to other phenomena seem so appealing and appropriate: *suffering brings echoes long after the act has ceased*. With their turn to the imagery of echoes and ripples, we think they are trying to communicate what Husserl's phenomenological tools have helped us reveal: that the presence of past suffering remains in our present via retention, and that this very same suffering *forecloses certain futures* the subject could have had, or *should have been able to have* (namely, futures which do not contain this suffering) via protention. We are calling this inability to escape one's suffering *stuckedness*. Stuckedness due to suffering, we think, is the phenomenon scholars are trying to capture when they call non-paradigm phenomena 'violence'.

Let us elaborate this position. We have noted that the presence of the past in the present (retention) is necessary, because it enables the ability to make sense of the present; also active in the present is protention, that from which

⁷⁶Felix Ó Murchadha, 'The Temporality of Violence: Destruction, Dissolution and the Construction of Sense' in Lode Lauwaert, Laura Katherine Smith and Christian Sternard (eds), *Violence and Meaning* (Palgrave Macmillan 2019) 45, 51.

⁷⁷Bufacchi and Gilson (n 1, 38), emphasis added.

⁷⁸Galtung (n 6, 86).

we can project a range of possible futures open to us from where we now stand. The persistence of suffering must be either the effect of an incongruous experience from which we can project *no* future, or, if the event of suffering does sediment via retention, then it is reasonable to suspect that the suffering has foreclosed desirable future possibilities. To use Felix Ó Murchadha's words, suffering has 'the characteristic of *not letting the past pass*, of sedimenting the past in the present ... in a manner which ... does not allow new possibilities'.⁷⁹ Put another way, the experience sediments in a manner which closes off, rather than opens up, our readiness for making sense of the present and for taking up a certain future. 'Violence' triggers *stuckedness*. One cannot 'get over it' and nor can one 'go back' to a time before the suffering;⁸⁰ this is because every experience we live through is retained by us and structures our present *no matter what*.⁸¹ The presence of suffering in the present closes off many of the future paths which were once open. Past suffering is present suffering is future suffering is stuck.⁸²

To directly apply this to the experience of paradigm violence, note that violence operates with the following temporal trajectory: the suffering begins when the victim's experience of violence begins, and continues after the event of violence has ended, rippling through the tripartite structure of retentions, protentions, and the primary impression. This victim's *stuckedness* can be traced back to the initiation of the violent event, but in our wider cases of phenomena called 'violence', there may be difficulty in pinpointing a distinct initiating act. This is the case for both structural and symbolic violence, which, as ongoing historico-social phenomena, precede an individual victim's birth. We might think here of a happy housewife in a patriarchal context who, from a young age, has learned to expect and be content with the limited possibilities afforded in her adulthood as a wife, mother, and homemaker. In both structural and symbolic violence, the suffering manifests as a *stuckedness* to which the victims have become habituated by virtue of their ongoing exposure to (and misrecognition of) the structures (like patriarchy) and social imaginaries that persist in their world.⁸³ So, we are thinking here of persons who have grown up expecting that they have *one* future path of possibility. This is clearly distinct from victims who had been used to moving into open future paths until a violent event diverted them into *stuckedness*. And yet, both are stuck.

⁷⁹Murchadha (n 76, 50).

⁸⁰Helen Ngo, "'Get Over It'?" Racialised Temporalities and Bodily Orientations in Time' (2019) 40 *Journal of Intercultural Studies* 239.

⁸¹Murchadha (n 78, 56).

⁸²All experiences are temporally extended: our past remains with us in all of our present moments, so we could say that our past is ongoingly present, or rather that our past extends our present. However, the paths open in our perceived futures are what interests us here. Not all people get stuck in suffering, and of those who do, for how long they are stuck will surely vary by wide degrees.

⁸³Gatens (n 12); Richardson-Self (n 6, 33–47).

