Australian Terrorism: Traditions of Violence and the Family Court Bombings

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"They said, 'the Court has been bombed, what's wrong with the Court?'
Not, 'The Court's been bombed - what an outrage - what are we going to do to stop this type of thing happening in our community ...'
The agenda started to be: what are you going to do to change things."
Elizabeth Evatt, former Chief Judge of the Family Court,
Interview, 22 Aug 1989.

"The murderous attacks upon the judges provoked a curious reaction ...
The response appeared to be that there was something wrong with the Court, and not with those who made the attacks."
Alastair Nicholson, Chief Judge of the Family Court,
Bicentenary Family Law Conference, March 1988.

In 1984 the Australian Family Court was subjected to a series of terrorist attacks which included bombings of the homes of judges and of the Court's buildings. The 1984 bombings left one person dead and several injured. During an earlier incident, in 1980, a judge was shot dead. To date, no one has been charged in relation to these offences. These episodes of violence were extensively covered by the media, and were widely commented on by individuals and interest groups concerned with regulation of the family. The response to the bombings revolved around the question of why the Family Court had provoked such rage against itself. The answer to this rhetorical question was that the Family Court had proved itself unfair in its dealing with husbands and fathers,

which had finally provoked a violent reaction. Unequivocal condemnation of the bombings was rare and the most commonly repeated recommendation was that the Family Court itself would have to change.

Terrorism is rare in this country, and the Family Court bombings of 1984 are a unique example of Australian society being confronted by a series of physical attacks against a public institution. As a tactic, terrorism consists of the use of exemplary violence against a particular target to convey a message to a wider social audience. Any act of terrorism illuminates issues of power, legitimacy and the use of force within the society subject to it. The Family Court bombings are an interesting example of something unique in Australia - a successful terrorist campaign. The violence entered public discussion without the pejorative label of "terrorism", the perpetrators were not apprehended, the security services were unable to halt the campaign and the target was de-legitimised. There are various reasons for this startling series of events, which could not have been predicted before they happened, and have gone without explanation since they occurred.[1]

Over the past 15 years in Australia both domestic violence and terrorism have been subject to processes of definition and redefinition, and of the introduction of specific initiatives in legislation and police powers. Both cases illustrate the ways in which interpretations and representations of an act of violence are essential to the sanctioning, containment or cover-up of such crimes. Aside from this, these two forms of disorder would appear to be completely different - separate in motive, in the characteristics of the participants, and in their respective location in the public or private spheres.

However the Family Court bombings in 1984 were a meeting point of these disparate conceptions of violence. After the first incident, explanations of the bombings made use of the assumption that the unknown perpetrator must be a man who felt himself to be wronged by a decision of the Court. This supposition then grounded all discussion of the assaults against the Family Court within the interpretations of domestic violence - which pose the assailant and the victim as respectively male and female, the source of the violence as an attempt by a male to defend his privileges, and the solution as a change of behaviour by both parties, especially the victim of the assault.

The Family Court bombings remain unsolved in every sense of the word. The fact that an unknown individual or group could repeatedly attack part of the judicial system and evade detection is obviously a notable failure on the part of the state's security forces. In the five years preceeding the Family Court bombings, counter-terrorist capabilities had been developed in both the police forces and the military. However these forces, and the entire schema of counter terrorism which justifies their existence, could not be applied appropriately to a scattered series of bombings

1 Only one analysis of the Family Court bombings has appeared. It is Abrahams, *Violence Against the Family Court: Its Roots in Domestic Violence*, 1 AUSTRALIAN J. OF FAMILY LAW 67 (1986).

in Sydney. But this, the failure of policing,is only one aspect of the inadequate social response to the bombings. Also inadequate was the most commonly proposed solution to the Family Court bombings: that the Court would need to change its nature in order to prevent the recurrence of such rage against it. This is a surprising reaction to such offences, and would appear to be completely contrary to the Australian consensus of the proper response to terrorism.

Terrorism has intermittently attracted attention in Australian politics. As an abstract issue it has been deplored by editorialists and parliamentarians, the threat to Australia from foreign terrorists has often been speculated about, and counter measures have been proposed and funded. Amid the fervent denunciations of political violence, Australia seems to have attracted the attention of far more experts in counter-terrorism than terrorists themselves. Despite the lack of an existing threat, the Australian security services have cultivated an awareness of the possibility of terrorism's appearance. When reporting to parliament, ASIO regularly cites the terrorist threat as a reason to maintain its level of funding. Military options regarding counter-insurgency have also been developed and have received a significant allocation of resources. To date these measures have only been exercised as a deterrent and they exist on the supposition that terrorism is most likely to appear in Australia as an aggressive intrusion of international politics which can be effectively countered by the use of the state's defence forces.

The denunciations of terrorism appear calculated to insulate a society against this form of violence, preparing a climate of opinion which would reject such acts immediately should they ever appear. This is not the case, and the Australian experience of the Family Court bombings indicates why the general execration of terrorism is difficult to translate into a repudiation of a specific act of violence which springs from tensions indigenous to a society.

In the late twentieth century terrorism has been understood as the ultimate form of inexcusable violence. While acts of terrorism have flourished, the reputation of terrorists has not. Even to use the word terrorism is to abstract a particular use of force into the larger category of violence against the innocent. However the very horror of the term "terrorism" leads to many acts of terror being excused by observers, and defined in other ways, if they feel that the perpetrator is acting because of a legitimate grievance. To interested parties, such acts must therefore be explained as something other than terrorism. The pejorative value of applying the label "terrorist" is too valuable to be surrendered to a general model which would encompass actions performed by adherents of all shades of political opinion.

Academic analysts have offered workable definitions of terrorism. The difficulties arise in the consistent use of the term. All writers stress that it is the use of exemplary violence in order to coerce a wider community to act according to the terrorist's wishes. As Grant Wardlaw has noted, terrorism can operate "for or in opposition to established authority ... "[2] Terrorism is a tactic, and therefore tran-

2 Quoted by B. Martin, International Terrorism: Recent Developments and Implications for

icular ideology. However many English-speaking analysts proceed from the unfounded assumption that terrorism is necessarily associated with an "anti-establishment, anti-authority position ... "[3] Eqbal Ahmad, a Palestinian scholar, has interpreted terrorism as "acts of intimidation and injury to unarmed, presumably innocent civilians" for which there are five sources, "state, religion, protest/revolution, crime and pathology", of which "only the first three have political motivation."[4] Ahmad's definition usefully points to the multiple sources of terrorism, although many writers proceed from the assumption that terrorism is necessarily overtly political violence. Aside from entering the complex field of what does and does not constitute political behaviour, it is obvious that groups which do not define themselves as political can effectively engage in terrorism.

While terrorism, as a form of violence, is a diffuse and varied phenomena, it is usually represented according to a narrow, flamboyant image, which owes a great deal to fictional and cinematic conventions of a villain to play against the role of the Western hero. The influential and ubiquitous written descriptions of the terrorist present a figure who is exotic, in the full sense of that word. Essentially he is foreign: he either comes directly from overseas or is funded by foreign powers. In justifying this international focus, one "terrorism expert", Paul Wilkinson, has claimed that:

> In practice it is of course extremely difficult to find examples of purely domestic terrorism. In almost every case some cross-border movement of terrorists, or terrorist weapons and explosives, is involved.[5]

Although Wilkinson's schema is widely shared it simply does not relate to the history of terrorism, whether in its revolutionary or authoritarian forms. Although terrorists, in common with almost everyone else in the modern world, cross borders, they tend to be part of struggles particular to one state and are even often restrained to specific localities within a country.

