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## THE GENDERING OF VIOLENT CRIME: CONCEPTUALISING A HUMAN RIGHTS APPROACH

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### Abstract

This article reveals the diverse threats violent masculinities pose to human rights, especially females, in view of the idea that 'all things are equal now' between the genders. In the UK the Human Rights Act (1998) has sustained existing safeguards for the mainly male perpetrators of violence, but the needs of some female victims of domestic violence remain unmet. Contemporaneously, mainly female crime victims are vulnerable to violations of their basic human rights. The analysis in this paper identifies and interrogates the negative consequences of the principles of modernisation and six drivers of crime control underpinning government approaches since the late 1990s to dealing with violence against women in the context of general approaches to victimisation. Alongside issues relating to the receding influence of the state our argument is that a human rights-informed approach reveals not only the deficiencies and contradictions of government policy affecting change, but provides a vehicle for embedding a more comprehensive way of safeguarding human rights in practice.

### Keywords

Violence against women; human rights; modernisation.

## Introduction

The Human Rights Act (1998) signalled a renewed emphasis on the values of equality, freedom, dignity and respect for all human subjects. The New Labour government of that day sold this as an opportunity to bring about change for the general wellbeing of the citizenry as part of its wider aim to 'modernise' public policy. Many possibilities were imagined in what has been characterised as the 'last grand narrative', which has been mobilised to scrutinise the workings of state institutions (Cohen cited in Halliday, 2007; see also Cohen, 2006). While there have undoubtedly been some beneficiaries of such an agenda this optimistic outlook must be tempered by an appreciation of some of the inhibitory processes also at play, especially towards those behaviours that pose a fundamental threat to public safety. These processes include violent men who are reluctant to change their aggressive and violent behaviour towards women and the modernisation of crime policy at a structural level, which sometimes contradicts human rights values. Attention has focused on the human rights of the prison population, for example the unlawful detention of prisoners such as suspected terrorists (Pierce, 2010). Post-9/11 and 7/7 the logic of intrusive policing and surveillance measures involving restrictions on the rights of suspected terrorists is arguably now a feature of 'routine' policing, especially the 'intensive' application of stop and search (Innes & Thiel, 2008; Parmar, 2013). At the lower end of the spectrum of deviance the over-zealous response to the anti-social behaviour of young people is another example of categorical suspicion (Rodger, 2008). The human rights that are vulnerable here are overwhelmingly, if not exclusively, those of males, not females.

The analysis in this paper identifies and interrogates the negative consequences of the principles of the modernisation of criminal justice policy and six drivers of crime control underpinning government approaches since the late 1990s to dealing with violence against women in the context of general approaches to victimisation. These drivers, considered in more detail in due course, include (i) managerialism, (ii) penal populism, (iii) public protection, (iv) victim centred justice, (v) the commercialisation of crime control and (vi) risk assessment and management. Alongside issues relating to the receding influence of the state a human rights informed approach reveals not only the deficiencies of government policy, specifically blockages affecting change, but provides a vehicle for embedding a more comprehensive way of safeguarding human rights in practice. In short we argue that particular renderings of human rights principles could provide a more effective approach for tackling violence against women.

To achieve these aims the article is divided into four sections. The first puts the key debates into context. The second audits the problem of violence against women and the gender based inequalities it generates. This summarises the 'facts and figures' relating to gendered violence noting who commits violent crime and victim offender relationships. This reveals the scale and intensity of the problem and maps the complex terrain and the diverse settings in which human rights need to be realised. Numerically most violent offenders and victims of violence are male, yet in the private sphere where domestic and sexual violence is endemic it is mainly women who are the victims, highlighting a need for responses to address such inequality. We then argue in the third part that a human rights approach might be applied to address such inequalities. Here the importance of human

rights principles at an international level, such as the Istanbul Convention (Council of Europe, 2011), for coming to terms with gendered violence at a national level is examined. Kelly (2006) has rightly noted that a considerable discomfort exists among traditional human rights scholars with the move from a focus on states and state actors to include feminist positions that stress accountability for individual perpetrators and critical perspectives on masculinity. We adopt a similar position and argue that nation states, due to the modernisation of criminal justice policy, lack the capacity to address the privatised insecurities of women, leaving their human rights vulnerable to abuse and violation. In the final part we demonstrate how the general direction of government policy in the field of crime control currently weakens some of the aspirations behind this approach. Authentic approaches to human rights need to extend beyond policy and legal approaches but given the modernisation of criminal justice, genuine gender transcending human rights are unlikely to be realised unless these policies are reversed.