The suffering which psychosocial and linguistic ‘violence’ allude to also follows the same temporal logic as paradigmatic violence. Psychosocial and linguistic harms can be inflicted as events with clear and distinct start points, or they can be ongoing and compounding. In the case of hate speech, some passer-by may act by commenting on a woman’s appearance, calling her a ‘slut’ and morally denigrating her in that instant. This *act* has a clear start and end point: it starts with the ‘S’ and ends at the ‘T’. However, the suffering (*experience*) of being called a slut does not likewise end at the T. This is why some have likened ‘hate speech’ to ‘violence’. Turning now to the issue of gaslighting, the attempt to undermine a victim’s capacities for judgement in her present includes *retroactively* undermining her sedimented experiences of herself as once having had the capacity for judgement, which subsequently impacts retention, too.⁸⁴ Again, in both cases the temporally extended suffering experienced by victims ripples right through the three components of temporality. We find this temporality of suffering in instances of epistemic violence as well, where the gradual erasure of a community’s knowledge over time also contains an important retroactive dimension. Here, the retentions of members of the community which *had* grounded their shared knowledge are undermined and no longer able to ground shared knowledge in the present.

Clearly, the theorists of structural, symbolic, epistemic, linguistic, and psychosocial ‘violence’ discussed above think that collectives and societal schemas are keeping people stuck in some sort of suffering, and it is this suffering that they seek to end. This is noteworthy because, even with respect to paradigm violence, people who suffer do not always suffer forevermore. Thus, we must ask, how can one become unstuck? The past cannot be changed, which means the act, situation, or omission which led to the suffering is *always* shaping the present. But perhaps past suffering may not always *affectively* shape the present. Said differently, while the experience of suffering never leaves you – for it is your own history, and your knowledge of it will orient the way you behave for the rest of your life – that does not mean the suffering necessarily causes *ongoing distress* (or a similar affect). If this is correct, then it must be possible to re-open future paths which, amid the stuckedness in suffering, seem now to be closed. We think that re-opening such futural life paths is a live possibility – the question is how to do it: how to stop the distress? More specifically, for the purpose of this inquiry, the question is whether law can be used in the unsticking?

5. The Relationship of Law to Violence and Suffering

We have identified the paradigm form of violence; it causes suffering and is physical, intentional, and interpersonal. We have also identified a number of

⁸⁴Manne (n 13).

applications of the term ‘violence’ to phenomena that do not replicate any or all of these paradigmatic features. We have focused on structural, symbolic, psychosocial, epistemic, and linguistic ‘violence’ as chief examples. Despite seeming incongruous with the paradigm form of violence, we think we have identified what makes these types of ‘violence’ seem sufficiently similar to those who espouse elastic definitions. Namely, they all involve the condition of stuckedness in/of suffering. When one is stuck in suffering because of past events which remain in the present, plausible futural paths the subject might have taken close down. However, if the affective side of suffering can be tempered, it may be possible to *let the past pass* and thus, too, to open formerly closed futural paths. Of course, the suffering experienced is never really gone. What could be gone is the *stranglehold* that affectiveness of suffering had on the present and thus also the future. How, if at all, can law help?⁸⁵

Law is supposed to appear and act as ‘the neutral arbiter of injury’.⁸⁶ Indeed, Coady thinks that ‘most people accept political authority [i.e. law] ... primarily through the reassuring thought that it provides sanction against someone else’s violent behaviour’.⁸⁷ For example, we already have criminal charges which attend to assault of several varieties – common assault, sexual assault, assault occasioning bodily harm, unlawful wounding, grievous bodily harm, and ‘serious assault’ (which refers to the assault of a state-sanctioned worker, such as a police officer or a healthcare worker),⁸⁸ among other offences – in place to respond to paradigm violence. It is entirely plausible to think that such charges *can* alleviate the affect of suffering for a victim, but they do not *necessarily* do so. One must consider, further, whether it is the retributive or restorative approach to justice (or both) that helps alleviate the suffering in the paradigm case.

