ORIGINAL ARTICLE

Law, language, and the power of 'invisible threats' of violence against women

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Abstract

Violence, and the threat of violence, is a pervasive feature of women's lives. From high-profile threats in politics to everyday harms such as domestic abuse, violence, threat, and intimidation control women's behaviour and silence their voices. Yet in many cases the pernicious and harmful effect of threat is not captured by the law. Drawing on the work of sociologist Pierre Bourdieu and empirical research undertaken in Northern Ireland, this article analyses the ways in which both objective and 'incorporated' social structures generate invisible forces of fear and threat that the law does not see, but that women feel and structure their lives around. The article develops the novel conceptual tool of 'invisible threats' to capture threat as harm, to show the relation between threat and gendered (in)securities, and to challenge institutions of the law to respond better to invisible threats as perceived and articulated by women.

1 | INTRODUCTION

Assume that you or I have been hurt so often that it has become part of our daily existence. When we talk about it, we are labelled overly sensitive. When we name it injury, we are called unreasonable. When we turn to law, the injury we experience is

not within the legal standard from which harm is measured. To our bewilderment, when we think about it, we realise our injury is invisible.[1]

Violence against women is a pervasive social phenomenon. From attacks in public spaces to harassment online and abuse and control in their homes, women routinely experience both the threat and the reality of a range of forms of gendered violence. In the United Kingdom (UK), women in public roles regularly experience threats and abuse in their professional lives – from explicit death threats to less visible but persistent misogynist messaging and abuse through their work and on social media.[2] It is increasingly evident that a latent risk accompanies participation in public life for women – across, and on the basis of, party political lines, gender, sexuality, race, and class. Gendered violence, threat, and harassment in politics are now recognized as a global problem, the subject of a report by the United Nations (UN) Special Rapporteur on violence against women, who noted:

> Frequently, reports of threats, harassment or other forms of gender-based violence are dismissed by the authorities, especially when there has been no physical harm. The gender-specific dimensions of the violence faced by women in politics are still strongly resisted and sometimes rejected.[3]

While physical manifestations of violence against women may be captured in law and policy, there is less consensus on the nature and significance of *threats* and how they may be understood, defined, and addressed. Often, the nature of the subtle threats and harassment that women experience falls short of the scope of criminal law.[4] Threats are commonly assessed through a legal and policy lens and evaluated in terms of their likelihood to lead to a violent act. Yet threats in and of themselves have tangible coercive effects, independent of the consequential harm that they promise.[5] Attempting to address the impact of threats on women in public life runs up against entrenched views of what may and may not be considered socially and criminally harmful, particularly where – and indeed because – women are the subjects.[6] Women in these circumstances suffer a form of what Miranda Fricker terms 'hermeneutic injustice', whereby their experiences are rendered invisible because the conditions that give rise to their sense of threat are not recognizable by those who make and enforce the law.[7] The law and its associated institutions are not

[1] S. J. Levitt, 'Rethinking Harm: A Feminist Essay' (1995) 34 *Washburn Law J.* 531.

[2] A. Dhrodia, 'Unsocial Media: A Toxic Place for Women' (2018) 24 *IPPR Progressive Rev.* 381; M. L. Krook, 'Violence against Women in Politics' (2017) 28 *J. of Democracy* 74.

[3] UN Special Rapporteur on Violence against Women, *Violence against Women in Politics* (2018) UN Doc. A/73/301, para. 19, at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/251/00/PDF/N1825100.pdf>.

[4] L. Kelly, 'The Continuum of Sexual Violence' in *Women, Violence and Social Control*, eds J. Hanmer and M. Maynard (1987) 46; J. Conaghan, *Law and Gender* (2013); Levitt, op. cit., n. 1.

[5] S. A. Anderson, 'On The Immorality of Threatening' (2011) 24 *Ratio* 229. Judith Butler argues that the speech act itself registers a certain force in language that both presages and inaugurates a subsequent force: J. Butler, *Excitable Speech* (2021) 9.

[6] P. H. Robinson, 'A Theory of Justification: Societal Harm as a Prerequisite for Criminal Liability' (1975) 23 *UCLA Law Rev.* 266.

[7] M. Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (2007). Hermeneutic injustice arises where the social experiences of one group (such as women) are not recognized because they fall outside the dominant interpretation of these experiences, which is itself unduly influenced by more hermeneutically powerful groups (such as men).

adequately equipped to respond to subjective perceptions of threat and insecurity, even where those perceptions turn out to be objectively founded.[8]

This article draws on empirical research conducted in Northern Ireland to reveal how women who participate in public life experience persistent low levels of gendered intimidation that fall outside the scope of the law and its related security policy. The work of sociologist Pierre Bourdieu is used to develop a theoretical framework to understand these types of threat. Bourdieu's concepts of 'habitus' and 'field' are deployed to show how women's lived experience shapes their understanding of actions and words that give rise to their situated feeling of threat. Building on this theoretical framework, the article develops the novel concept of 'invisible threats' to explain how subtle actions and words exert force and control over women and their behaviour and attempt to silence them. In this regard, the article brings theory and empirical evidence together in a new framework for understanding women's everyday experiences of threat.

Experiences of intimidation based on identity and social structure may seem invisible, and even irrational, to others who do not share them. In this respect, the impact of threat on one's sense of security extends well beyond the parameters of law. While this article examines threats through the prism of women's participation in public life, it addresses the more general question of the legal recognition of harm, and how to capture the form, effect, and function of threat. In proposing the concept of invisible threats, the article's motivation is to establish a framework for articulating and understanding the experience of threat as situated in social and political structures.

2 | TAKING THREATS SERIOUSLY IN LAW AND POLICY

2.1 | Defining threats

The starting point for this article is women's articulation of their experience of threat. The article draws on interviews with 25 women in multi-level leadership roles in Northern Ireland. The interviews were conducted in 2021 as part of a research project examining the risks and threats experienced by women in public life in the overarching context of the UN's Women, Peace and Security agenda.[9] Participants were recruited on the basis of three criteria:

1. They were either an elected representative, a senior leader in a public body, or a leader of a civil society organization.
2. Their work was related in some way to the reforms of the Good Friday Agreement and its implementation.
3. They were sufficiently senior within their organizations to have a public profile.

These criteria were chosen to ensure an inclusive definition of participation that captured the multi-layered nature of women's contribution to public life. Participants were initially recruited

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[8] R. Graycar and J. Morgan, *The Hidden Gender of Law* (2002, 2nd edn); E. Stark, *Coercive Control: How Men Entrap Women in Personal Life* (2009).

[9] C. Turner and A. Swaine, *At the Nexus of Participation and Protection: Protection-Related Barriers to Women's Participation in Northern Ireland* (2021), at <https://www.ipinst.org/wp-content/uploads/2021/06/Womens-Participation-Northern-Ireland-2-Final.pdf>.

through an open call to the networks of the Women's Resource and Development Agency in Belfast. This was then supplemented with targeted invitations to ensure that the sample was representative of the spectrum of political opinion, geographic location, and age. Each participant completed a semi-structured interview during which they were asked about their experience of risks arising from their professional role.[10] Due to ethical concerns for women's safety, participants were drawn from women in positions of leadership who were accustomed to speaking publicly in their professional capacities.[11] The anonymized transcripts were coded inductively to identify common themes, allowing participants' own articulation of lived experience of threat to form the basis of the findings.[12] In adopting this approach, the article builds on existing feminist theories of harm that allow women to (re)conceptualize what they have experienced, and thereby to explore gender-specific understandings of what harm is and how we recognize it.[13] Utilizing theoretical tools from gender studies to interpret the data sheds new light on legal framings of threats and harm.