The terrorist is also exotic because he is represented in sensational terms. However disapprovingly, depictions of the figure of the terrorist bestow upon him attributes of power, action, cruelty, and other characteristics which conform to the requirements of a masculine sexual identity. Within the existing structure of gender stereotypes and the understanding of violence, an element of eroticism and glamour inevitably enters the representation of a terrorist. Conservative discourse parries by investing counter-terrorist forces with exactly the same qualities in a purer and more triumphant form. An excellent example of this "mirror image" syndrome is the history of the rhetoric and images which have arisen over the past ten years in the relationship between the Irish Republican Army and the British elite counter-terrorist unit, the SAS.

Australia 5 (Legislative Research Service, Australian Parliament 1985).

3 S. SEAGALLER, INVISIBLE ARMIES: TERRORISM INTO THE 1990S 88 (Penguin 1987).

4 Quoted by Said, *Identity, Negation and Violence*, 171 NEW LEFT REV. 50 (1988).

5 Wilkinson, *Fighting the Hydra: International Terrorism and the Rule of Law* in TERRORISM, IDEOLOGY AND REVOLUTION 208 (N. O'Sullivan ed. Wheatsheaf 1986).

This is terrorism as the world knows it. It is an enduring form of violence in itself, and is also a veritable industry for government security forces, the popular press and writers of fiction. One result of the invective against the international terrorist - always foreign, wholly evil, very dramatic, extremely threatening - is that more local forms of terrorism are unequal to the drama which the word implies. Representations of terrorism have effectively externalised the threat of coercive public violence. Close at hand violence, which lacks the identifiable evil of a foreign enemy, may occur more often, claim more lives and intimidate a greater number of people. But it is not likely to meet the anti-terrorist hostility which has been created in societies such as Australia and which waits dormant, ready to meet a real terrorist should he ever appear. He did not appear in the Family Court bombings. Those violent occurrences were defined as the work of a violent husband, a figure all too familiar to this society. There have been only rare appearances of popularly recognised terrorists in this country.

Until the bombings of the Family Court, each of the infrequent incidents of Australian terrorism was the occasion for legislative and security initiatives designed to preempt further threats. This process began in February 1978, when a bomb blast outside the Hilton Hotel initiated a new era in Australian planning for political violence. The bombing was interpreted as an attack on the Commonwealth Heads of Government Regional Meeting, and the Fraser government reacted with an unprecedented show of military force. For the first time since Federation, the Commonwealth Government called out its armed forces to maintain public order within Australia in peace time. The military was given responsibility for the security of the remainder of the CHOGM conference.

Sydney was also the site of two further incidents which have been attributed to Middle Eastern terrorism. In December 1980 the Turkish consul-general and his bodyguard were assassinated by the "Justice Commandos of the Armenian Genocide." It was a professional killing and the assailants escaped, possibly to leave the country. A more enigmatic incident occurred in December 1982, when two bombs were detonated in Sydney without causing any casualties. One, a powerful explosive device, was set in the stairwell of the Westfield Towers building in Sydney, which houses the Israeli Consulate. A far less dangerous bomb, an amateurish device made of gas cylinders, exploded in the car park of the Hakoah Club the same evening. No one has been convicted of any of these offences. On the same day as the Westfield Towers bombing the Federal Government's Protective Services Coordination Centre announced that a new federal security force to protect key government installations and foreign embassies was to be established.[6]

As the Hakoah Club is a Jewish organisation, the two bombings were thought to be a terrorist campaign against Zionism. No group claimed responsibility. It was

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6 *Crack Security Force Will Be Set Up Soon*, The Weekend Australian, 24-5 December 1982 at 3. It was stated that the timing of the announcement of this new force was coincidentally made on the day of the bombings. Yet it is unusual for a government Ministry to announce a policy initiative on Christmas Eve.

suggested that the Palestine Liberation Organisation was responsible, but this was denied by their Australian representative, Ali Kazak.[7] Once they had been described as an outcome of the Middle East conflict, these bombings fell within the existing understanding of terrorism, and were denounced by journalists and politicians in hysterical terms. Despite the absence of casualties, the event was covered as a major incident and the Arab population of Australia bore the ignominy of being assumed to be the source of the violence.

Government security services in Australia can be divided into pre- and post-Hilton eras. Since the 1978 bomb blast, there has been a re-evaluation of the most likely threat to national security and counter-terrorist measures have attracted generous funding and have been supported by extensive authority. The Australian Security and Intelligence Organisation (ASIO) had its operational powers increased by the 1979 *ASIO Act* and much of the justification for passing this Act concerned the threat of terrorism, as evidenced by the Hilton bombing. The Department of Defence has provided additional funding for training in counter-terrorist techniques for units such as the Australian Special Air Service Regiment. Acting on the same priorities, various units within the State Police Forces have been equipped with military skills and weapons and trained to deal radically with threats to public order.[8]

A result of the provision of specific counter-terrorist measures is that the definition of terrorism becomes of more than philosophic significance. Access to certain of the state's protective services becomes dependent upon whether an event is perceived as an act of terrorism or merely violence. This is more likely to be unclear in a nation such as Australia, where counter-terrorist forces have been put into place without a specific threat to which they are tailored to respond.

The few terrorist incidents which have occurred in Australia have required effective police investigation leading to an orthodox arrest, rather than a military confrontation with an urban guerilla. The fact that the majority of these incidents remain unsolved is a serious deficiency in our law enforcement, which cannot be remedied through the services of our counter-terrorist forces. Considering that so many of the aims of terrorism lie beyond actual operations, found rather in the impact of their acts on society, effective counter-terrorism is not necessarily a matter of strengthening the security forces. On the contrary, the methods and principles of such forces, even where they can be employed, is often so confrontationist and amoral that their effect is to spread the contagion of violence rather than to end it.

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7 Sydney Morning Herald, 24 December 1982 at 1.

8 Wardlaw, *Terrorism and Public Disorder: the Australian Context* in THE AUSTRALIAN CRIMINAL JUSTICE SYSTEM: THE MID 1980s 151 (D. Chappell & P. Wilson eds. Butterworth 1986). In this article Wardlaw discussed the possible consequences of the training and tactics of "special" units within police forces. His apprehensions appear to have been borne out by two controversial shootings by these units in New South Wales.

During the decade after 1975, while a scattering of bombings agitated Australian society to reflect on terrorism, a different form of violence was brought to public attention by those who concern themselves with women's rights and the family. Any contemplation of domestic violence will show that the actual position of women in their homes is incongruous with their formal rights as citizens entitled to protection from assault. The role of the state in preventing and punishing violence becomes problematic when assaults occur within a family.

Various items of legislation have been introduced into state parliaments to address the issue of domestic violence. The general purpose of such legal reforms has been to facilitate the prosecution of domestic violence offenders and to outlaw rape within marriage. These laws provide measures to curb assault within a family home, such as Court orders to exclude an offender from the home during legal proceedings.