Retributive justice recognises that someone has been wronged and that the wrong is question should be met with a punitive response. Adequate punishment may (partially) alleviate suffering. However, societal recognition of suffering through punishing the perpetrator might not release the victim from suffering’s affective grip. Furthermore, where punishment does alleviate

⁸⁵To clarify: this section is not intended to provide a comprehensive overview of Australia’s laws that prohibit paradigm and wide violence – it is to think through how law can intersect with stuckedness in suffering to determine whether it might alleviate or reduce this affect, allowing for persons to mobilise their newly opened futural paths. We also acknowledge that laws are not the only tools in the kit for dealing with stuckedness, and other potential strategies are worthy of future research.

⁸⁶Powell and Henry (n 6, 197).

⁸⁷Coady (n 2, 248).

⁸⁸Australian National Character Check, *Types of Assault Charges in Australia* (online) <<https://www.australiannationalcharactercheck.com.au/types-of-assault-charges-Australia.html>> accessed 27 October 2021. Note: for the moment we are bypassing killings in our discussion of violence. The reason for doing so is that, once deceased, a person can no longer suffer. Of course, it is very likely that killing will lead to the suffering of others (friends, family, and so forth), but we do not have space for further discussion on this occasion.

suffering to some degree, the question of what is *adequate* from victims' perspectives will necessarily have a range so wide it cannot be captured in scopes of jail time and fines. Finally, there may simply be no punishment severe enough to allow the past to pass.

So, to alleviate suffering, it may be necessary to opt for a restorative approach to justice instead. In such an approach, the wrongdoer acknowledges their actions, takes responsibility, apologises, tells or listens to truths, etc., in order to (a) affirm the victim's own sense that their suffering was an injustice and (b) affirm that the perpetrator recognises this too, offering them a chance to atone. Yet, again, depending on the suffering experienced and the outcome of restorative mediation, a victim *may* feel that the matter has been appropriately dealt with, releasing her of the stranglehold that is suffering, but it is equally possible that – with a different victim, or a different outcome where the perpetrator refuses to take responsibility and atone for the suffering caused – this could lead to the assessment that justice has *not* been served, and this in turn might *compound* the affective experience of suffering.

Because of the temporal indeterminacy of suffering and its individuated variability, in turning to law 'we are now facing the impossible task of quantifying an ongoing experience'.⁸⁹ Thus, it is not clear that there could be any law – whether retributive or restorative, or a mixture of both – that would come close to tempering the effect of *all* who unjustly suffer, even in paradigm cases alone. However, one might counter, there are broader reasons to apply laws in situations of paradigm violence that exceed the fact of the victim's suffering. Public safety is a good example. A second counterpoint is that law has a broader function; some believe that law can 'express condemnation' simply by virtue of existing, which is to say that laws symbolically tell society what will or will not be tolerated.⁹⁰ We concede the first counterpoint and agree that the law's relationship to paradigm violence expands beyond the scope of the victim's suffering. It also includes the well-being of wider society. Still, when it comes to stuckedness in the paradigm case, whether law will help is uncertain. However, to the second counterpoint, we note that 'from the perspective of victims ... law must be assessed on its ability to tackle the problem'.⁹¹ As we shall see below, laws often fail victims of paradigm violence, and in so doing may well contribute to a victim's stuckedness.

For example, laws ban sexual assault in Australia. Yet of the 140,000 + sexual assaults reported in Australia in 2017, only 42,600 or 30% of reports

⁸⁹Bufacchi and Gilson (n 1, 38).

⁹⁰Maxime Lepoutre, 'Hate Speech Laws: Expressive Power is Not the Answer' (2020) 25(4) Legal Theory 272, 276.