As participants shared their significant exposure to risk in their public roles, one notable theme emerged – that of threat and the use of subtle forms of speech as a means of intimidation. The nature of these threats, including their social and political context, is more fully elaborated in Section 4. It is important to acknowledge here, however, that as in other regions of the UK and globally, a general culture of misogyny and sexist abuse is a feature of public life for women in Northern Ireland.[14] An additional layer is the broader legacy of Northern Ireland's political context, including the enduring presence of paramilitary organizations that exert significant influence over social structures.[15] Highlighting the ways in which 'the past is lived in the present',[16] historical patterns of gender inequality and militarized sectarian division continue to shape women's experience of public life, as well as the ways in which related threats are subjectively understood.[17] Participants reported multiple interactions where they understood, and were made to understand, seemingly innocuous statements as threats, such as ostensibly throwaway comments made about their 'lovely set of windows', and about how someone 'knew them' or 'knew what they were doing' or how they 'recognized their accents'. In the context of Northern Ireland, these are messages that convey a threat that derives, on the part of both sender and recipient, from a shared knowledge of a violent past in which, for example, homes regularly had objects thrown through their windows.[18]

A further dimension arose from the way in which threats were made. Often, statements could not be described as direct threats. Rather, the deliberate use of ambiguous language to convey

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[10] All interviews were conducted in Northern Ireland in January and February 2021. Interviews were conducted online due to public health restrictions arising from the COVID-19 pandemic in force at the time.

[11] Ethical approval for the project was granted by Durham University (reference Law-2020-10-22T12:36:56, 29 October 2020).

[12] Interviews have been anonymously coded as follows: 'NI' denotes the location of the interview; each interview is allocated a number to identify it. For example, Interview 1 is coded as NI 101. This convention is used throughout.

[13] F. Ní Aoláin, 'Exploring a Feminist Theory of Harm in Conflicted and Post-Conflict Societies' (2009) 35 *Queen's Law J.* 219.

[14] R. Powell, *Gender Inequality in Northern Ireland: Where Are We in 2020?* (2020), at <https://wrda.net/wp-content/uploads/2020/02/Gender-Inequality-in-Northern-Ireland.pdf>; Turner and Swaine, op. cit., n. 9.

[15] K. Rickard and K. M. Bakke, 'Legacies of Wartime Order: Punishment Attacks and Social Control in Northern Ireland' (2021) 30 *Security Studies* 603.

[16] M. Burke, *When Time Warps: The Lived Experience of Gender, Race, and Sexual Violence* (2019) 13.

[17] Id., citing P. Hill Collins, *Black Sexual Politics: African Americans, Gender, and the New Racism* (2005).

[18] See Section 5 below.

messages ensured that threats could only be understood in context. One participant noted that '[i]t's sometimes the way things are said, as opposed to what is said'.[19] Participants highlighted the indirect nature of these threats and how often words or actions did not reach the threshold of a threat as defined in law or policy. Yet they were in no doubt as to the intention behind the messaging. They did not feel, however, that their subjective perception of risk was taken seriously in the context of criminal law and the 'Threats to Life' policy under which police protection is allocated in response.

2.2 | Capturing threats in criminal law

In the UK, criminal law is the means by which the state assesses the security of the individual and provides protection accordingly. As the concept of positive obligations has taken hold in human rights law, the idea of a 'right to security' and the consequent obligations that this would place on a state have been the subject of significant discussion.[20] Yet despite a fairly robust international legal framework requiring states to take action to protect life,[21] the attendant criminal law architecture remains limited when it comes to quantifying threats. In this respect, two distinct questions arise. First, what types of harm can be considered to be 'threatening'? Second, what level of intention must be proved?

The law in Northern Ireland takes its lead from that in England and Wales. There are four categories of offence that relate to threats. The first requires the specific act of making threats, such as threatening to kill,[22] threatening to cause damage to property and potentially endanger life in the process,[23] or being in possession of imitation firearms.[24] These are specific intent offences, whereby the act of making a threat, and the intention to commit that act, must be clear. Furthermore, the intended effect on the victim must be clearly defined. Each of these offences requires not only that the accused made the threat, but also that they knew, or ought to have known, that fear would be the effect of their actions. A similar approach is adopted in the Public Order Act 1986 that applies in England and Wales, whereby a person commits an offence if they use threatening or abusive words or behaviour, verbally or in writing, with the intent that the other person would believe that 'immediate unlawful violence' would be used against them.[25] In Northern Ireland, the Public Order (Northern Ireland) Order 1987 similarly provides for some offences related to acts intended or likely to stir up hatred or arouse fear. Specifically, the Order provides that words, behaviour, or the display of written material,[26] the distribution or showing of recorded material,[27] or the possession of matter intended or likely to stir up hatred or arouse fear[28] may all constitute

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[19] NI 103.

[20] L. Lazarus, 'Positive Obligations and Criminal Justice: Duties to Protect or Coerce?' in *Principled Approaches to Criminal Law and Criminal Justice: Essays in Honour of Professor Andrew Ashworth*, eds J. Roberts and L. Zedner (2012) 135.

[21] All of the major regional human rights treaties contain such provisions. For an overview, see id.

[22] Offences Against the Person Act 1861, s. 4.

[23] Criminal Damage Act (NI) Order 1977.

[24] Firearms (NI) Order 2004, s. 58(2).

[25] Public Order Act 1986, s. 4.

[26] Public Order (Northern Ireland) Order 1987, Art. 9.

[27] Id., Art. 11.

[28] Id., Art. 13.

an offence. Importantly, the possibility of prosecution for making threats depends largely on their reference to specific acts, as well as on the objectively discernible existence of intention on the part of the accused to stir up hatred or arouse fear, or on the inherently threatening, abusive, or insulting nature of the material itself.

The second category of offence arises under the Communications Act 2003. This Act provides for liability for malicious communications where the purpose of communication is to 'cause distress or anxiety to the recipient'.[29] Section 127 of the Act makes it an offence to send a message that is 'grossly offensive or of an indecent, obscene or menacing character over a public electronic communications network'.[30] Given the nature of threats as 'communicative acts', and particularly given the dominance of social media in modern life, it is also possible to consider these forms of communication, particularly where they are made online, as threats under the Act. While the offence requires proof that the sender was aware that the message would cause fear for the recipient,[31] it is critical to establish 'as a matter of fact' that there is a menacing threat in its content. This is more difficult to determine where the form and wording of threats are opaque and understood only within a specific social context that lies beyond the scope of legal reasoning.[32]

The final two categories of offence are those of basic intent. The offence of harassment provides that a 'course of conduct' that causes fear may amount to an offence. The Protection from Harassment Act 1997 and the corresponding Protection from Harassment (Northern Ireland) Order 1997 penalize the infliction of emotional harm through a course of conduct of at least two incidents.[33] There is also scope for including fear of violence in the future under this offence where the nature of the threat is reasonably clear.[34] It is, however, not enough to demonstrate that someone fears that violence *may* happen at some point in the future.[35]

Finally, in England and Wales, the Serious Crime Act 2015 introduced the crime of coercive control,[36] which was subsequently introduced in Northern Ireland through the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021. This offence extends the legal understanding of the significance of fear as an element of an offence by recognizing that acts or patterns of abuse, including harassment, intimidation, and control, can constitute an offence without necessarily being accompanied by explicit threats or violence. This begins to break the link between specific acts and fear, opening up space for incorporating a more subjective approach to threat.

While threats and causing fear of violence are captured by the law in a number of ways, a connecting thread is the need to establish the existence of the threat both with reference to a specified harm and in terms of the intention of the perpetrator to commit that harm. The nature of the threatened harm is determined objectively. As Suzanne Levitt argues, 'to say something is a legal harm is to collapse into a phrase, a systemic evaluation that particular experiences

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[29] Communications Act 2003, s. 127.