The application of law reform to the issue of domestic violence was motivated by the hope that specific legal powers would enable the authorities to obstruct the effectuation of violence within a household. The passage of these laws also committed the state to a public and formal prohibition of domestic violence. In providing an articulation of censure, and policing powers designed to fit the commission of this particular crime, the legislation against family violence provided a theoretical answer to this social problem. Yet to hope that law reform could provide a solution to domestic violence is to overlook the existing basis of the problem, which is that such violence has a long history of being understood as acceptable. The death and injury of women in their homes has been possible because of an acceptance of domestic violence within Australian culture, rather than a deficiency in statutes. While attitudinal barriers remain in place, new legislation is not necessarily going to be any more effective. As Richard Ingleby has pointed out, the legislative separation of domestic violence from other forms of assault augments the popular assumption that the violence which occurs in the home is different from "real" crime - which occurs elsewhere.[9]

Conceptualisations of family violence are entirely individualised, which is one reason why such crimes, although common, are not commonly feared. In contrast to terrorism, which is ominously posed as an indiscriminate public threat to the innocent, domestic violence is understood as a consequence of voluntary relationships within the private sphere of personal interaction. Notwithstanding the murder statistics, which define the home as the most dangerous location for a woman,[10] domestic violence is consistently trivialised. Men who injure or murder their wives are likely to receive more lenient sentences than those who assault a stranger.

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9 Ingleby, *The Crimes (Family Violence) Act 1987 - A Duck Or An Emu?*, 3 AUSTRALIAN J. OF FAMILY LAW 59 (1989).

10 Stubbs & Wallace, *Protecting Victims of Domestic Violence?* in UNDERSTANDING CRIME AND CRIMINAL JUSTICE 54 (M. Findlay & R. Hogg eds. Law Book 1988).

Although justifications for leniency toward these men are often overtly sexist, the general issue of violence in the home exceeds the issue of male privilege. Infanticide and child abuse, which can be committed by a parent of either sex, also receive different treatment in law and society at large. There is a common acceptance that the uniqueness of familial relations is a contributing factor to a variety of violent crimes, which cannot be categorised as such, or met with the full penalties which the law provides for assault and murder. The family, which is so often praised as the foundation of socialisation and co-operation, is also the easiest entry point of violence into human relations.

The legal regulation of Australian marriage has been the responsibility of the Family Court since 1976. The *Family Law Act* was a radical break with the previous organisation of marriage and divorce. Control of the dissolution of marriage was removed from the state Supreme Courts and became an entirely federal function. The new law was to be administered by a separate court, or subordinate courts operating under its jurisdiction. Only one ground for the granting of a divorce was allowed, the irretrievable breakdown of marriage. The complete abolition of "fault" in divorce is a measure which has attracted much adverse comment, but the *Family Law Act* does allow "relevant conduct" to be taken into account when making settlements of property and custody issues.

The *Family Law Act* was one of the most significant of the many reforms of the Whitlam government and, because it was introduced at the end of the Whitlam era, it had to be implemented by later governments much less sympathetic to its spirit. It was introduced on a "shoestring" budget and the genesis of many of its later problems was a lack of adequate resources. These problems were not anticipated at the time. The proponents of the *Family Law Act* proceeded enthusiastically, confident of the principles and their ability to implement them.

The *Family Law Act*, and other reforms of this era, were divided philosophically as well as organisationally from the older branches of the Australian legal system. Much law reform of the 1970s sharply broke with the traditional concept of the rule of law - which claims to be a structure of formally defined rights, a system self-contained within its own logic and not a mechanism by which power is, or ought to be, distributed in society.[11] Weber's well known analysis of legal rationality contrasts between the European tradition with the capricious judgements of the orient - "Kadi-justice" - which considers only the evidence in a particular case, without reference to an external structure of principles.[12] The judicial establishment still tends to maintain the conservative ideal of legality. A former chief justice of South Australia, for example, claims that contemporary law reform promotes a form of "palm tree justice, the justice which is traditionally administered in Eastern societies by the cadi sitting at the city gate."[13] This standpoint enables conservatives to view change as degeneration, and to inscribe the norms of

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11 *See* Black & Thomas, *Beyond the Courtroom Door: Politics and the Court*, 2 AUSTRALIAN J. OF LAW AND SOCIETY 111 (1983).

12 M. WEBER, FROM MAX WEBER 216 (Penguin 1974).

13 Bray, *Law, Logic and Learning*, 1 UNSW L. J. 210 (1975/6).

sexual difference - the foreign, the female and the emotional - onto the proponents of law reform.

Long before the *Family Law Act,* judgements on custody and property division arising from divorce always had to include a weighing of the intangible factors of character, suitability and worthiness. The concept of fault, endlessly elaborated and amended, was supposed to provide judges with the means to make decisions purely on the basis of written laws external to their own standards. Of course it could not completely do so, and divorce rulings have always been a mirror of the overt conversion of personal attitudes into legal judgements. The *Family Law Act,* while it abolished fault, placed a similar faith in the process of counselling and the written reports of social science professionals. This explicit incorporation of non-legal insights into judicial decision-making could be seen by conservatives as a pollution of the standards of justice. Because the decisions of the Family Court had to be made on a case by case basis, with heavy reliance on the subjective realities of each dispute, the Court was understood to be dispensing a different form of justice from the older branches of the legal system.

In the legal world divorce work has always lacked prestige, despite its vital social function. As Myf Christie, a South Australian family law solicitor has commented, "We are the lowest paid and the least considered lawyers in practice. We joke amongst ourselves at the oft-held opinion of other legal practitioners that we are not 'real lawyers'."[14] An Australian barrister at a 1987 legal conference suggested "the traditional distaste of advocates for this basic field" as one of the factors "which have led to the present sad position that the Family Court is not respected in the legal community."[15] The new court had presided over the least eminent sector of legal practice, and the innovation of granting a separate jurisdiction to the particular field of family law locked the court and its legal practitioners together, partners in low status.

The comparative informality of the courtrooms, where neither judges nor counsel wore robes, was disapproved of by many lawyers. The rapid appointment of a whole crop of new judges, thirty-five in the first few years, provoked unfavourable comment. Appointments to the Family Court also broke the convention that judges are selected only from the ranks of senior barristers. The Family Court bench included solicitors who had practiced in family law as well as legal academics. The *Family Law Act* specifically provided that any judge appointed "by reason of training, experience and personality is a suitable person to deal with matters of family law."[16] This may seem simple common sense but such a provision was seen by some to elevate personal factors in a manner detrimental to the traditions of the

14 Christie, *Family Violence - Perpetuation and Aftermath in the Family Court: A Lawyer's Perspective* in NATIONAL CONFERENCE ON DOMESTIC VIOLENCE: PROCEEDINGS 605 (S. Hatty ed. Australian Institute of Criminology 1985).

15 Young, *Commentary at the Family Law Discussion* in PROCEEDINGS OF THE LONDON CONFERENCE OF THE AUSTRALIAN BAR ASSOCIATION 6 (9 July 1987).

16 Quoted by Asche & Marshall, *The Interaction of Judges, Lawyers and Counsellors in the Family Court of Australia*, 1 AUSTRALIA J. OF SEX, MARRIAGE AND THE FAMILY 30 (1980).

law. The Chief Justice of the High Court objected that "[p]ast experience in Australia does not support the view that specialised experience is necessary to render a judge able to deal with matters of family law."[17] The Family Court's practice of appointing judges by reference to their abilities to deal with families was seen as another example of over-utilising the subjective element of decision-making, inimical to the traditional philosophy of the law. Finally, too many of these new judges were women.