Without such a reversal the full realisation of gender neutral, human rights values is likely to be compromised. The limitations of policy and legislation in tackling this problem are exposed, specifically in the context of New Labour's modernising government agenda (Cabinet Office, 1999; Senior et al., 2007). Between 1997 and 2010 the Blair and Brown governments were widely criticised for their authoritarian and repressive responses to various types of offending behaviour but attempts to augment crime control through surveillance and other draconian measures have not significantly touched men who are violent towards women. By contrast there are calls for the state to do more to control this group of offenders. There is also the agency of individual men, more specifically perpetrators of violence against women, whose behaviour inhibits women's human rights. Compared to acquisitive crime and male violence in public space we know relatively little about perpetrators of violence against women and most critical writing on this emanates from feminist scholars whose influence remains limited to the margins of the discipline (Heidonsohn, 2012; Kelly & Westmarland, 2015). Accordingly a belief in the transformability of violent masculinities is over-optimistic in light of the persistence of violence against women (Dobash et al., 2000). The closing section revisits the potential future of the above debates and human rights more broadly in light of the Conservative-Liberal Democrat Coalition government (2010-15) and the current Conservative government, which reveals the intensification of the problems and contradictions highlighted throughout the analysis.

## Human rights and gendered violence in context

In the spirit of the *End Violence Against Women Coalition* (2011) publication, co-produced by researchers, practitioners and NGOs, this article augments established academic accounts of these issues by arguing that violence against women and the deficient state response are violations of the human rights of women. Article 3 ('the prohibition of torture') - and tragically on some occasions article 2 ('the right to life') - in light of article 14 ('freedom from discrimination') are examples (Copelon, 1994; Cook, 1994). Even though the state and civil society are oriented towards human rights principles this is not always evident in practice.

One interpretation of human rights values, in the spirit of Kant, is that they dissipate gender-based differences by stressing the universal characteristics of a gender-less human subject (Woodiwiss, 2005). In contrast there is a view that this 'masks' the 'false ideological universality' of human rights and the ways in which they 'legitimise the concrete politics of domination' and *exploitation* of women (Žižek, 2009: 126). In other words, human rights discourse is synonymous with the idea that 'all things are equal now' between the genders. Working against this, however, are the elements of diversity, difference and discrimination, including gendered divisions, enacted through often paradoxical processes of differentiation. Whilst some evidence of growing gender equality exists, when it comes to matters of criminal justice gender divisions become more prominent in many instances (Silvestri & Crowther-Dowey, 2016). Thus not everyone has benefited equally from the Human Rights Act (1998) and certain behaviour carried out by one gender disproportionately disadvantages the other, in this instance it is violence against women. The above observations chime with feminist critiques of international human rights law, which deem oppressive and coercive practices against women, such as interpersonal violence, as being akin to violations of their human rights (Copelon, 1994).

Our core contention that the human rights of women and girls are vulnerable in the face of male violence might appear surprising when ending such violence is a priority in public policy, illustrated by the current Conservative government's *Ending Violence Against Women and Girls Strategy* (HM Government, 2016). This builds on a strategy launched a decade ago (HM Government, 2009) and dedicates (in addition to the funding of other related areas of activity) £80 million to support front line services such as refuges and rape crisis centres and the launch in 2017 of the Service Transformation Fund to stimulate innovative responses to meet the needs of victims and perpetrators. The government has also signed the Istanbul Convention (Council of Europe, 2011), which due to the HRA places an obligation on the British state to exercise due diligence in its response to violence against women, specifically protecting victims and prosecuting perpetrators. Thus the female victim, or survivor, now has a central place in policy only because of feminist academic research and political activism commencing in the 1960s. Since the 1990s through legislation and myriad policy initiatives the state and voluntary and community sectors, often anticipated to be working in partnership, have asserted their commitment to take violence against women 'seriously' (Heidensohn & Silvestri, 2012).

We build on Walby et al.'s (2016) finding that austerity measures implemented by recent governments have led to an accentuation of gender based inequalities, which limit what government can do to reduce violence and constrain the choices women face in attempting to escape violent masculinities. This is despite concerted effort in a number of spheres to address violence against women. Although the government has signed the Istanbul Convention it is yet to ratify it, which weakens its status. Also, although individual men are to a large extent responsible for these problems, the lack of appropriate services and wider developments in crime policy do not make the potential for bringing about change to violent masculinities and a reduction in violence a straightforward task.