[30] Id. The message must 'as a matter of fact' be grossly offensive, or of an indecent, obscene, or menacing character. Ordinary English words can be 'indecent or grossly offensive': *Connolly* v. *DPP* [2007] 1 ALL ER.

[31] *Chambers* v. *DPP* [2012] EWHC 2157.

[32] Fricker, op. cit., n. 7; Anderson, op. cit., n. 5.

[33] The Protection from Harassment (Northern Ireland) Order refers to 'alarming the person or causing the person distress': Protection from Harassment (Northern Ireland) Order 1997, s. 2(1)(2). See J. Stannard, 'Sticks, Stones and Words: Emotional Harm and the English Criminal Law' (2010) 74 *J. of Criminal Law* 533.

[34] Such fear must arise from another incidence: *R* v. *DPP* [2001] ECHC Admin 17.

[35] Protection from Harassment Act 1997, s. 4.

[36] Serious Crime Act 2015, s. 76.

or actions are wrongful and warrant redress'.[37] Joanne Conaghan similarly asserts that law has become an instrument for the redress of harm[38] and, as a result, only those harms for which responsibility can be objectively determined can be captured in the legal framework. Consequently, there remains the question of who gets to determine the harm, and on what (gendered) basis?[39]

2.3 | Assessing threats: the 'Threats to Life' policy in Northern Ireland

In the context of the empirical research, participants spoke of the response to their experience of threat through the lens of their engagement with the Police Service of Northern Ireland (PSNI). The PSNI's 'Threats to Life' policy is the link between the law and its operation in policy. When a report of a threat is received, the PSNI conducts a 'threat assessment' to determine what, if any, police action is necessary to protect the life of the threatened person.[40] The threat assessment is constructed around categories of objective risk, whereby the police know or ought to have known of a real and immediate risk arising from the criminal actions of a third party.[41] When considering the existence of threats against women, the assessment focuses on acts and utterances that indicate a specific risk of *immediate* unlawful violence to the recipient. These are inevitably the framings that are necessary for a legalistic analysis of whether women are, in fact, being threatened.[42]

When conducting this assessment, the police must walk a fine line between respecting the due process rights of those accused of crimes, on the one hand,[43] and taking sufficient measures to protect life, on the other. Failure to do so results in breaches of procedural obligations under Article 2 of the European Convention on Human Rights (ECHR), and civil liability in respect of that failure.[44] In this regard, Liora Lazarus identifies a tension between a right to security rooted in positive human rights obligations, on the one hand, and an increase in the coercive activity of the state arising from an increased intensity of policing, on the other.[45] As a result of this tension, the scope of the obligations placed on the police is relatively narrowly defined. According to the ECHR, these obligations must not be interpreted in such a way as to impose an 'impossible' or 'disproportionate' burden on the authorities.[46] There are no hard and fast rules about what actions are reasonably necessary to keep people safe, as these are assessed on a case-by-case

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[37] Levitt, op. cit., n. 1, p. 532.

[38] J. Conaghan, 'Law, Harm and Redress: A Feminist Perspective' (2002) 22 *Legal Studies* 319.

[39] Here we are drawing on justification theory: see Robinson, op. cit., n. 6.

[40] Police Service of Northern Ireland, *Threats to Life* (2017) Corporate Policy Service Instruction SI2317, at <https://www.psni.police.uk/sites/default/files/2022-09/Threats%20to%20Life%20%20January%202022.pdf>.

[41] *Osman* v. *United Kingdom* [1998] ECHR 101, para. 116. One research participant who had had to engage with the threat assessment process noted that 'the way they tend to do threat assessments is you get an all clear unless and until there is a specific threat by a recognised individual': NI 125.

[42] F. Vera-Gray, 'Men's Stranger Intrusions: Rethinking Street Harassment' (2016) 58 *Women's Studies International Forum* 9.

[43] *Osman*, op. cit., n. 41, para. 121.

[44] *Hill* v. *Chief Constable of West Yorkshire* [1988] 2 All ER 238; *Michael* v. *Chief Constable of South Wales* [2015] UKSC 2. See Lazarus, op. cit., n. 20.

[45] Lazarus, id.

[46] *Osman*, op. cit., n. 41, para. 115.

basis,[47] meaning that all assessment of risk is conducted within the framework of legal binaries that establish what is and is not a threat. This leads towards a conservative assessment of risk as only that which is immediate and objectively verifiable. One participant in the research observed that '[w]hen they say "no threat", what they mean is there is no evidence of threat – they don't mean you're not under any sort of threat'.[48]

The extent to which women's situated experience of threats can be addressed in policy depends on the extent to which those threats can be captured in law. Yet the emphasis on objectively determinable facts has, to date, rendered invisible the subjective and gendered experience or perception of threat.

2.4 | Taking threats seriously

To have their experiences taken seriously, women are expected to frame them in the language of the existing legal structures. As Fiona Vera-Gray notes, 'social phenomena that are experienced in different ways by women and men encounter the problem of naming'.[49] In particular, to fall within the definition of a harm captured by criminal law, the experience must be exceptional rather than everyday. Feminist legal scholarship has long sought to challenge the emphasis on the purportedly objective standards of law by evidencing how it is inherently gendered,[50] excludes women as reasonable actors,[51] and renders them as law's 'other'.[52] Fricker similarly notes how the female voice is 'not recognised as rational, but is marginalised as morally immature', hindering women's attempts to communicate their sense of threat.[53] This was borne out in the interviews, where a clear gap was evident between the way in which threats were treated in law and policy, on the one hand, and how participants themselves perceived the level of threat and the adequacy of the response, on the other.

Participants articulated a common experience whereby they were subjected to words that were not captured under the policy as threats and that would not have met the standard for criminal prosecution. Crucially, those words were understood by both the person saying them and the person hearing them as a form of threat designed to intimidate. Threats experienced in such circumstances are rendered invisible through the limits imposed by legal language and legal binaries.[54] This was referred to by one participant as the 'grey side of risk'.[55] Many participants noted that they had experienced incidents where they felt that subjective fear had not been adequately addressed by the police. For example, one commented how she felt that the 'perception of risk is not really dealt with'.[56] Another noted how, when she reported a perceived serious threat, the

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[47] Id., para. 116.

[48] NI 125.

[49] Vera-Gray, op. cit., n. 42, p. 13.

[50] Conaghan, op. cit., n. 4; C. Smart, *Feminism and the Power of Law* (1989).

[51] N. Cahn, 'Looseness of Legal Language: The Reasonable Woman Standard in Theory and Practice' (1992) 77 *Cornell Law Rev.* 1398, at 1404.

[52] E. Handsley, 'The Reasonable Man: Two Case Studies' (1996) 1 *Sisters at Law* 35, at 59; Fricker, op. cit., n. 7.

[53] Fricker, id., p. 13.

[54] Vera-Gray, op. cit., n. 42, p. 9.

[55] NI 106.

[56] Id.

responding police officer dismissed her fears by suggesting that she 'was not under any more threat than any of us'.[57] These observations raise the question of 'how best to manage the tensions between the articulation of lived experience for women, with the boundaries necessary for legal and policy intervention'.[58] While this research looks specifically at the experience of women in public life, clear parallels emerge between these findings and the multiple cases of women who have been murdered after reporting feeling unsafe to the police or other statutory bodies across the UK.