In a critique of the legal profession's values in relation to family law, John H. Wade has suggested that the disproportionate number of female lawyers who specialise in this area is yet another reason for the low professional status of this sector of practice. He writes that:

> Apart from being symptomatic of the low status of family law, the presence of female practitioners also *causes* further low status. Males are able to delegate family law clients to females; to reinforce their stereotype of what females are good at; and to denigrate males who practice 'among the women'.[18]

Because the status of women has remained lower than that of men, their predominance in any field of work diminishes its importance, thus family law practice is demeaned. On the other hand, members of the general community often identify the *Family Law Act* as one of the gains made by the feminist movement and resent it as evidence of the advancement of women.

Misogyny in the legal profession appears to be common but hostility to women on the bench can only be voiced informally. It is recorded in such forms as a satirical verse published in a legal journal which proclaimed that:

> After 17 females in a row
> To the Family Court bench did trail
> The Attorney General thought it wise
> To appoint a token male.[19]

This verse overstates the number of women in the Family Court. In 1985 there were only six women judges, including Elizabeth Evatt, who has since departed. The overwhelming majority of Family Court judges were male. Yet, as Mr Justice Asche noted, it was viewed as "pre-eminently the court working towards a better representation of women."[20] Unfortunately, this aspect did little to accommodate the new court within the legal profession. Moreover, in the community as a whole, the sense that the Family Court had a female identity influenced its image when it became a target for a form of violence which was defined as male.

The Family Court commenced work in registries which were no more than ordinary rooms in commercial or business premises. The simple surroundings dispensed with some traditional aspects of the layout of courts, such as a raised dais

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17 Gibbs, *The State of the Australian Judicature*, 59 AUSTRALIAN L. J. 522 (1985).

18 Wade, *The Professional Status of Family Law Practice in Australia*, 8 UNSW L. J. 187 (1985).

19 *The Family Court Judge's Song*, 1 AUSTRALIAN FAMILY LAWYER 19 (1985).

20 Asche, *The Family Court - The First 10 Years*, 1 AUSTRALIAN FAMILY LAWYER 5 (1986).

on which the judge sits. It was part of the policy of the *Family Law Act* to dispense with traditional surroundings, but resources were not made available for aesthetic and practical alternatives. The Family Court was established on a modest budget and had to cope with a hectic workload. The inadequate premises allocated to it were in constant use and the Family Law Council received numerous complaints that the Court's accommodation was "inadequate, cramped, overcrowded, seedy and generally depressing to staff and clients alike."[21] The physical surroundings of the courtrooms, like the lack of wigs and robes, would eventually be blamed for inciting violence by failing to induce sufficient respect from members of the public. In more tangible terms, the Family Court registries were a security risk, poorly guarded and difficult to bring under adequate surveillance.

The question of the security of Family Court premises ought to have been an issue for consideration by the authorities long before the bombings. The Family Court was not dealing with a peaceful sector of society. However, at the time of their establishment no particular security measures were arranged for the Family Law Courts. Indeed, protective services were often markedly fewer than those allocated to other courts, despite assaults upon women even within the precincts of the Court and sometimes immediately after the granting of a restraining order against their husbands.[22] The lack of security of the Family Court's premises was partly a feature of its general lack of resources, but was also symptomatic of a failure to address the issue of domestic violence.

In establishing the new system of family law, the proponents of law reform identified the main obstacle as the opposition from conservative forces who wished to maintain repressive marriage laws. Law reformers did not consider that the Australian family itself might hold risks of harmful resistance to those who are responsible for regulating it.

One instance of this over-optimism was that, while the *Family Law Act* contained certain provisions to prevent violence in the families before its courts, there were no means of enforcing its orders. Injunctions were no more than stated warnings. It was not until amendments in 1983 that a judge of the Family Court would even attach a power of arrest to an injunction, but this is seen as an extreme measure and is rarely granted. The *Family Law Act* provided few protective measures; with regard to both the safety of its clients and its own staff, the Family Law authorities put their trust in the forces of conciliation.

The story of domestic violence in Australia shows an oft repeated, commonly excused, form of criminal activity which has evaded legislative measures and effective policing. In dealing with families in crisis, the Family Court was applying the law to the most intractably violent sector of society. Yet there was no recognition

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21 FAMILY LAW COUNCIL, ADMINISTRATION OF FAMILY LAW IN AUSTRALIA: REPORT TO THE ATTORNEY-GENERAL 25 JULY 1985 5 (AGPS, 1985).

22 Waters, *The Family Court and Domestic Violence: More of the Rack and Less of the Rubric* in NATIONAL CONFERENCE ON DOMESTIC VIOLENCE: PROCEEDINGS, *supra* note 14 at 553.

of the lethal forces which the Court engaged. This oversight was common to both the critics of the *Family Law Act* who were committed to the idealisation of the family as the "foundation of society", and to the proponents of the Act who were determined to deal with the dissolution of failed marriages through the application of humane, rational and informal proceedings. There was no room in either view for the recognition that many families in Australia are the site of brutality and homicide and are not always tractable to the process of legal regulation.

During its first years of operation the Family Court suffered from a huge and ever-expanding workload, as well as widespread criticism from individuals who disapproved of its operations. The complaints of dissatisfied clients were cited by journalists as typical of those who had been before the Court.

Much unfavourable comment about the Court came from men who felt that its operation threatened men's rights in their homes and *vis-a-vis* their families. This view of the Court was articulated by various spokesmen, a representative example being:

> [the Act has] created a situation where children can easily be taken from a responsible man in marriage by an irresponsible woman ... The man has no right of control, prevention or even control of access to his children. The Act specifically disregards and discriminates against a responsible and innocent man in divorce.[23]

A journalist, Patrick Tennison, wrote a book entirely composed of this type of complaint.[24] Some academic commentators took such claims seriously, interpreting modern Australian society as a battleground between feminists and the Family Court on the one hand, and husbands on the other. Geoffrey Lehmann, a law lecturer, regretted that "[e]ven now there is no effective 'men's rights movement'" and claimed that the formation of men's groups such as DAWMA (Defence Against Women Marriage & Alimony) and FORCE (Fathers Organisation for Revolutionary Custody Entitlement) are the product of the "judicially discarded fathers"[25] who came before the Family Court.

Patrick Tennison described several cases in which fathers actually murdered their children during access visits. Astonishingly, he cites these cases as evidence that the Court is unfair on the fathers concerned, who had sought custody of the children but failed to gain it. It might seem that the Court was in fact far too lenient toward these violent men, in granting them access at all, but these extreme cases are cited as evidence of the "tragedy" of the Court destroying a family.[26] Such treatment provides disquieting evidence of the social endorsement of violence within family

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23 Letter from A.B. Ranken in JOINT SELECT COMMITTEE ON THE FAMILY LAW ACT, MINUTES OF EVIDENCE AND SUBMISSIONS AUTHORISED FOR PUBLICATION 4346/7 Vol. 4 (AGPS 1979).

24 P. TENNISON, FAMILY COURT: THE LEGAL JUNGLE (Tennison 1983).

25 Lehmann, *The Fault in No Fault Divorce*, 189 QUADRANT (1983) at 27.

26 See TENNISON, *supra* note 24 at 13.

life. Murder is the final proof of paternal love. It is remarkable that even in such pathological examples it is the Court which is charged with breaking up the family.