### An audit of the impact of violent masculinities

This section exposes the contrasts between the universalising tendencies of human rights and the gender-specific nature of victimisation and opens up a range of issues addressed in our analysis. Our knowledge of women's victimisation in Britain has vastly increased over the past few decades, a direct result of feminist activism. The United Nations General Assembly who disseminated in 1993 the *Declaration on the Elimination of Violence against Women* described it as,

'[a]ny act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.'

The category of violent crime includes a range of offences, varying in level of seriousness, with homicide at one end of the continuum, and at the other end minor assaults where no physical injury is sustained. While all crime types affect men and women there are numerically more male victims of male violence in general: in 2009/10 men were two times more likely to be a victim of violence than women. Out of all violent incidents 67% of victims were men, for women the figure is 33% (Flatley et al., 2010: Table 301; see also ONS, 2015). There is marked inequality when it comes to interpersonal violence in the private sphere. Men do experience these crimes, but less frequently and the indignities experienced by women are more profound and their freedom to act in self-defence or to escape from the physical and psychological control of aggressive and violent men more limited. As Hester (2013) puts it domestic abuse is 'asymmetrical' in the sense that it is men who are more likely to control, coerce and assault females than vice versa. Moreover the capacity, and sometimes, commitment, of the state to safeguard women is also more likely to be found wanting (Equality and Human Rights Commission, 2010).

The evidence base relating to interpersonal violence against women in Britain includes crime recorded by the police and the Crime Survey of England and Wales (CSEW), as well as various smaller scale studies. There are many challenges when gathering data about this issue, including the private and sensitive nature of these crimes, and the well documented failings of the criminal justice response. On the basis of this imperfect knowledge we can say with some certainty that more is known today than in the past but there are still gaps and this knowledge has not led to the creation and implementation, of effective ameliorative solutions (Silvestri & Crowther-Dowey, 2016).

Domestic violence, for example, is not recorded by the police in these terms but instead as assault, actual bodily harm or harassment (Hester, 2013), thus rendering the offence (and its gendered nature) less visible. It is also difficult to distinguish between different types of abuse (i.e. physical, emotional) and levels of seriousness, further complicated by the inclusion of coercive control as a result of section 76 of the Serious Crime Act 2015 (Home Office, 2013; Bishop, 2016). The British Crime Survey 2010/11 (now the CSEW) estimated that there were 392,000 domestic violence incidents, which is comparable with figures for most years. Repeat victimisation - or a victim experiencing the same type of victimisation

more than once in a year - is common and in 2010/11 73% of all incidents affected repeat victims (Chaplain et al., 2011: 62).

A sexual assault will be experienced by one in four women at some point in their life (Fawcett Society, 2010). With rape, there is a tendency to underestimate the true extent of this crime and only 11% of rapes are actually reported (Povey et al., 2009). In the vast majority of rapes the victim knows the perpetrator, with the most common perpetrators being husbands and partners. Women are most likely to be sexually attacked by a man they know in some way, most often partners (32%) or acquaintances (22%). Current partners (at the time of the attack) were responsible for 45% of rapes reported to the survey and, contrary to the fears held by many women, 'strangers' were only responsible for 8% of rapes (Myhill & Allen, 2002). For less serious sexual assaults the perpetrator is more likely to be a stranger (64%) (Walby & Allen, 2004).

Taking the most extreme form of violence, homicide, 71% of victims are men. However, it is estimated that two women are murdered by a partner every week. Indeed partners and ex-partners - instead of acquaintances, strangers and friends - account for the majority of female homicides: 68% compared to 15% of men (Smith et al., 2010).

We could go on to reinforce the point that women are vulnerable to male violence, but at this stage it is appropriate to restate how this all relates to a human rights agenda. The statistics show that there are profound inequalities between the sexes and there is also the lived reality of male violence, which jeopardizes the dignity and freedom of females. Human rights principles offer an opportunity to address some of these negative experiences.