3 | SYMBOLIC POWER AND THE EFFECTIVENESS OF THREATS

The concept of 'symbolic power' developed by the French sociologist Pierre Bourdieu speaks to the way in which social relations mediate encounters between individuals, exerting power and influence, and constructing reality.[59] It highlights the need to understand the structure of social relations and the resulting invisible forces within which interactions between individuals take place.[60] The concept of symbolic power as a form of violence against women in politics has begun to be recognized.[61] Indeed, the term 'symbolic violence' is often used when referring to its impact on women. In this context, it is understood as the ways in which social institutions and structures operate to dominate women, often enabling other forms of violence against them.[62]

As Bourdieu notes, '[d]epending on my position in the space, I will see different things, depending on whether I am dominant or dominated'.[63] Women operate within a social context in which they are accustomed to persistent low levels of everyday violence, sexual harassment, and threats. In turn, they adjust their behaviour and engagement in the social world to account for the ever-present and latent possibility of gendered harm – in ways that are different than for men.[64] What seems like a threat to a woman may not seem serious in the eyes of a man, or to the law.[65] One participant in the research noted how some (male) police officers seemed to think it funny when she reported feeling under threat. She recalled how 'they got a bit of a giggle out of it. There's this person trying to tell them what's what, thinks she's special.'[66] This demonstrates an underlying tension between the need to take threats seriously and an unwillingness to acknowledge that

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[57] NI 125. In this sense, the participant was experiencing a form of hermeneutical injustice caused by the inability of the person hearing her complaint to recognize her experience. Fricker, op. cit. n. 7.

[58] Vera-Gray, op. cit., n. 42, p. 10.

[59] P. Bourdieu, *Language and Symbolic Power* (1991) trans. M. Adamson, 166.

[60] Bourdieu describes these as 'invisible relations that you cannot photograph': P. Bourdieu, *Habitus and Field: General Sociology, Volume 2 – Lectures at the Collège de France, 1982–83* (2020) 13.

[61] G. Bardall, 'Symbolic Violence as a Form of Violence against Women in Politics: A Critical Examination' (2020) 65 *Revista Mexicana de Ciencias Políticas y Sociales* 379; UN Special Rapporteur, op. cit., n. 3; Krook, op. cit., n. 2.

[62] Hill Collins, op. cit., n. 17; S. Thapar-Björkert et. al., 'Exploring Symbolic Violence in the Everyday: Misrecognition, Condescension, Consent and Complicity' (2016) 112 *Feminist Rev.* 114.

[63] Bourdieu, op. cit., n. 60, p. 253.

[64] Bourdieu makes the analogy that '[t]he feeling of being king makes it very difficult to understand the knowledge of the social world that mere mortals have': Bourdieu, op. cit., n. 59, p. 60.

[65] Handsley, op. cit., n. 52, p. 66.

[66] NI 125.

there is a difference between a man's assessment and a woman's assessment of what it means to be threatened.[67]

Global scholarly and policy research shows how gender norms and entitlements 'shape the meaning of violent acts' experienced by women and men.[68] For women, gender's 'meta-status' in both mediating social relations and determining that women have less economic, political, and social power than men means that gender-based violence is pervasive, regulating the place of women in gender and sexual hierarchies.[69] Feminist scholars argue that there is a need to look beyond isolated 'incidents' of gendered violence to 'a systemic pattern of violence against individual women and women collectively who live in fear of imminent violence'.[70] Invisibilized and normative structural inequalities determine women's individual, social, and collective vulnerability to gendered violence.[71] The insecurity that this violence generates in women's lives exists within and beyond, and disrupts, the idea of security as defined by the state.[72] It is therefore not only physical violence that is significant in estimations of what constitutes 'violence against women', but also the mere existence of the latent *threat* of gendered violence in terms of social, material, and bodily harm that matters.[73] It is this that distinguishes women's experiences from those of men.

Symbolic violence does not require physical acts of violence against women. Rather, it is rooted in the way in which social conditions create a shared but largely unconscious understanding of the legitimate order.[74] This in turn leads women to accept these forms of violence as part of normal everyday life. Yet, as one participant noted, 'sometimes perception of risk can be as detrimental to a person as an actual risk can be'.[75] For most participants, the experience of feeling under threat was not an isolated incident, but rather an ongoing way of being. Subtle messaging was used to let them know that their activities were being watched, or that they could be harmed at any time by those who did not approve of their actions. Often, individual police officers to whom incidents were reported acknowledged that the perception of fear was not unfounded.[76] Many were empathetic with the participants who reported incidents or threats, but their hands were tied by the limits of the policy framework, which is in turn constrained by the approach of the

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67 L. Kelly and J. Radford, '"Nothing Really Happened": The Invalidation of Women's Experiences of Sexual Violence' (1990) 10 *Critical Social Policy* 39; K. L. Anderson, 'Gendering Coercive Control' (2009) 15 *Violence against Women* 1444.

68 N. F. Russo and A. Pirlott, 'Gender-Based Violence: Concepts, Methods, and Findings' (2006) 1087 *Annals of the New York Academy of Sciences* 178, at 179.

69 Id., p. 180. For discussion evidencing the relationship between gender and violence and its pervasive nature in the lives of women, see M. Urban Walker, 'Gender and Violence in Focus: A Background for Gender Justice' in *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations*, ed. R. Rubio-Marin (2009) 18. For policy research, see WHO, *Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence* (2013), at <https://www.who.int/publications/i/item/9789241564625>; UN, *The UN Secretary-General's In-Depth Study on All Forms of Violence against Women* (2006), at <https://www.un.org/womenwatch/daw/vaw/SGstudyvaw.htm>.

70 J. True, *The Political Economy of Violence against Women* (2012) 4.

71 Id. See also F. Ní Aoláin, op. cit., n. 13.

72 R. Matthew et al. (eds), *Women's Perspectives on Human Security: Violence, Environment, and Sustainability* (2020); L. Shepherd, *Gender, Violence and Security: Discourse as Practice* (2008); J. A. Tickner, *Gender in International Relations: Feminist Perspectives on Achieving Global Security* (1992).

73 H. Popitz, *The Phenomena of Power: Authority, Domination, and Violence* (2017).

74 Bourdieu, op. cit., n. 60; Bardall, op. cit., n. 61.

75 NI 106.

76 NI 106; NI 110; NI 119.

law. Crucially, however, this kind of symbolic power operates most effectively on what Bourdieu terms a 'habitus' that is predisposed to respond to it.[77] To understand the habitus, it is therefore necessary to consider how the individual is socially situated.

4 | UNDERSTANDING THE HABITUS AND FIELD OF NORTHERN IRELAND

The concept of symbolic power explains the existence of invisible forces that operate to shape an individual's understanding of their position. To fully appreciate the reasons why women's perception of threat should be taken seriously in Northern Ireland and elsewhere, it is necessary to understand the way in which these perceptions are shaped. As noted, the extent to which symbolic power can influence a person is determined by what Bourdieu terms their habitus, which, put simply, is the embodied memory of one's past experiences.[78] It is the interaction of this habitus – the way in which one is predisposed, through experience, to understand the world – with objective social structures that shapes a person's response to a stimulus such as a threat.[79] As a result, words themselves are only one part of the story; they cannot be understood in a vacuum, only in the context of the previous experience of the person hearing them. This approach recognizes the interplay between an objective field of forces, and a subjective habitus of dispositions. It helps to challenge the binary of objective and subjective as a lens through which to assess threat and harm. It also underlines how threats can only be understood by examining the role of institutions and structures within which individuals operate in creating a context in which they feel safe or not.

4.1 | Understanding threats in the context of Northern Ireland

In 1998, agreement was reached in Belfast to bring an end to 30 years of violent political conflict in Northern Ireland (hereinafter 'the Good Friday Agreement').[80] The Good Friday Agreement established the basis for a power-sharing government on a cross-community basis. It also recommended reform of the main institutions of justice and security, and the establishment of new institutions for the legal protection of human rights and equality.[81] The creation of these new legal institutions was the means by which political conflict would be managed, thereby preventing violence.

Through the implementation of the Good Friday Agreement and subsequent related political agreements, most notably the St Andrew's Agreement of 2006[82] and the Stormont House

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[77] Bourdieu, op. cit., n. 60, p. 52.

[78] Id., p. 121.