Feminist scholars have scrutinised the record of the Family Court and have criticised it in exactly opposite terms. Many point out that a wife's contribution to marriage is still overlooked and that women are disadvantaged in property settlements. Studies have shown that the Court is ineffective in protecting its clients, and implicitly tolerant of male violence because access to women and children is granted to men who assault them.[27]

Those responsible for the administration of the *Family Law Act* were not insensitive to criticism. From 1980 - after the conclusion of a Senate Joint Select Committee inquiry - to 1984, various publications examined the Court's record. In particular the Institute of Family Studies, a body set up by the federal government in 1983 to collect data relevant to family legislation, conducted several surveys which investigated areas where the Family Court was understood to be controversial.[28] The opinion surveys of the Court's operation provide contradictory results. Although the surveys register a high level of dissatisfaction, the causes cited are quite divergent. The Court is seen as too intimidating, too informal, or biased against either men or women, according to the experience of the respondent. It is difficult to draw a general picture from these individual experiences. What is more conclusively proved by the surveys and printed opinions is the difference perceived between the Family Court and the rest of the judicial system, the authority of which remained literally unquestioned. The Family Court is the only court upon which the general public has been invited to express opinions, which are then aired as information relevant to the success of its functions.

The emplacement of the Family Court as an issue of public opinion might be regarded as an inevitable result of its recent invention and its status as a "helping court."[29] If a Court is so described, it is fair to ask to what extent it *is* helping people, and the people questioned will be those who have recently undergone the usually unhappy experience of the termination of their marriage. The abolition of fault was and is problematic in popular consciousness because it separates justice, retribution and juristic power. On the one hand it is an innovation in legal decision making which has yet to be commonly accepted, and so generates criticism on that ground alone. But the abolition of fault necessarily legitimates criticism because no stigma attaches to clients of the court. Persons who express dissatisfaction about other courts or tribunals like the National Securities Commission, face a certain scepticism

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27 Moloney, Marshall & Waters, *Suspension of Access: Attitudes Which Have Influenced the Courts*, 1 AUSTRALIAN J. OF FAMILY LAW 51 (1986); Kiel, *Child Sexual Abuse and the Family Court*, 23 AUSTRALIAN J. OF SOCIAL ISSUES 3 (1988). Kiel cites an instance where a man who had been convicted and fined by State courts for the sexual assault of his 11 year old daughter was permitted continuing access.

28 Harrison, *Attitudes of Divorced Men and Women to the Family Court* in INSTITUTE OF FAMILY STUDIES, AUSTRALIAN FAMILY RESEARCH CONFERENCE PROCEEDINGS (Institute of Family Studies, 1984).

29 Nygh, *Sexual Discrimination and the Family Court*, 8 UNSW L. J. 109 (1985).

based on the idea that at least some of those processed by the court are necessarily culprits. This cannot apply in the case of the Family Court, and it is the only court before which the average and law-abiding citizen has a statistically high chance of appearing. Meanwhile the negative affirmation of the role of the *Family Law Act* remains: that its numerous critics have usually failed to propose an alternative to it, and there has been no slackening in the enormous demand for its services.

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The first violence against a Family Court judge was the murder of David Opas on June 23, 1980. Justice Opas, of the Parramatta Registry of the Family Court, was killed at the gateway of his home by a single shot from a small calibre rifle.

The murder of David Opas remained a solitary and unsolved crime for four years. It was recalled to public attention in March 6, 1984 when a new attack was launched against a Family Court judge. The home of Justice Gee was almost demolished by a gelignite bomb planted by the front door. Richard Gee and his two children were asleep in the house when the explosion went off at 1.45 a.m. The front section of the house was destroyed and eight other nearby houses were damaged by flying debris. The Gee family were unhurt except for minor lacerations. Police estimated that more than 10 sticks of gelignite would have been required to cause such extensive damage. The bomb had apparently been set with a fuse and left on the front porch.

It was obvious that Richard Gee and his children had escaped death or injury only by miraculous chance. Richard Gee had succeeded David Opas' position at the Parramatta Court, and the realisation that this was a serious and very nearly successful attempt at murder prompted the first speculation that there was a violent campaign of revenge in action against the Family Court. These suspicions were confirmed the next month when another bomb blast devastated the doorway of the Parramatta Court on April 15, 1984.

The final incident was a bomb attack on the July 4, 1984 when a gelignite bomb was attached to the doorway of Justice Watson's Greenwich home unit. The bomb was detonated to explode when the door opened. Pearl Watson, the judge's wife, was killed instantly when she opened the door at 8.12 a.m. Ray Watson was injured and the powerful blast sent glass flying 50 metres.

These incidents of violence and murder were interpreted with a lack of censure markedly different from attitudes to previous bombing incidents or to any other crimes against a public institution. This absence was unexpected, although the workings of the *Family Law Act* had been the subject of reproaches from many sectors of society, and complaints from husbands, deprived of authority over their families, could tap a wellspring of conservative sentiment implicitly tolerant of domestic violence. Yet no open threats that violence would be used against the Court itself had been made and, until the bombings began in 1984, it would have seemed likely that any violence against the Court would discredit the assailant and even rally

public support to the Family Court. When the bombings began in 1984, however, they were interpreted as the result of the Court's own inadequacies. When public discourse began on this path, a dynamic was created whereby each additional act of terrorism reinforced the impetus to make concessions to the supposed grievances of the perpetrators. Although the killings were recognised as wrong, they were explained as the actions of a man or men who must have been unfairly treated by the Court. The apogee of this type of reasoning came in the wake of the final bombing, when a leading churchman described the death of Pearl Watson in terms of a tragic necessity which would hopefully draw attention to the need to change the *Family Law Act*.[30] The media's treatment of the events is distilled in a sub-heading on the contents page of *The Bulletin*, "Fatal attacks on Family Law Court judges and their families have exposed serious flaws in our divorce machinery."[31] The de-legitimation of the Family Court is a vivid instance of the understanding of violence in Australian culture, and the ease with which terrorism can be utilised to maintain values traditional to our society.

The identity and motivation of the person or persons responsible for these crimes remains unknown. To date, no arrest has been made in connection with any of these events, although the police have voiced suspicions about at least one man. Unusually, in a case of terrorism, no attempt by the perpetrator was made at any stage to contact the media or to otherwise claim responsibility. There is no real evidence that the terrorist events are all the work of one person or group, although the media coverage assumed a link between them. The three bombings, all using gelignite devices placed in doorways, show a strong likelihood that they are the work of one hand. The killing of Justice Opas by a rifle shot occurred some four years earlier and might not be linked with later incidents, except in public discourse which subsequently reinterpreted it as part of a campaign.

It is a curious feature of the few terrorist incidents which have occurred in Sydney over the past decade that all but one have been left unclaimed by the perpetrators. That one was the assassination of the Turkish Consul-General and his bodyguard in December 1980, claimed as the work of the Justice Commandos of the Armenian Genocide. No message was sent to the media by perpetrators of the Hilton bombing, nor the Hakoah Club bombing, nor the Family Court bombings.

In the case of the Family Court bombings, this silence may be taken as an indication that the events do not constitute terrorism at all, but rather belong in the category of ordinary criminal violence, motivated in this case by the desire for revenge rather than gain. However, terrorism as a phenomenon does not reside solely in the motivations of the perpetrators, but rather in the relationship between their violence, their target, and the audience of society. When an attack upon an individual or institution is understood to be the expression of a demand on the

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30 A sermon delivered at St Andrew's Cathedral by the Dean of Sydney, the Very Reverend Lance Shilton, reported by the Sydney Morning Herald, 9 July 1984 at 1.