⁹¹Jones (n 6, 302).

led to an arrest, summons, formal caution, or other legal action.⁹² Notably, police rejected <12,000 reports 'on the basis that they did not believe a sexual assault occurred'.⁹³ That means the majority of victims who reported their sexual assault – over 85,000 – were unable to put law to use to alleviate their suffering. This could actually intensify victims' suffering.⁹⁴ It seems a reasonable conclusion to draw, then, that in spite of the ostensible 'message' the law projects (that sexual violence will be punished), experientially, law really says to victims 'despite appearances, I am not on your side'. Thus, we still maintain that laws are, at best, ambivalent in cases of paradigm violence as regards the ability to address victims' stuckness in suffering, and, at worst, contribute to it.

Moving from the law's fraught capacity to alleviate suffering as a consequence of paradigm violence to its logical extensions – psycho-logical/social 'violence' and linguistic 'violence' – we can identify the same ambivalence where law may or may not be beneficial to the victim, depending entirely on the circumstances. (The line between logical extension versus different phenomenon is a little blurry already because the social in 'psychosocial' affects the psychological, and psychological violence is treated without question as a logical extension of paradigm violence by advocates of the restricted definition.) Let us consider an example that could plausibly be described as a form of psychosocial *and* linguistic violence: cyber abuse. In July, the *Online Safety Act 2021* (Cth) came into force. This Act is interesting because it includes provisions to address complaints of cyber-abuse material targeted at an Australian adult. According to Section 7 of the Act, online material counts as abusive if '1(b) an ordinary reasonable person would conclude that it is likely that the material was intended to have an effect of causing *serious harm* to a particular Australian adult;' and '(c) an ordinary reasonable person in the position of the Australian adult would regard the material as being, in all the circumstances, menacing, harassing or offensive'.⁹⁵ According to Section 5 of the Act, serious harm means physical harm or 'serious harm to a person's mental health, whether temporary or permanent', clarifying further that 'serious harm to a person's mental health includes: (a) serious psychological harm; and (b) serious distress; but does not include *mere ordinary emotional reactions* such as those of distress, grief, fear or anger'.⁹⁶

⁹²Inga Ting, Nathanael Scott, and Alex Palmer, 'Rough Justice: How Police are Failing Survivors of Sexual Assault' (ABC News, 3 February 2020) <<https://www.abc.net.au/news/2020-01-28/how-police-are-failing-survivors-of-sexual-assault/11871364?nw=0&r=HtmlFragment>> accessed 27 October 2021.

⁹³ibid.

⁹⁴Much of this violence is not reported at all. 'Half of women did not seek advice or support after their most recent incident of sexual assault perpetrated by a male': Australian Institute of Health and Welfare, *Sexual Assault in Australia* (online, 28 August 2020) <<https://www.aihw.gov.au/reports/domestic-violence/sexual-assault-in-australia/contents/summary>> accessed 27 October 2021.

⁹⁵*Online Safety Act 2021* (Cth), emphasis added.

⁹⁶ibid.

Now, say a woman is being persistently targeted with gendered hate speech online. There are no sex-based vilification laws in Australia to protect her from such abuse.⁹⁷ But a victim could use this law to make a report of cyber abuse to the eSafety Commissioner. Say the woman makes her complaint, the eSafety Commissioner's office issues a removal notice to the platform and/or end user (i.e. the abuser), and then the matter is officially resolved by removing the content. Removal *may* alleviate the suffering of the person being abused with vilificatory language; it *may* abate psychological malaise or halt the risk that she be physically assaulted as a consequence of that abusive talk. However, there is still a good chance that a removal notice (the greatest power of the eSafety Commissioner) will not remedy the suffering of the victim.⁹⁸ As the saying goes, you can't un-ring a bell. Once the person has been abused online, the suffering has already begun. A removal notice may prevent other women from suffering due to exposure to such gendered abuse, but it is not clear that removal would be sufficient to enable the original victim's suffering to pass into the past. Again, the capacity of law to address victims' suffering is ambivalent at best.