[79] Bourdieu notes how everything that a person has previously experienced 'will contribute, through the mediation of the habitus, to shape its response to this stimulus at that point in time': id., p. 21.

[80] *The Agreement Reached in the Multi-Party Negotiations: Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland* (1998), at <https://peacemaker.un.org/sites/peacemaker.un.org/files/IE%20GB_980410_Northern%20Ireland%20Agreement.pdf>.

[81] See generally D. Torrance, *Devolution in Northern Ireland, 1998–2020* (2020), at <https://commonslibrary.parliament.uk/research-briefings/cbp-8439>.

[82] Northern Ireland (St Andrew's Agreement) Act 2006.

Agreement of 2014,[83] policing and justice powers have been devolved from Westminster to the Northern Ireland Assembly. The Assembly, and its Executive departments, are now responsible for law and policy. This implicitly requires managing the legacy of political violence and the continued presence of large numbers of people who were formerly connected to paramilitary organizations, including the residual social structures of control created by those groups.[84] Recently, there has been an increase in the incidence of low-level violence, and questions are now being asked about the extent to which paramilitary groups retain control and influence over both politics and society in Northern Ireland.[85] Therefore, while Northern Ireland is often considered to be a 'post-conflict' society, the legacies of violence remain a feature of life. This is the context in which the habitus and field of Northern Ireland must be understood.

4.2 | Constructing the field

Bourdieu draws the analogy between the objective social structures of the field and the 'rules of the game'. These are the accepted laws, norms, and institutions that, for the most part, people accept as legitimate – the rules that govern the working of the social space. One's perceptions are shaped by the combination of one's experiences and the ways in which one adapts to the objective social structures within which one operates.[86] As a result, 'to understand what happens in a social space we need to postulate invisible structures'.[87] In the words of Bourdieu, 'think not of interactions but of positions; instead of seeing a space of visible individuals and interactions … we now only see positions analysed in terms of an abstract space that we have to construct'.[88]

In all societies, gender norms and inequalities intersect with other political dynamics to create the field of objective or 'incorporated' structures.[89] In Northern Ireland, gender norms intersect with the 'rules of the game' set by the Good Friday Agreement and its subsequent implementation.[90] This combined context of political violence and rigid gendered hierarchies (among others) plays a significant role in the construction of the field in Northern Ireland.

The macro political conflict that took place in Northern Ireland has left a legacy of sectarianism that continues to permeate everyday life and structure political processes. One example of this is

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[83] Northern Ireland Office, *Stormont House Agreement: An Agreement on Key Issues that Opens the Way to a More Prosperous, Stable and Secure Future for Northern Ireland* (2014), at <https://www.gov.uk/government/publications/the-stormont-house-agreement>; H. Armstrong and P. Bowers, *Northern Ireland: Stormont House Agreement and Implementation* (2015), at <https://commonslibrary.parliament.uk/research-briefings/cbp-7284>.

[84] C. Knox and R. Monaghan, *Informal Criminal Justice Systems in Northern Ireland* (2000).

[85] See for example PSNI, 'Police Recorded Security Situation Statistics: 1 March 2022–28 February 2023' *PSNI*, March 2023, at <https://www.psni.police.uk/official-statistics/security-situation-statistics>.

[86] Bourdieu, op. cit., n. 60, p. 65.

[87] Id., p. 236.

[88] Id., p. 250.

[89] 'Incorporated' refers to the way in which these dynamics become part of the structure within which we live, rather than separate from it.

[90] Torrance, op. cit., n. 81.

the Executive Office's strategy to tackle the legacy of paramilitarism.[91] While most paramilitary groups in Northern Ireland have ostensibly undergone a process of decommissioning, it is clear that the legacy of these organizations continues to shape the field of interactions.[92] The criminal law concept of 'coercive control' has been used in policy to describe the impact of these actors at community levels,[93] acknowledging the ongoing potential of non-state actors to control individuals and communities through forms of intimidation that are difficult for statutory bodies to address. In some communities, paramilitary organizations have been 'transformed' into community development organizations, engaged in the leadership of restorative justice initiatives. There are significant gendered outcomes of this approach in terms of reinstating hierarchies of masculinity and of concentrating power and decision making at community levels in the hands of formerly violent men, reinforcing a public/private divide in which women are assumed to be subject to, rather than agents of, such power.[94] This intersection of political and gendered hierarchies entitles particular men to control particular women, where men's authority over women's positioning in social relations is the rule, not the exception.[95] This has significant implications for women, gender minorities, and other so-called 'new' communities such as immigrants, whose very presence challenges the traditional sectarian power structures and can lead to intimidation and violence.[96]

In addition to a legacy of violence perpetrated by non-state actors, there is also a legacy of gender inequality and sexist attitudes and behaviours that enables high levels of discrimination, violence, and abuse against women in their intimate relationships and spaces, as well as in public and professional workplaces.[97] This creates an additional layer to the 'rules of the game' specifically applied to women. It is notable that when the social and political structures of Northern Ireland are narrated, this additional layer of gender inequality is almost always absent. The story of gender inequality is routinely subordinated to the story of political violence, with the result that the background gendered social order is often rendered invisible. Consequently, the Northern Ireland Executive adopts a gender-neutral approach to policy making, including in its approach to dealing with the security legacy of paramilitary organizations,[98] completely obscuring the gendered hierarchies that underpin the field. This means that the normalized relations of threat experienced by women are ultimately not seen 'because they are considered normal, [and] are presumptively not harmful'.[99] Recognizing women's subjective determination of harm becomes practically impossible in such a field of forces.

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[91] Department of Justice, *Tackling Paramilitarism, Criminality and Organised Crime: Executive Action Plan* (2016), at <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/tackling-paramilitary-activity-action-plan.pdf>.

[92] Turner and Swaine, op. cit., n. 9.

[93] Department of Justice, op. cit., n. 91, p. 5.

[94] F. Ashe, 'From Paramilitaries to Peacemakers: The Gender Dynamics of Community-Based Restorative Justice in Northern Ireland' (2009) 11 *Brit. J. of Politics and International Relations* 298.

[95] M. Urban Walker, op. cit., n. 69.

[96] House of Commons Northern Ireland Affairs Committee, *The Experiences of Minority Ethnic and Migrant People in Northern Ireland* (2022) Second Report of Session 2021–22, HC 159, at <https://committees.parliament.uk/publications/9166/documents/159683/default>.

[97] J. L. Doyle and M. McWilliams, 'What Difference Does Peace Make? Intimate Partner Violence and Violent Conflict in Northern Ireland' (2020) 26 *Violence against Women* 139.

[98] M.-A. Deiana et al., 'Nevertheless, They Persisted: Feminist Activism and the Politics of Crisis in Northern Ireland' (2022) 31 *J. of Gender Studies* 654.

[99] Levitt, op. cit., n. 1, pp. 531–532.

4.3 | Understanding the habitus

When women or other minority groups enter public life, they are inherently going into a world that has been structured to exclude them.[100] As a result, they often bring non-conforming positions, in terms of demands, both explicit and implicit, that clash with the established hierarchies. This is one example of the struggle between the individual and the structures, whereby if the individual manages to impose her own position, the whole space will change.[101] In the case of Northern Ireland, the gendered nature of these structures interacts with existing sectarian cleavages that create powerful vested interests that are challenged by the participation of women in public life. The structures of the Good Friday Agreement, and the deeply embedded sexism attached to leadership, are the 'rules of the game' or the field in which power and influence is divided up. This helps us to account for resistance to women's participation, which is a form of political and gendered disruption that promises to reshape objective social structures in a way that discomforts those in power.