31 THE BULLETIN, 17 July 1984 at 3.

community, such violence is terrorism, and when a society is forced to contemplate its institutions in the light of such attacks, that society has entered the dynamic of terrorism and the reaction to it.

When discussion of the murder of David Opas was current in 1980, it was often suggested that his killer could be a disappointed litigant. However, while his work on the Family Court bench was assumed to have motivated his killer, there was no suggestion that this diminished the gravity of the crime, or that the *Family Law Act* could be altered to prevent such crimes occurring. Sympathy for the perpetrator, and hostility toward the Family Court, did not appear until the second event and unfavourable publicity about the Court gathered pace with each subsequent action, culminating in the murder of Pearl Watson. It was the understanding that the killings and bombings were part of a campaign that made the violence seem purposeful. The aims of the offenders entered public discourse and as their discontent was articulated, the Family Court was attacked morally as well as physically.

A *Sydney Morning Herald* article reporting the bombing of Justice Gee's house quoted a "profile" of the person probably responsible: "most probably a man, extremely distressed by a decision of the court ... "[32] Justice Evatt, herself a potential target for this person, described him as "quite unbalanced and dangerous" rather than distressed.[33] The press, having begun accounts of the bombings with speculation as to the identity of the assailant, soon decided that he was a man who felt himself to be wronged by the court. The extreme violence displayed by this hypothetical individual was not sufficient to condemn his motives out of hand.

Under the headline, "Family courts - too much of a revolution?", *The Bulletin* discussed the various shortcomings of the *Family Law Act*, noting that the bombings "are the work of unhinged minds, but they have drawn attention to fundamental faults in our family law system ... "[34] The *Sydney Morning Herald*, having described the murder of Pearl Watson as "an assault on the whole structure of the Family Court and the law it administers" did not seek to disassociate itself from this project but went on to make suggestions as to why the Court should change. "The very informality of the Court is now seen ... as one of the factors leading to the unprecedented violence ... "[35]

Many of those selected by journalists to comment on the bombings were individuals or organisations who had actively criticised the Court over the past years. They were not confronted by the media in the same manner as were Palestinian sympathisers after the Hakoah Club bombing, but were presented rather as authorities whose misgivings about the Court had been confirmed by the violence. It was constantly suggested that the Family Court should alter in response to the bombings, especially that wigs and gowns be introduced in order to raise the status of its judges.

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32 Sydney Morning Herald, 7 March 1984 at 9.

33 *Id.* at 2.

34 THE BULLETIN, 17 July 1984 at 32.

35 Sydney Morning Herald, 5 July 1984 at 1.

A member of the Lone Fathers Association explained to the *Sydney Morning Herald* that "There are a lot of angry, bitter men out there, but my organisation deplores violence and we know nothing of the bombing incidents in Sydney."[36] It is characteristic of the media coverage that the words "There are a lot of angry men out there" were emphasised in a sub-heading, rather than the disclaimer of violence. *The Australian*, which interviewed different people, produced a similar sub-heading: "No wonder the man often feels a sense of rage."[37] This type of coverage was bolstered by contributions from sources who would regard themselves as defenders of morality, and who normally anathemise any act of terrorism. The Anglican Dean of Sydney stated that good could come of the bombings because they would lead "to people taking a fresh look at the (Family Law) Act ... "[38] The Chairman of the Festival of Light deplored the bombings but stated that "such an extreme reaction must have been triggered off by a deeply felt sense of injustice."[39] The marginal status of the Family Court emerged in the anomaly that although terrorism was directed against a legal institution, it was received as a defence of, not as an attack on, traditional authority. The implicitly violent nature of that traditionalism is shown in the ready excuses offered for even bombings and assassinations so long as they appeared to emanate from paternal authority.

Earlier bombing incidents in Sydney, such as the Hilton bombing, could be readily enlisted into the pre-existing schema of terrorism, therefore attracting an easy rhetoric of explanation and denunciation. The Family Court bombings marked a conflict integral to and divisive of the society, having been interpreted as a form of domestic violence writ large. The resultant discourse maps the tacit acceptance and rationalisations which this particular form of violence enjoys within Australian society. The entire response to the bombings reflects the common view which expects that a man faced with family problems is inevitably violent. The observer then seeks to find excuses for his acts.

This understanding of domestic violence is diametrically opposed to the horror provoked by acts of terrorism. Explanations of the Family Court bombings made use of the rationales offered concerning assault against spouses, the behaviour of the victims was analysed as the causal factor, and the perpetrator was understood to be acting in a natural, if extreme, manner. Moreover the rationale attributed to the assailant was appreciated as the actual cause of the violence. Commentators on the bombings, whether criticising or defending the Family Court, accepted that they articulated a complaint against the Court. To explain the bombings was to reply to the critique which was pronounced by terrorism.

This type of coverage of terrorism is usually consciously avoided, because it melds the media's account of an event with the aims of the perpetrator. It is generally

36 *The Family Court Under Siege*, Sydney Morning Herald, 6 July 1984 at 1.

37 Sheridan, *The Crisis in the Family Court*, The Weekend Australian, 7-8 July 1984 at 21.

38 *Good Can Come of Bombings - Dean*, Sydney Morning Herald, 9 July 1984 at 1.

39 Letter from David Phillips, Chairman, Festival of Light S.A., The Australian, 12 July 1984 at 89.

known that terrorism depends upon the inculcation of a message into an act of violence; therefore the media can easily be accused of becoming participants rather than maintaining an observer status. Usually this is avoided by locating an event in the evil drama of terrorism, entirely decontextualising the perpetrators. The actors' own reasoning and aims thus appear necessarily wicked because of the means used to express them. The very opposite process took place during the Family Court bombings, where critiques of the *Family Law Act* were legitimated, not discredited, by violent attacks on the Court.

The reaction of blaming the Family Court for the acts of terrorism perpetrated against it was not unanimous. A few dissenting opinions did find their way into print. Some letters to the editor pointed out that such acts of violence condemned the aggressor rather than the Court which might have separated him from his family. Daphne Kok, President of the International Federation of Women Lawyers, was quoted by the *Sydney Morning Herald* as saying that neither formality in the Courtroom nor the abolition of fault in divorce should be regarded as the cause of the bombings: "If someone is of such an unusual character that he goes and bombs someone's house, there's a fair degree of fault there anyway."[40] The *Sun Herald*'s columnist, Peter Robinson, suggested that:

> The terrorist assaults on the Family Court do not merely raise relatively trivial issues of security or fancy dress in court, but starkly outline the most basic relationships of any human society - namely, those between the sexes. The basic significance of this is illustrated by the subtle changes which have occurred in commentaries on Family Court problems since Justice David Opas was shot...[41]

Justice Ray Watson, in an interview conducted several months before the bombing which killed his own wife, commented that the violent attacks on the Family Court could be traced to the "ocker traditions" of Australian society. He stated that:

> It is the lack of equality between men and women in our relationships that is the problem ... Men have been walking out of marriages since time began. ... Now that there are supporting mother's pensions, women don't have to put up with the trash in a marriage and they can walk out too. Men are a bit shocked by this and they don't know where to hit.[42]

These attempts to relocate the explanation of the events into the sphere of violent sexism remained isolated in public discussion. Other observations which attempted to defend the position of the Family Court could not alter the terms of a debate which presented the deficiencies of the Court as the cause of the terrorism. The constant enquiry was "What's wrong with the Family Court?" A commentator could attempt

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40 Sydney Morning Herald, 6 July 1984 at 9. The President of the Law Institute of Victoria, David Miles, agreed with her. *See* account by Law Reporter Aileen Berry, The Age, 5 July 1984 at 16.