All we are left with are those forms of 'violence' advocates of the restricted conception would deny count as such: structural, symbolic, and epistemic. Can law enable the passage of suffering in these cases? 'Law', Powell and Henry explain, 'is a *discourse of power* because of its claim to justice and truth, its construction of knowledge and its shaping of social norms, beliefs and values'. They go on to state that 'law can serve the interests of the powerful, silence or suppress other narratives and conceal or reproduce relations of domination'.⁹⁹ So, here is where the temporally extended experience of structural, symbolic, and epistemic suffering become highly illuminating with respect to law. Consider the following interconnected example. Let us return to the subject of Australia's colonisation. We have already seen that First Nations peoples in Australia have a significantly shorter lifespan compared to settler Australians. We also know that there is a disproportionate incarceration rate of First Nations peoples, being only 2% of the total Australian population but 27% of the national prison population.¹⁰⁰ First Nations people experience disproportionate family, sexual, and domestic

⁹⁷Tanya D'Souza and others, 'Harming Women with Words: The Failure of Australian Law to Prohibit Gendered Hate Speech' (2018) 41(3) *University of New South Wales Law Journal* 939; Anjalee de Silva, 'Addressing the Vilification of Women: A Functional Theory of Harm and Implications for Law' (2020) 43(3) *Melbourne University Law Review* 987.

⁹⁸For a specific analysis of whether this legislation would attend to the harm of oppression that is resultant of gendered hate speech, see Richardson-Self (n 6, 122–5).

⁹⁹Powell and Henry (n 6, 197), emphasis added.

¹⁰⁰Australian Law Reform Commission, *Disproportionate Incarceration Rate* (online, 9 January 2018) <<https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/executive-summary-15/disproportionate-incarceration-rate/>> accessed 28 October 2021.

violence – in ‘2016–2017, Indigenous people were 32 times as likely to be hospitalised for family violence, compared with non-Indigenous people’.¹⁰¹ Deeper than this, First Nations peoples still carry with them the legacy of paradigm colonial violence and the aftermath of the Stolen Generations,¹⁰² which have created intergenerational trauma.¹⁰³ Furthermore, though Australia was once ‘one of the most linguistically diverse places on earth’, the after-effects of the colonial project is that, ‘as of 2016, only 10% of Australia’s Indigenous population spoke an Indigenous language at home’.¹⁰⁴

Finally (though we could go on), consider the Australian Government’s refusal to enter into a treaty with First Nations peoples. The call for a treaty is based on claims to Indigenous sovereignty:

Sovereignty is a means for Indigenous people to seek greater control over their lives and limited government interference in Indigenous affairs. Indigenous sovereignty in Australia includes concepts such as self-government, autonomy and the recognition of cultural distinctiveness, though not the creation of a new country.¹⁰⁵

Insofar as the Australian Government will not establish a treaty with First Nations peoples, it remains clear that ‘*the law*’ is on the side of the coloniser and is, itself, a contributor to the ongoing stucked-suffering faced by First Nations peoples today. *Symbolically*, this denies recognition of Indigenous sovereignty and prior occupation of Australia. *Structurally*, this perpetuates the status quo within which First Nations peoples are massively disadvantaged. *Epistemically*, refusal to acknowledge sovereignty perpetuates the myth that First Nations peoples are now equal to all other Australians, and that they can (and *should*) ‘get over it’.¹⁰⁶

6. Conclusion

In agreement with Roodt, we think a restricted definition of violence is best, and that epistemic, symbolic, and structural ‘violence’ are better termed

¹⁰¹ Australian Institute of Health and Welfare, *Family, Domestic and Sexual Violence in Australia: Continuing the National Story* (online, 2019) <<https://www.aihw.gov.au/getmedia/b0037b2d-a651-4abf-9f7b-00a85e3de528/aihw-fdv3-FDSV-in-Australia-2019.pdf.aspx?inline=true>> accessed 28 October 2021, 106.