The extent to which women, as newcomers in the public space, are able to challenge the forces that they encounter in that space is proportionate to their capital.[102] Some women have greater political capital, in the form of networks and institutional relationships, to counter these structures than others. The participants in the research were all leaders in their fields. They enjoyed relatively high levels of social capital that enabled them to speak out against the physical and symbolic violence that they experienced. However, research conducted by women's civil society organizations shows that multiple forms of invisible threat are pervasive for women, and that most women at grassroots level do not have the same levels of capital to resist the forces being exerted on them.[103] Indeed, Bourdieu notes how these structures 'impose themselves with particular violence and necessity on the most dominated'[104] – that is, on those who have the least power to resist them. Historic systems of gendered oppression, and the degree to which everyday gendered exclusions and controls have become normative as a result, generate a subtext in which violence, harms, and risk are clearly understood by women. In Northern Ireland, these are amplified further for women from outside the two traditional political communities, such as migrant women, and sexual minorities. Women adapt to and function within a social order in which harms are delimited to accommodate accepted and tolerated levels of both sectarian and gendered abuse, which are often intertwined. A deep understanding of these boundaries, and whether and how they can be safely pushed or crossed at particular times, determines how women live their lives and, in this case, how they engage with public leadership. This reveals, in tangible terms, how objective structures operate to modify the behaviour of the individual and their expectations, rather than

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[100] UN Special Rapporteur, op. cit., n. 3, para. 16, noting the connections between the low level of women's participation in politics, violence against women in politics, and widely held cultural attitudes that associate women with the private and domestic sphere.

[101] Bourdieu, op. cit., n. 60, p. 75.

[102] Id., p. 251. In this sense, 'capital' is understood to mean the resources available to one, linked to networks of institutionalized relationships of mutual recognition. The volume of one's social capital depends on the size of the network of connections that one can effectively mobilize. P. Bourdieu, 'The Forms of Capital' in *Handbook of Theory and Research for the Sociology of Education*, ed. J. Richardson (1986) 241.

[103] Women's Resource and Development Agency, *Women and the Conflict: Talking about the Troubles and Planning for the Future* (2008), at <https://cain.ulster.ac.uk/issues/women/docs/mclaughlin08womenconflict.pdf>.

[104] Bourdieu, op. cit., n. 59, p. 131.

the other way around.[105] It is in this context that the existence of subjective perceptions and risk must be understood.

5 | LANGUAGE, SYMBOLIC POWER, AND INVISIBLE THREATS

While it is clear that the concept of symbolic violence can be used to understand women's inequality, arguably it does not stand alone as a category of threat of violence from which women feel that they should be protected.[106] It is therefore necessary to consider how symbolic power combines with other forces to produce the effect of intimidation or threat on women. In particular, we should seek to understand the way in which *language* is used to exert power within this field of forces. This means looking beyond the words themselves to understand their meaning. For Bourdieu, 'the propensity to reduce the search for causes to a search for responsibilities' within language (and, indeed, within law) makes it impossible to recognize the intimidatory force exerted on those predisposed to see it, which remains invisible to or ignored by others.[107] Understanding the relationship between language and context is therefore crucial to grasping the way in which invisible threats operate by producing an effect on the recipient. This raises the question of what allows two individuals to attribute the same meaning and the same behaviour to the same signifying intentions?[108] In the case of indirect words or language, how do both the person speaking and the person hearing arrive at the same meaning for those words? Put differently, where does language exist?[109]

Central to Bourdieu's understanding of the role of language in exerting power is the way in which it cannot simply be reduced to relations of pure communication. As he notes, 'as soon as one treats language as an autonomous object … one is condemned to looking within words for the power of words', and that, for Bourdieu, is not where that power is to be found.[110] By looking simply at language itself, 'one forgets that authority comes to language from outside'.[111] Of particular interest is the significance of who is speaking. The manner, as much as the substance, depends on the social position of the speaker.[112] For Bourdieu, the speaker is only able to use words to influence other agents because his speech contains the symbolic capital of the group on whose behalf he speaks.[113] The extent to which words issued are understood as friendly or as intimidating therefore comes down to the social function of the speaker. Furthermore, the intimidating effect of words is only created because of the embeddedness of the recipient within the same social world as the speaker. Words exert force on the person hearing them in the form of a 'knowledge effect'.[114]

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105 Id., p. 128. Scott Anderson notes how these communicative acts 'create a condition or constraint on the actions of the threatened party that would not otherwise exist but for the making of a threat': Anderson, op. cit., n. 5, p. 233.

106 Bardall, op. cit., n. 61.

107 Bourdieu, op. cit., n. 60, p. 51.

108 Bourdieu, op. cit., n. 59, p. 111.

109 Id.

110 Id., p. 107.

111 Id., p. 109.

112 Id.

113 Id., pp. 109–111.

114 Id., p. 127.

This dynamic was evident in the ways in which participants spoke about having been exposed to subtle threats and forms of intimidation. For example, one noted how 'even a very simple thing that somebody says, like "I know you" – it doesn't mean "I know you and I'm going to call in"'.[115] The meaning of the phrase 'I know you', for this participant, can only be understood by looking at the 'big picture, at who is speaking and at their back history'.[116] Similarly, the phrase 'she needs taken out', which was deemed not to breach Twitter's community standards, was not understood by the participant to mean 'I'd like to take her out for a meal' but rather as a threat or incitement to murder.[117] The phrase must be understood in a broader context of violence that gives subtext to these particular words. To give another example, one participant noted how a person whom she knew to be connected to paramilitary organizations said to her 'I think you've got a Dunloy accent'.[118] This was a reference to where the speaker thought that she lived, and a clear corresponding inference about her political affiliations. While she dismissed this as a meaningless phrase, and indeed factually incorrect, in her words that was 'the only night that I was conscious of the route home, and conscious that my car registration could be taken'.[119] Not only did this seemingly innocuous observation leave her feeling uncomfortable, it also caused her to alter her behaviour. She noted that 'I chose a bit of a zig-zag route home, which is crazy'. As with other participants, she attributed this change in behaviour, and her deeper understanding of the nature of the interaction that had occurred, to her knowledge of the history of the people with whom she was working, and the ways in which people draw conclusions about religious and political identity based on where one lives.

The most sinister example of this use of indirect communication to intimidate women comes in the form of suggestions, usually written on walls in towns or on social media, that they are informers for the police or for the security services (MI5). A number of participants in the research reported how allegations that they were working for the security forces were posted online.[120] When considered in the context of the history of Northern Ireland, this is a particularly disturbing form of indirect threat.[121] As one participant who suffered this form of intimidation noted, 'I knew it was directed towards my home. … And I had to drive past that every day knowing that that sign had been put up for me.'[122] This example usefully illustrates the distinction between direct and indirect threats, and the ways in which a direct threat, such as a threat issued by one person to shoot another, is more easily captured within the existing criminal law framework for dealing with threats because there is a clear threat to carry out an illegal act. There is also a clear intended victim and a clear perpetrator. By contrast, a statement that someone is an informer is clearly understood by most people in Northern Ireland as an incitement or threat to commit violence against that

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[115] NI 101. 'I know you' and 'We know you' were reported in multiple interviews as phrases routinely used to convey threat to women. See also NI 103; NI 125.

[116] NI 101.

[117] NI 105.

[118] Dunloy is a village in County Antrim. Space in Northern Ireland remains deeply segregated. As such, it is often possible to draw conclusions about a person's political or community background from where they live. See P. Nolan, 'Two Tribes: A Divided Northern Ireland' *Irish Times*, 1 April 2017, at <https://www.irishtimes.com/news/ireland/irish-news/two-tribes-a-divided-northern-ireland-1.3030921>.

[119] NI 120.

[120] NI 106; NI 119; NI 120.

[121] For context, see R. Dudai, *Penality in the Underground: The IRA's Pursuit of Informers* (2022).