### **Human rights and opportunities for criminology and criminal justice**

The language of human rights, though not new and bequeathing a distinguished history, has been expressed in multiple ways by a variety of individual and collective actors. The 'human rights project' rests on an assumption that rights are universal and applicable to all human beings, making them distinctive from earlier liberal notions of *natural rights* and the 'rights of man', which are not enjoyed by virtue of being human per se, but rather by white European men (Kallen, 2004). The Universal Declaration of Human Rights applies across the globe and is, at least symbolically, a set of cardinal principles, stating that all persons in any civilised moral and political order possess a fundamental and equal moral status, entitling them, without any distinction, to *freedom, equality and dignity*. For Kallen (2004: 30) human rights principles sustain an 'overarching paradigm for social equality and social justice for all of humanity, rooted in the twin foundations of human unity and cultural diversity.' According to the second of the three New Labour governments in a consultation paper, *Equality and Diversity: Making it Happen* - published in 2002 - the 'complementary nature of equality and human rights' was 'reflected in the Government's vision of a society based on fair and equal treatment for all and respect for the dignity and value of each person' (para 9.3).

### **Bringing Rights home: cleaning up our 'own back yards'**

Thinking about human rights and how citizens can access them has undergone significant transition since the 1998 Act. There was widespread optimism (Costigan & Thomas, 2005), culminating with the passing into law of the Equality Acts (2006, 2010). For some readers, comparing the abuses going on in states overseas where political oppression is rife and where any dialogue about freedom and inequality is quashed or absent because it has not even been imagined as a possibility is inappropriate. By looking, as Kallen (2004: xiv) does, at what happens in 'our own back yards' it is apparent that public policy in democratic societies, such as Britain, where the 'human rights principles of justice and equity for all citizens' are advocated and celebrated, such values are not safe from violation in some apparently less contested settings.

Despite the optimism surrounding its inauguration Chakrabarti (2005) expressed some disappointment with the Act because human rights values were never fully embedded in social institutions or the psyches of everyone. A principal cause for this disillusionment was the lack of a Human Rights Commission like the one set up in Northern Ireland following the Belfast (Good Friday) Agreement in April 1998, which could give advice and assist alleged victims in bringing proceedings. A Commission for Equality and Human Rights did appear in 2007. There was also a dearth of consciousness-raising about the kind of culture engendered by human rights principles and that the Act was not effectively promoted and publicised to the wider citizenry (Silvestri & Crowther-Dowey, 2016).

The upshot of all this activity, and with the jury being still out regarding the successes and failures of the Act, is that there is now an opportunity to reinterpret equality beyond addressing discrimination in its own right but instead as a question of human rights. This is where criminology and criminal justice enters the debate, because the materialisation of human rights in the world of crime and its regulation is seamlessly interrelated with the realisation of justice. We re-conceptualise and re-imagine gendered violence and its inequitable impact on women through a human rights lens, which delivers a new way of understanding the tension between the ambition to protect rights and actual achievement of this goal. It also interrogates the applicability of very general notions of human rights and forwards a specific interpretation of the concept that holds most utility for the rights of female victims of violence.

### **Rethinking violence against women**

The aforementioned 1993 UN *Declaration on the Elimination of Violence Against Women* was backed up by more robust enforcement mechanisms to safeguard women. The subsequent *Committee on the Elimination of All Forms of Discrimination Against Women* maintained this momentum and in spite of ongoing disputes about what constitutes discrimination against women, both within nation states and supra-nationally, the issue has been recognised. Here there is increasingly an international consensus (i.e. the Istanbul Convention) that a legal response to the limitations of depending on supposedly sex neutral norms is necessary because women are discriminated against in ways that men are not. Such initiatives demonstrate international recognitions of pervasive and systemic discrimination against women and the need to tackle those social processes underlying women's inequality by countering the many forms of discrimination women routinely experience.

Feminist-inspired analyses of the victimisation of women by violent men reverberate throughout contemporary research, as well as the response of policy makers to the perseverance of violent masculinities. The argument that a human rights approach can potentially benefit female victims of male violence is, on the surface, compelling, not least due to the relative powerlessness and 'deserving' status of female victims. A complicating factor in criminal justice systems such as the adversarial one found in Britain is that victims do not enjoy formal rights like suspects and offenders, and that the response to victims has been couched mainly in terms of needs and expectations (Walklate, 2012). One way of rethinking the experiences of victims of violence through appealing to human rights values hones in on the theme of state accountability. A feminist critique of mainstream human rights discourse is that it is gender-blind, notably the distinction between the public/private divide with respect to women's legal rights (Smart, 1989; McQuigg, 2016). It is conceivable that governments should be held accountable when they fail to protect women from domestic violence. The logic of this argument applied in international arenas to condemn sexual violence against women in armed conflict and to compel governments to treat trafficking as a human rights crisis, also has resonance in the context of the UK (Chinkin, 2014; Council of Europe (the Istanbul Convention), 2011). Notably, although the British government has accepted that it is obliged to develop a comprehensive response to domestic abuse and violence against women in general it has resisted over time the ratification of the Istanbul Convention.