41 Robinson, *Behind the Front Door Violence*, Sun Herald, 8 July 1984 at 54.

42 Sydney Morning Herald, 5 July 1984 at 2. This interview had been conducted in April but was printed only in July after the attack on Justice Watson's house.

to uphold the Court's reputation in answer to this question but no one could recast the parameters of the debate in a manner which would make the heinous nature of the bombings the premise of an explanation.

Much of the burden of explaining the Family Court's position fell to the Chief Judge, Elizabeth Evatt. Other prominent persons, such as the Chairperson of the Family Law Council, Justice Fogarty, did not feature in the media coverage. The Chief Judge's status as a well-known person in public life, her continuous service at the Family Court from its inception and her leadership of the Bench made her an ideal target for media attention. The fact that at that time a woman was Chief Judge may have augmented the sexism which journalists drew on when seeking explanations for the violence as a result of men being wronged by the Court. Some newspapers were willing to quote opinion such as: "Women are now in great strength with females in power for positions such as head of the Family Court, Minister for Welfare etc. and they are active in lobbying for laws favourable to them ... "[43] In the crescendo of publicity after Pearl Watson's death, the materials reproduced by the media were so extreme that Elizabeth Evatt eventually sued John Fairfax and Sons for defamation and was awarded damages.

The Chief Judge tried to defend the role of the Family Court, as well as her own reputation. She spoke against the media's interpretation of the violence, but since such complaints could be aired only through the media itself, they were given minimal coverage. The silence from the rest of the judiciary also delegitimised her statements. As she recalled in 1989:

> If any other court had been subject to that kind of attack the whole legal profession and the judiciary would have stood up in anger, because this was really an attack on the independence of the court, but people didn't really see it that way ... They preferred to use what happened as an extra argument for their viewpoint.[44]

This type of response from the legal profession was shown by the Law Council, who claimed that the bombings and killings "underline the need to review the operations of the Family Court ... " Their Secretary General, Phillip Hawke, commented that the Family Court "may have gone too far."[45] In an address to the Australian Legal Convention, the Chief Justice of the High Court complained that the "creation of that Court (the Family Court) has made it difficult to maintain the highest standards in the making of judicial appointments."[46] The Bar Council of NSW did attempt to curb the excesses of the media coverage. They wrote to the editor of the *Sydney Morning Herald* (stating that their letter was not for publication) to protest that it was "unwise" for the Herald to have published the names of further Judges "said to be on some 'hit list'."[47] This letter did not address the general

43 *Supra* note 36.

44 Interview with the author, 22 August 1989.

45 *Law Council Calls for Review of Family Court*, Sydney Morning Herald, 9 July 1984 at 2.

46 *See* Gibbs, *supra* note 17 at 522.

47 Letter from P W Young, Senior Vice-President of the Bar Council, Sydney Morning Herald, 13

critiques being made of the Court, suggesting only that such coverage might encourage further violence. It is one of the few efforts by the legal profession to offer support to the Family Court in the wake of the bombings.

In theory, public communications concerning the Family Court were the responsibility of the then Attorney General, Gareth Evans, but he did not take a high public profile during the bombings and was overseas for part of the time. Statements of unequivocal support for the Court came largely from the Chief Judge. The Commonwealth Attorney General was more inclined to tailor his response to this audience and he showed no sign of understanding the principle, allegedly so vital to the containment of terrorism, that violence should not be allowed to dictate political change.

Gareth Evans assured the Family Law Council that he was "a long time proponent of the landmark in social legislation that is the *Family Law Act 1975*."[48] When informing the Senate of the bombing of Justice Gee's home, he stated that he found it regrettable that "so many members of the legal profession tend to undervalue the role of the Family Court and Family Court judges ... "[49] However in the face of the continuation of the bombings he conceded to the press that there would have to be "some more thinking about the whole future of the court."[50] He wrote to organisations such as the Lone Fathers Association stating that he was "very concerned about the Family Court and in particular the recent violent incidents"[51] and would welcome any suggestions for change which they might make. It is not surprising that a man in the audience told a meeting of FLAG (Family Law Action Group): "You will get more response from the politicians about changing the (Family Law) Act if a few more get killed."[52]

Even before the final incident of the murder of Pearl Watson, Gareth Evans was calling for a report from the Family Law Council on:

> positive measures which might be adopted to improve the image of the Court and assist in the prevention of confrontation and disappointment which has been evidenced by recent violent episodes against the Court.[53]

This request suggests that "positive measures" could have prevented the violence. It is a very optimistic assessment of the impact of administrative change and an underestimation of the destructive inclinations of those who were planning violence against the Court. Responsibility for preventing further bombings was shifted onto the Family Law Council. There was no acknowledgment that the failure

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July 1984. Copy of the letter courtesy of the Bar Council of NSW.

48 Letter from G. Evans to Justice Fogarty dated 15 June 1984. Copy of the letter courtesy of the Attorney General's Department.

49 Hansard, 7 March 1984 at 529.

50 The Australian, 6 July 1984 at 2.

51 Letter produced by the Lone Fathers' Association at a press conference as reported by the Sydney Morning Herald, 6 July 1984 at 1.

52 *Hit List - Three Judges Named*, Sydney Morning Herald, 13 July 1984 at 1.

53 Evans letter, *supra* note 48.

to apprehend the offender or prevent further attacks was a failure of the Government's security services.

It is notable that after two unsolved terrorist incidents, there was no mention in the June correspondence of increasing the physical security of the Court and its personnel. This is regardless of a submission to the Attorney General by the Professional Officers Association after the April 15 bombing. The association represents the Family Court's counsellors and had submitted a detailed log of claims concerning an increase in security measures. The measures were not implemented, apparently because of funding restrictions. As Gareth Evans later told the Senate, "The bottom line in dealing with Family Court problems, as with many other areas of government activity, is adequate staffing resources."[54] Full police protection was given to the Family Court judges after the death of Pearl Watson and security measures were organised for the Court buildings.

The Family Law Council made a number of suggestions on improving the services provided by the Court and the public perception of its operations.[55] All the measures - such as better premises, crisis counselling and a channel for public complaints to be investigated - required additional funding, while the Attorney General had already stated that financial and staffing constraints would inevitably remain in place.

Exactly what changes ought to be made to the Family Court were never made clear in public discussion. While the deluge of media coverage was very unfavourable to the Court, there were still very few substantial suggestions for reform. The bombs had shaken lives, reputations and an institution, but the actual obstacles to changes in family law remained in place. Although the reintroduction of fault was canvassed, there was a consistent unwillingness to specify exactly what faults would be made actionable. The claims that men were wronged in custody and access arrangements were not supported by any general analysis of the workings of the *Family Law Act* and only Geoffrey Lehmann attempted to provide a schema of the legal reforms of decision-making in custody cases.[56] The only tangible reform which was consistently suggested in the wake of the bombings was that Family Court judges should wear wigs and gowns.

The issue of formal court dress became a recurrent theme in media discussion of the bombings. "Could a wig and gown be the means of keeping a judge alive?"[57] asked a headline in the *Sun Herald.* This rhetoric suggested that it was the abandonment of the externals of the bench which had left the Family Court open to violence, formal dress for judges could help to restore peace.

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54 HANSARD, 12 September 1984 at 888.