[122] NI 119.

person,[123] but the words themselves do not point to a specific criminal act, nor indeed to a specific perpetrator, leaving them outside the scope of legal and policy protection. This detachment of words from their referent is a central part of the way in which language enables political discourse and symbolic struggle.[124]

These indirect utterances can be both descriptive ('X is a police informer') and prescriptive ('Informers will be shot'). Women themselves acknowledge that words alone often do not look like threats, but that 'when you look at the history of the person uttering them, and the way in which it is said', they appear in a different and more threatening light.[125] This is because the power of the words derives not solely from the individual speaking them, but also from the way in which the speech 'concentrates within it the accumulated symbolic capital of the group of which he is an authorised representative and the agenda of that group'.[126] If one's social reality is shaped by such an agenda, this affords an ontological status to language, enabling it to play an eminently political role as a result.[127]

Scott Anderson notes three conditions whereby a threatener is able to make credible threats with a reasonable hope that those threats will achieve their aim: first, that the act that is being threatened is commonly performed, or at least feasible; second, that the threatener demonstrates similarities to those who have carried out such acts in the past; and third, that the party being threatened is in a position of vulnerability. When these conditions combine, it is possible for a person to communicate a credible threat. For Anderson, the person making the threat is 'taking advantage of a certain kind of power that he possesses relative to the threatened party'.[128] Notably, this power resides in the ability of the person making the threat to ally himself with the history of actors who have previously harmed others in the way in which the threatener proposes, as well as a willingness and ability to harm others violently.[129]

In this research, those issuing threats were predominantly connected to paramilitary organizations. Their words bore the symbolic capital derived from years of violence and intimidation that have been a feature of everyday life in Northern Ireland.[130] For this reason, they were effective in conveying threat or intimidation, through the way in which the words acted on the recipients through their knowledge of this social world.[131] An invisible field operates between speakers and recipients, a space where 'forces exerted can only be grasped through the modifications they cause to individuals and their behaviour'.[132] It is therefore important to take seriously not only the words that are spoken, or indeed the manner in which they are spoken, but also the effect that they have on the person to whom they are uttered. Understanding this effect helps us to grasp the nature

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[123] Gabrielle Bardall terms this an 'act of commission' that amounts to symbolic violence: Bardall, op. cit., n. 61.

[124] Bourdieu, op. cit., n. 59, pp. 113–114.

[125] NI 101.

[126] Bourdieu, op. cit., n. 59, p. 109.

[127] Id., p. 111.

[128] Anderson, op. cit., n. 5, p. 237.

[129] Id., pp. 238–239.

[130] Butler refers to 'a language whose historicity includes a past and future that exceeds that of the subject who speaks': Butler, op. cit., n. 5, p. 29.

[131] Bourdieu, op. cit., n. 59, p. 127.

[132] Bourdieu, op. cit., n. 60, p. 13. As Bourdieu notes, 'the forces that are suggested to us are known to us only through the intermediary of the individuals that they influence': Bourdieu, op. cit., n. 59, p. 121.

and significance of the words. The very notion of threat is unintelligible when abstracted from its relationship to contexts where power differentials enable pressure to be put on the person being threatened.[133]

Understanding the role of symbolic power in these interactions helps us to grasp the role of less tangible elements of interaction, such as the manner in which words are communicated, in a more nuanced fashion.[134] What can appear as a jocular interaction[135] or a polite request, such as 'I am asking you not to go into this meeting',[136] takes on more sinister significance depending on the person who is speaking and their social position.[137] For example, one participant noted how ex-paramilitaries in her area would make ostensibly throwaway comments about her 'lovely set of windows'.[138] This is not the language of direct threat. It is difficult to pinpoint a specific act from a comment such as 'Those are lovely windows you have'. It is even more difficult to pinpoint in an objective sense what the intention is behind those words. Yet the interaction is understood by both parties to be conveying a threat because of a history of people's homes being attacked with missiles such as bricks or petrol bombs thrown through windows. For Judith Butler, the force of such language derives from 'an encoded memory of trauma, one that lives in language and is carried in language'.[139]

The likelihood of these words leading to violent actions is assessed by the person hearing them in the context of the known history of violent social interaction in Northern Ireland – the knowledge, for example, that small children were burned in their beds because of sectarian anger,[140] and that so-called 'touts', including women, were routinely abducted and murdered.[141] The habitus is a product of this history, and as a result of this experience, women become more inclined to 'anticipate and await the probable'.[142] As Bourdieu notes,

> the science which may be tempted to cut through these debates by providing an objective measure of the degree of realism of the respective positions must, if it is to proceed in a logical way, describe the space in which these struggles take place.[143]

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133 Anderson, op. cit., n. 5, p. 238.

134 Bourdieu, op. cit., n. 59, pp. 236, 246.

135 NI 125. The fact that the interaction itself, when studied objectively, appears friendly does not remove the subtext of threat; see also NI 103, noting how 'there's never been any open threat in all honesty, but it's more the wee jokes around them [the women] … It's *that* coercive.'

136 NI 113.

137 Butler, op. cit., n. 5.

138 NI 103.

139 Butler, op. cit., n. 5, p. 37.

140 J. F. Clarity, '3 Catholic Brothers Killed in Fire, Stunning Ulster and Raising Fears' *New York Times*, 13 July 1998, at <https://www.nytimes.com/1998/07/13/world/3-catholic-brothers-killed-in-fire-stunning-ulster-and-raising-fears.html>. This fear clearly weighed on one participant, who noted how the time that she had been most afraid was when her address was posted in a Facebook group targeting her. She noted how she had two small children at the time and 'had to get fire extinguishers put into the house because we were afraid of them putting something through the letterbox': NI 119.

141 P. Radden Keefe, *Say Nothing: A True Story of Murder and Memory in Northern Ireland* (2018).

142 Bourdieu, op. cit., n. 59, pp. 123–124.

143 Bourdieu, op. cit., n. 59, p. 134.

6 | INVISIBLE THREATS: WHAT ARE THEY AND WHY DO THEY MATTER?

In a context where the idea of security is linked to the logics of the state and criminal justice, it is inevitable that situated experiences of threat are difficult to accommodate.[144] However, as Butler asks, 'what if language has within it its own possibilities for violence and for world shattering?'[145] The notion of invisible threats is proposed as a conceptual tool to address the gap between legal recognition and situated experience – a means of exploring in more depth the limits of the legal approach, and how we may begin to move beyond it.

Invisible threats are those that arise because either the nature of the harm or the nature of the intention, or both, is ambiguous. The threat resides in the power of language to produce consequences beyond the words themselves.[146] While there may be a clearly shared understanding of the purpose of the words between speaker and recipient, that purpose is not objectively definable under criminal law. The concept of invisible threats helps us to decouple words from their ordinary meaning and explore their power in context. To understand invisible threats, we must look beyond *what* was said and consider who said it and the effect that it produced.

A threat prefigures an act that is yet to come.[147] In this respect, a threat made to a woman creates a sense of anticipation, extending the temporal scope of the threat and shaping her sense of security.[148] It 'enacts domination', operating as the 'vehicle through which the social structure is re-instated'.[149] Ultimately, this empowers those who use subtle forms of violence and intimidation to silence women, thereby also denying the relevance of women's subjective experience of harm.[150] To limit the idea of harm to that defined by criminal law is therefore to miss important ways in which (in)security is embedded within everyday social structures.

This can have sinister side effects, particularly where paramilitary actors become normalized as part of the social structures. For example, a number of participants in the research reported that, when faced with police inaction, they were forced to accept help from ex-paramilitaries. The police were aware of a threat against one participant but could not share any information about the person responsible. The participant reported how a man 'left an anonymous threat on my voicemail and the police will [sic] not inform me of his name. I had to go directly to ex-paramilitaries to find out the answer, which is absolutely ridiculous and entirely unfair.'[151] Another participant noted how she reported graffiti targeting her to the police. She recalled how the responding officer 'laid back in his chair and said "Would you never think about moving?"' After this response, which was inadequate in her view, the participant was approached by a 'man with influence'

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[144] L. Lazarus, 'The Right to Security: Securing Rights or Securitising Rights?' in *Examining Critical Perspectives on Human Rights*, eds R. Dickinson et al. (2012) 87.