The main advantage of adopting a human rights framework is that it makes feasible a project to unify the experiences of vulnerable groups by exposing the workings of masculine power in different locations. Female victims of male violence can be unified because their temporally and spatially atomised and isolated experiences reveal a common vulnerability and lack of power in male dominated settings both in private and in the public spheres that constitute the criminal justice system. Yet despite these universalising tendencies, caution needs to be taken when seeking to homogenise the experiences of victims into a singular identity (i.e. 'womanhood'). Such attempts may cancel out the labours of feminists past and present to critique and dismantle any universalising strategies that create artificial unity. Other divisions, especially class, race and ethnicity and age do intersect with women's lives in multiple ways and femininity is often celebrated in terms of its diversity, difference and plurality. True as this may be, when it comes to domestic violence women share a degree of solidarity, however unwanted and unwitting this may be, due to the real or perceived danger of male violence and it is worth reminding ourselves of Stanko's astute observation made over two decades ago:

'Women's lives rest upon a continuum of unsafety. This does not mean that all women occupy the same position in relation to safety and violence... Somehow, though, as all women reach adulthood, they share a common awareness of their particular vulnerability. Learning the strategies for survival is a continuous lesson about what it means to be female.' (Stanko, 1990: 85).

Drawing on human rights values allows women to recapture a common language articulating their shared suffering and a consciousness that can be enlisted to exert

sustained pressure on governments, agencies and citizens to work towards change and a transformed future. However, we should also acknowledge that human rights are not unproblematic or necessarily a coherent set of values.

### **Human rights and responses to violent masculinities: opportunities, paradoxes and barriers**

Our attention now rests on the equality gap relating to gendered violence. The extent to which this can be attributed to state actors is a central issue but the limits to the role of government are recognised in the face of the behaviour of men, individually and collectively.

#### **Modernising gender relations - some paradoxes in human rights discourse and crime policy**

Beyond the violent individual are a range of political economic structures and processes, which independently contribute to the inequalities, indignities and restricted freedom experienced by women, in this instance modernisation of crime and public policy. This concept is associated with the three New Labour governments - in power between 1997 and 2010 - although the idea has a long history and certain elements were moulded by the Thatcher and Major governments who governed between 1979 and 1997. The Coalition (2010-15) and Conservative governments have continued to drive forward this agenda through its austerity measures, which calls for a less centralised state and more discretion for local authorities in implementing policy, including making savings and cuts. Added to this, prominent Conservative politicians have suggested that the HRA should be scrapped and replaced with a British Bill of Rights embedded in the Constitution. The former Conservative Prime Minister, David Cameron, has also critiqued the equalities agenda more widely dismissing it as 'bureaucratic nonsense' (Silvestri & Crowther-Dowey, 2016).

The 'New Public Management' or managerialist agenda, which reflected the global ascendancy of neo-liberal values such as the centrality of business and market principles, and the celebration of competitive individualism, all demonstrate this. Since the late 1980s this has consistently been presented as a politically neutral tactic although this is disingenuous because the choices made reflect a narrow range of politically motivated interests that are determined by central government. A tendency set in motion was the expectation that agencies achieve what they did in the past - and possibly more - by using existing funding regimes more prudently. Invariably economic and technocratic considerations are prioritised and budgets are managed very closely. Governments have, rhetorically, promoted the rights of consumers of services but in reality, economic considerations such as efficiency and cost effectiveness are preferred and inform the direction of policy. More abstract beliefs and values - equality, dignity, justice and human rights - are neglected or marginalised and the concept of gender tends to be treated as a technical rather than conceptual issue.