55 Family Law Council, *Submission* to the Attorney General, 25 July 1984.

56 Lehmann, *Legal Craftsmanship in Custody Cases or a Joint Custody Presumption?*, 14 MELBOURNE U. LAW REV. 442 (1984) at 467.

57 Sun Herald, 8 July 1984 at 5.

The argument in favour of introducing robing to Family Court judges was that it contributed to the authority of a court and that an atmosphere of prestige deterred violence. An additional ground was that decisions received from a person in a wig and robe might appear to emanate from an impartial law maker and therefore arouse less personal animosity than would an unacceptable decision perceived to have been made merely by another individual. In rebuttal of these points the Family Law Council reported that violent outbursts by litigants who have to be restrained by court staff are quite common in the State Supreme Courts where robes are always worn, while magistrates, who do not wear formal dress, have not yet been the target of assassinations despite some truly draconian decisions.[58]

Whatever the merits of the robing of judges, the importance of this issue is insufficient to explain the obsessive raising of the question in every discussion of the Family Court bombings. Just as robes are the symbol of judicial authority, their absence became a symbol of the Family Court's lack of prestige. The issue of robing was a meeting point of the concerns of both the media and the legal profession when contemplating the Family Court. Reporting that other judges wanted robing introduced was the simplest way in which the press could report on the complex issues of the isolation of the Family Court within the legal profession.

Several unrelated issues clouded the status of the judiciary at the time of the bombings and possibly inhibited the profession from providing support for their colleagues at the Family Court. Throughout 1984 the Bench was plagued by a series of unprecedented high profile scandals. These broke on March 5, 1984 with the naming of Justice Lionel Murphy, then on the High Court, as the Judge subject to allegations in the "Age tapes". The next day the home of Justice Gee was bombed and during the next four months new developments in the Murphy case and further Family Court bombings alternated as news items.

No hint of any form of corruption had ever been brought forward about the Family Court or members of its staff. However the Family Court suffered from this period of turbulence as the bombings were reported alongside almost violent denunciations of Lionel Murphy. It did not help the Family Court that during its own crisis the instigator of the *Family Law Act* was facing the ruin of his career. His name was associated with the Family Court, particularly by commentators who were critical of both.[59]

In the presence of so much turmoil, the tone of media coverage encouraged other members of the judiciary to assume that the Family Court was widely disliked and was not respected. As a retired judge from the NSW Court of Appeal wrote, "The newspaper editorials show that there is a general feeling that something is radically wrong with the Family Court."[60]

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58 Family Law Council, *supra* note 21 at 28.

59 An example is B.A. Santamaria, *The Murphy Legend is Born*, NEWS WEEKLY, 7 November 1984 at 17. This article began with a description of Murphy's eclipse, then discussed the Family Court bombings as if it were a related subject. Chief Justice Gibbs utilised the same rhetorical ordering of subjects in his critique of the Family Court bench, *supra* note 17 at 522.

60 Hutley, *What's Wrong With the Family Law Act?*, 230 QUADRANT (1987) at 75.

An editorial note at the beginning of this article states that it had been written some time earlier. It seems to date from the aftermath of the bombings. The irony of Justice Hutley's reliance on editorials to show that something was wrong with the Family Court is that editorialists were inclined to state that it was the legal profession who had misgivings about the Family Court.[61]

The media, and especially the Fairfax press, can be criticised for having played a blameworthy role during this period, as they were in the forefront of applying a construction of meaning to the bombings which relied so entirely on identifying and applying the reasoning of the unknown assailant. However, they were not alone in this, but rather were common participants in a culture which views family violence according to an existing tradition of excuses and concealment. This tradition is so powerful that it can apparently still draw upon the same strategies of vindication even when transferred into a different form of violence in the public sphere. Although newspaper articles provided the most representations of the bombings, they do not differ significantly from other sources. There is no dissonance among the documents of public policy, media coverage and the internal debates of the legal profession. All put the onus of response to the bombings on the Family Court itself.

It seems surprising that so many commentators could respond spontaneously to the bombings by articulating their meaning and making recommendations on this basis. For of course any statement about the aims of the assailant must always be mere speculation. The Family Court bomber never spoke to the Australian public except through the actual acts of violence. This was always ignored by those who created representations of the bombings, because their meaning appeared obvious. In itself, this shows how intelligible such violence is within Australian culture. A gesture could not be so eloquent unless a well developed understanding already existed, ready to ascribe significance to it.

The fact that the assailants of the Family Court remained unknown, and that they did not communicate any statement of their aims, might have increased the tendency for their supposed grievances to be articulated by the media. As has been shown, the Family Court had been subject to much criticism but the complaints were from different sources and were quite inchoate. While the bombings remained as open statements, those with a complaint against the Family Court could interpret the terrorism as the consequence of the faults which they identified. Thus lone father groups claimed that the issue was unfairness in custody arrangements; conservatives pointed to the no fault clause; and the legal profession to the functioning of the Court as a separate jurisdiction. It is unlikely they appreciated that ascribing their own

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61 The circular nature of the communication between the legal and journalistic professions occurs in issues other than the Family Court bombings. George Zdenkowski recalled that "[w]hen I interviewed judges for the Australian Law Reform Commission's sentencing inquiry, I was frequently told that they relied on the press for public attitudes to punishment. When interviewing journalists about the same issue, I was frequently told that judicial pronouncements reflected public opinion." G. Zdenkowski, *Review of Journalism and Justice*, Sydney Morning Herald, 6 May 1989.

reasoning to the motivations of violence was a form of identification with the terrorist.

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A founding member of the Family Court bench, Justice Asche, looked back on the terrorism and said that the bombings and killings were "shattering blows to a young court struggling for proper recognition."[62] The events of 1984 must have been particularly painful to someone such as Justice Asche, who had been ready in 1980 to thank "the legal profession and the public"[63] for their general acceptance of the role of the Court. Despite the complaints made against the Family Court in its first years of operation, there could have been no expectation that actual violence against the Court would be so little condemned in the community. Justice Asche could only state that it was "extraordinary."[64]

The bombings of the Family Court are a paradigm instance of how a public institution became a suitable target for terrorist violence in Australia. The Family Court could not be adequately defended, in its physical institutions, its personnel or its reputation. All suffered from the violence.

These incidents are unlikely to be recorded in the history of the Family Court as a turning point in its development. The changes introduced since the time of the bombings, such as the reintroduction of robing, are not of major import and could have been achieved in any case by consistent lobbying. The achievement of whoever instigated the bombings was to have exposed Australian society as receptive to the arguments of force, provided they spring from our own traditions of violence. The Family Court bombings are of great significance to the history of terrorism in Australia because it could be argued that this is Australia's first, and one hopes its only, completely successful terrorist campaign. The perpetrators were not apprehended, the security services were unable to halt the campaign and the target was delegitimated.

Successful terrorism so impresses its message on the public mind that it is seen as the use of extreme means to achieve a worthy goal. To achieve this, a terrorist group must delegitimate the target and gain a legitimacy of its own. This often happens, since many instances of terrorism spring from long held grievances and social divisions. In societies where violence is tolerated, terrorism can be accepted and justified as the retributive use of force. When it is so accepted, it is no longer recognised as terrorism at all. The public ordeal faced by the Family Court and its judges in 1984 is an excellent example of this syndrome.

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62 Asche, *supra* note 20 at 3.

63 Asche & Marshall, *supra* note 16 at 36.

64 Asche, *supra* note 20 at 3.