[145] Butler, op. cit., n. 5, p. 6.

[146] Id.

[147] Butler notes how 'the threat begins a temporal horizon within which the organising aim is the act that is threatened': id., p. 11.

[148] J. Twemlow et al., 'Moving in a State of Fear: Ambiguity, Gendered Temporality and the Phenomenology of Anticipating Violence' (2022) 48 *Aus. Feminist Law J.* 87.

[149] Butler, op. cit., n. 5, p. 19.

[150] Kelly and Radford, op. cit., n. 67.

[151] NI 116. The participant felt vulnerable as a result of having received this threat but not knowing where the person who had issued the threat was located. Through her engagement with ex-paramilitaries, she was able to establish that the man in question lived one mile from her house and to take preventive action.

in the community who started a chain of events that included offers of assistance from a number of paramilitary organizations. While she did not want to accept help from ex-paramilitaries, this mobilization eventually led to police protection being offered.[152] What is clear from these examples is that ex-paramilitaries step into the void where the police are unable to address the concerns of women. This further strengthens both the legitimacy and normalization of paramilitarism within communities, and as a result makes it easier for women to turn to them for support. This practice also reinforces the relevance and legitimacy of the field and the 'rules of the game', affirming the power of paramilitary organizations to determine, control, and manage any threats of the invisible and symbolic kind.[153]

Indeed, the extent of this adaptation to circumstance is what leads to symbolic violence. Symbolic violence has been distinguished from other forms of violence against women because of how it operates largely with the apparent consent of women.[154] This refers to the ways in which women internalize invisible social structures and come to accept their dominated position within them as legitimate. As a result of this adaptation, women are afraid to speak out and challenge the invisible powers. They are specifically advised not to draw attention to these subtle acts of intimidation for fear of escalating violence.[155] They also accept high levels of threat because they feel that there is no alternative or that what is happening to them is normal and not something for which they should be entitled to additional support.[156] Therefore, the fact that women do not routinely report or object to this persistent low level of control through threat and intimidation is not a reason to ignore it. The concept of symbolic power, exercised through invisible threats, usefully helps us to challenge the idea that because women acquiesce in some of these objective social structures, there is no need to take their subjective experiences of threat seriously.[157] Self-silencing is the means by which women manage to keep their families safe and live relatively normal lives in abnormal contexts. As one participant noted, 'your survival depends on you being able to adjust, so you do start to normalize the abnormal in order that you can get on and function and do the other things'.[158] The difficulty, however, is that this adaptation does not simply apply to individual interactions, but rather becomes internalized as an ongoing way of being, whereby these patterns become 'immanent rules for behaviour'.[159] This ultimately makes it difficult to distinguish between the objective and subjective elements of invisible threats. Does the person feel threatened because a threat was made? Or are the words a threat because the person hearing them feels threatened?

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[152] NI 119.

[153] For discussion of how young women use their own experiential knowledge of paramilitary organizations to keep safe, see S. McAlister et al., 'Gender, Violence and Cultures of Silence: Young Women and Paramilitary Violence' (2022) 25 *J. of Youth Studies* 1148. For discussion of how this approach also reinforces the place of the speaker within the social order, see Butler, op. cit., n. 5.

[154] Bardall, op. cit., n. 61.

[155] NI 116. All forms of violence against women in politics are under-reported because of cultures of silence, stigma, and impunity associated with gender-based violence: UN Special Rapporteur, op. cit., n. 3, para. 17.

[156] One participant who reported a serious incident of invasion of her home, which was interpreted by the police as her being given 'a warning', noted that, when there was no additional protection available, she was 'just another house' when 'there's more serious stuff going on out there': NI 110.

[157] Bourdieu describes this in terms of being 'shaped by revolting conditions without revolting against these conditions': Bourdieu, op. cit., n. 59, p. 130.

[158] NI 105.

[159] Bourdieu, op. cit., n. 59, p. 128.

The concept of invisible threats is a step towards naming and thereby recognizing a form of harm that is experienced by women, and indeed other marginalized groups, but that remains invisible to law and policy. It is also a step towards putting situated experiences at the centre of analysis of how we understand the nature of threat. However, there remains a question about how best to respond to these forms of threat. When asked how the police could better react to invisible threats, participants did not emphasize legal obligations or costly security measures that perpetuate securitized logics of protection. Rather, they expressed a desire to have the threats against them acknowledged.[160] Primarily, the desire was for a more collaborative engagement around how women experience intimidation and threat and the impact that it has on their lives. In particular, it was a request for recognition – for women's understanding of what constitutes a threat to be taken seriously. On a macro level, this exposes the need to recognize and address situated threats, and to explore the possibilities of disrupting and subverting the social order in which such threats are effective.[161]

7 | CONCLUSION

For Butler, the 'possibility of reworking the force of the speech act against the force of injury consists in misappropriating the force of speech from those prior contexts'.[162] What this means is rethinking understandings of harm and security in a way that resists the social structures within which invisible threats operate rather than reinforces them.

Overwhelmingly, threats are treated as individual incidents that must be assessed on a case-by-case basis, with responses similarly individualized.[163] This approach obscures the significance of the social structures within which these threats are made – the very structures that give them meaning and make them effective. While this article has developed the theory of invisible threats by focusing on gender, the analysis is equally applicable to any other group whose experience is not easily visible to these structures, including experience based, for example, on race or sexuality.

Situated threat is often invisible to those who do not share the social experience of the recipient. Understanding the place of the individual within social and institutional structures opens up new possibilities for thinking about the experience of a range of diverse communities within those structures. It is therefore imperative to consider how to move the responses by the police and other institutions towards an understanding of situated threat. The orientation of the meaning and significance of threat *should come from the women reporting it*, rather than from the criminalized and securitized response that is the current approach.

Legal responses will always be constrained by the need to strike a fair balance between certainty in the definition of offences, on the one hand, and justice, on the other. With respect to invisible threats, there is significant scope in the policy space to begin to tackle the more deeply entrenched structures of a field in which violence against women is part of everyday life and threats are located on a spectrum of forms of harm.[164] Recognizing subjective experiences of threat, for women and other marginalized groups, requires sensitivity to the reasons why these experiences are not

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160 NI 101; NI 106; NI 110; NI 116; NI 125.

161 Butler, op. cit., n. 5, p. 19.

162 Id., p. 41.

163 Turner and Swaine, op. cit., n. 9.

164 Kelly, op. cit., n. 4.

easily articulated. As Fricker notes, '[t]he point is to realize that the speaker is struggling with an objective difficulty and not a subjective failing'[165] and to keep an open mind as to the required response. To properly understand the significance of invisible threats and the symbolic violence that they exert, it is necessary to make visible the ways in which social relations contain a form of violence that is transformed into 'symbolic power capable of producing real effects without any apparent expenditure of energy'.[166]

As such, invisible threats emerge as a conceptual tool that helps us to illustrate the ways in which threat is experienced and the need to find new means of acknowledging it. This might include training for police officers, social workers, and others in listening for and responding to invisible threats, and an updating of policy tools such as strategies to tackle violence against women to include an intersubjective definition of security when it comes to assessing threat. Ultimately, this points to a need for a broader approach that sees both the purpose of a threat and its impact on the individual within the much wider 'field of forces', and to acknowledge and address the impact of those forces on the ways in which threats and violence are experienced.

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[165] Fricker, op. cit., n. 7, p. 21.

[166] Bourdieu, op. cit., n. 59, p. 170.