New Labour, at least in the early days when in office, emphasised the philosophy of the 'Third Way' and the need to reconcile the rights and responsibilities of government and the individual, which indicated that it would address some of the inequalities and exclusion experienced in various environments (Senior et al., 2007). The Conservative

government currently (as well as when they were in coalition) emphasise personal responsibility over and above rights through its oppositional views about the place of a rights based culture in civil society (Silvestri & Crowther-Dowey, 2016). Prior to this the Cabinet Office (1999) stated that modernising government was about making government and public sector agencies more accountable in terms of decision-making and service delivery. These aims were to be achieved through setting targets for agencies and auditing their 'performance' in the context of new institutional arrangements in the field of criminal justice. State agencies no longer monopolised crime reduction and responsibility for the provision of this good was shared between the state and other sectors, particularly those in the 'responsibilised' voluntary and community sector at central, regional and local levels, as well as the individual (Garland, 2001). Under the Coalition discussions focussed on the ill-defined notion of the 'Big Society', which promoted localism and the idea that individual citizens and local communities should be self-governing and create a strong civil society, instead of relying on 'big' government (Cabinet Office, 2010; Morgan, 2012). Behind these changes was a commitment to addressing the democratic deficit and lack of civic engagement that was evident in many communities and it is here that the Human Rights Act (1998) became conspicuous. However, the responsabilisation of local authorities and government has not resulted in the co-ordinated and sustained delivery of services to victims of male violence with women and girls unable to 'access vital help,' partly because local governing agencies do not fully comprehend their obligations to address this problem (Joint Committee on Human Rights, 2015: 25).

In the field of crime and public policy this commitment to a human rights agenda co-existed with the emergence of six drivers of crime control. Managerialism, discussed above, is linked to five others: penal populism and public protection; victim centred justice; the commercialisation of crime control; risk assessment and management; and the decline of the rehabilitative ideal. These autonomous yet interdependent factors interact in complex ways in relation to different crime issues (Senior et al., 2007). These are discussed in turn with relation to the victimisation of females by violent males. Crucially modernisation is sometimes at odds with and contradicts human rights values, which means the latter are not always tangible in state-led responses to violence against women.

The goal of *public protection* is a key driver behind *penal populism*. The expansion of the prison population has been justified as necessary by the government in response to populist beliefs that dangerous violent criminals, especially paedophiles and predatory sex offenders, need to be incarcerated. In their attempt to satisfy public demands to punish these offenders government can downplay the domesticated nature of violence against women and the privatised insecurity they experience can be overlooked. This insecurity is not the same as private security, which has been expanded as part of *the commercialisation of crime control*, especially to regulate male violence in the night-time economy. The point is that violence against women in the private sphere is not a preoccupation of private, for profit enterprises. This is notable because this is one of the few problems where the private sector has not been widely utilised in crime policy. Thus with the exception of some services in the courts and some offender management work (such as the Community Rehabilitation Companies (CRCs)) the private sector is not in the business of preventing and reducing the worst excesses of high risk and dangerous violent

masculinities as they impact on women, confirmed towards the end of 2016 in a report written by the Chief Inspector of Probation, Dame Glenys Stacey, which identified a lack of awareness of domestic abuse amongst CRC personnel (Travis, 2016).

In terms of *public protection* women are statistically at less risk of violent crime in general but this should not ignore the finding that talk about a 'crime drop' since the mid-1990s, specifically in relation to violent crime, has been overstated in the case of violent crime against women, which is increasing (Walby et al., 2016). In addition, their fear of rape accounts for high levels of anxiety. Such fears may be dismissed as disproportionate to the actual risk, but we already know that many cases go unreported to, or are not recorded by, the police and many offenders remain absolved from prosecution and conviction (Hohl & Stanko, 2015). There are also incidents when women have been seriously injured or murdered due to the police failing to respond to emergency calls (Angiolini, 2015). The downgrading of offences, the difficulty of tracking offences as they progress through the criminal justice system and ultimately the high attrition rate mean that many women feel excluded and reluctant to engage with the criminal justice system (Equality and Human Rights Commission, 2010: 142-5; Hovarth & Kelly, 2007). Notwithstanding high incarceration rates and the fact that rates of some acquisitive crimes have been falling since the mid-1990s it is apparent that when reflecting on the theme of *public protection* there is much cause for concern. The paradox here is that the benefits of these dynamics are not evenly spread, hence the limited success of attempts to ensure women are protected from the indignities, disrespect and lack of freedom they routinely experience. Placing the *victim at the centre of crime policy* and the emergence of *risk assessment and management* are two tendencies related to the above.