¹⁰² Victoria Haskins, ‘“A Better Chance”? – Sexual Abuse and the Apprenticeship of Aboriginal Girls Under the NSW Aborigines Protection Board’ (2004) 28 *Aboriginal History Journal* 33; Michael Grewcock, ‘Settler-Colonial Violence, Primitive Accumulation and Australia’s Genocide’ (2018) 7(2) *State Crime Journal* 222.

¹⁰³ In fact, the temporal extension of suffering elaborated above *explains* how intergenerational trauma (suffering) is possible, but we do not have the space to take this up further here.

¹⁰⁴ Laura Rademaker, ‘Voices Silenced: What Happened to Our Indigenous Languages?’ (*SBS News*, 18 January 2019) <<https://www.sbs.com.au/news/voices-silenced-what-happened-to-our-indigenous-languages/7b4f01c3-9ca8-468d-a724-4e5b559c2470>> accessed 28 October 2021.

¹⁰⁵ Australians Together, *The Lack of Treaty* (online, 13 August 2021) <<https://australiansitogether.org.au/discover/the-wound/the-lack-of-treaty/>> accessed 28 October 2021.

¹⁰⁶ Helen Ngo, *The Habits of Racism: A Phenomenology of Racism and Racialized Embodiment* (Lexington Books 2017) 246.

injustices.¹⁰⁷ Here is why. Galtung astutely notes that ‘it is difficult to compare the amount of suffering and harm that has been caused by personal or structural violence; they are both of such an order of magnitude that comparisons appear meaningless’.¹⁰⁸ When we move from: Andy hit Brenda, and Brenda hurts, to: England colonised Australia, destroyed communities through physical separation, the loss of language, and disenfranchisement leading to inter-generational trauma, increased chances of incarceration, subjection to paradigm violence, and increased likelihood of an early death, all while – to this day – Australia continues *not* to recognise the sovereignty of First Nations peoples via a treaty, it is clear that Galtung is right. Asking whether law can alleviate suffering – at all – is distinctly dependent on whether the law is actually part and parcel of the structural, symbolic, epistemic, linguistic, and psychosocial suffering in question.¹⁰⁹

Thus, let us state our conclusions to this essay’s questions. Can law alleviate the stuckedness in suffering from paradigm – that is, agent-to-agent – instances of violence (or its logical extensions)? Perhaps. As Jones points out:

‘law’ does not necessarily involve courtrooms and juries or lawyers and expense. It is possible to use law creatively, to invoke a range of legal forms to address different aspects of the problem. The function required of law may be symbolic, educational, deterrent, remedial or punitive [*sic*].¹¹⁰

Law, in any of its potential forms, may allow the affect of suffering to pass for some, yet law simply may not help others. (Law could even make suffering worse.) In any case, there are reasons beyond tending to a victim’s suffering that warrant legislation to prohibit certain agent-to-agent hostile and abusive acts.

However, with respect to injustices called ‘violence’, will law(s) alleviate suffering? Again, the answer is, perhaps. Law can take many forms. Law is powerful: it can pronounce what is just; it can shape what we do, what we believe, and what we value. But this sometimes has the effect of *creating* and *sustaining* injustices. Looking at the numerous injustices First Nations Australians face, the legal system, being a product of colonisation itself, continues to work to maintain the unjust status quo.¹¹¹ Anywhere that law *in fact* maintains an unjust status quo, active challenges are necessary. Law need not harm and hinder; it can be utilised in liberatory projects.

¹⁰⁷We think that psychosocial and linguistic violence are logical extensions of the paradigm concept. However, as above noted, where the ‘logical extension’ of violence ends and an ‘injustice’ begins, is not at all clear.

¹⁰⁸Galtung (n 6, 102), emphasis added.

¹⁰⁹For these reasons one may search for extra-legal responses in the form of counterspeech, education, and so forth, which may be more appropriate in the unsticking of suffering. Unfortunately, exploration of these avenues is beyond the scope of this paper.

¹¹⁰Jones (n 6, 313).

¹¹¹Galtung (n 6, 84).

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