*Victim centred justice* is of fundamental importance and females affected by interpersonal violence have been the beneficiaries of legislation and policy initiatives to ameliorate the problem, culminating most recently with the Coalition government's *National Strategy: Violence Against Women and Girls* first published in November 2010 and followed by more recent iterations of this policy goal (Home Office, 2015; see also HM Government, 2016). New Labour was especially active during their second term. All of the below were designed with the idea of partnership working and the joining together of statutory agencies and the voluntary and community sector (e.g. Women's Aid; Action After Fatal Domestic Abuse; Refuge; Rape Crisis; amongst others). The Sexual Offences Act (2003) supplemented an extensive range of plans and policy interventions, nationally and locally, by prioritizing the reduction of such crime through improving the treatment of victims by the police, CPS and courts. The Home Office (2003) *Safety and Justice* report and *the Domestic Violence National Plan* (2005) emphasized three distinctive courses of action, namely prevention, protection and justice, and support. The *Domestic Violence, Crime and Victims Act* (2004) enhanced the protection, support and rights of victims and witnesses, giving the police and other agencies the tools to address gendered violence. In April 2011 Section 9 of the previous law established domestic homicide reviews in cases where someone is killed by a current or ex-partner. The Genital Mutilation Act (2003) was passed into law mainly to protect girls from circumcision. In 2005 the first Specialist Domestic Violence Courts were established to place victims at the heart of the criminal justice process, specifically by creating the role of an advocate to support victims of abuse and help them liaise with the many agencies involved in this area. In the courts the role of

Independent Domestic Violence Advisor to help victims of domestic abuse to come to terms with the provision available to help them is also an important development (Fawcett Society, 2010; Robinson & Payton, 2016; Starmer, 2011). The Conservative government published an updated version of the national strategy (HM Government, 2016) and the inclusion of the language of human rights is encouraging yet this is restricted to championing human rights overseas and on an international rather than domestic stage. This is somewhat puzzling given the reluctance of the same government to ratify the Istanbul Convention (Council of Europe, 2011).

There is no shortage of activity but barriers exist, not least managerialism, but more enduring ones like police culture that have, and still do, inhibit fair and just responses to victims of gendered violence (Silvestri & Crowther-Dowey, 2016). As victims of male violence, women fare less well compared to victims of other violent and acquisitive crimes at all stages of the criminal justice process. Their human rights are further compromised by the shortcomings of two other drivers, namely *risk assessment* and flawed attempts to *rehabilitate* men who are violent towards women.

Research evidence shows that it is violent men who are most likely to be identified as a risk and in need of higher levels of surveillance and incapacitation. To combat domestic violence there are Multi Agency Risk Assessment Conferences, which bring together statutory and voluntary agencies to protect victims who are at a high risk of becoming a repeat victim of domestic violence (Steel et al., 2011). *Risk assessment and management* are influenced by a waning belief in the capacity of offenders to commit to change. This is presented as a scientific crime reduction tool and there is the expectation that its measurements will be accurate yet they might not in fact be value neutral (Senior et al., 2007). For example, defining a situation or a person as a risk and in need of a policy response is a political decision rather than a judgement based on pure science (Kemshall, 2003). Because it involves predictive profiling the protection it can provide to victims of serious violent, often sexually motivated, crimes can be over-stated. As Bottoms (1977) has argued risk assessment procedures can calculate false negatives and false positives. Subsequently, it is possible that a potential risk of offending is therefore not detected, which means that victims are not adequately protected, corroborated by a recent review of the policing of domestic abuse (HMIC, 2014).

Still, senior policy makers in government seem reluctant to appreciate that their expectations about the degree of public protection that can be provided are essentially unrealistic and unobtainable in practice. Increasing public protection is in principle feasible and there are interventions that could yield positive results yet for these strategies to be successful it would be necessary to use intrusive surveillance technologies that would undermine other human rights. More crucially, the scientific pretensions of risk assessment offer women limited protection from violent men and consequently their human rights are susceptible to being weakened.

The final driver examined here is the *decline of the rehabilitative ideal*. This refers to the pessimism and sense of 'impossibilism' underpinning Martinson's (1974) view that 'nothing works' when it comes to rehabilitating offenders. This assumption was effectively challenged in the 1990s by the 'what works' agenda and the burgeoning of 'evidence

based' research, which suggested that interventions can be effective if they are targeted at the right people, at the right time, and in the right place (Tilley, 2005). The actual effectiveness of many penal interventions is limited, though. This is partly due to the extent of under-reporting, which means many men are not brought to justice. Also, looking at prison population statistics between 2000 and 2011 it would appear that male violence, including sex offences, has not been reduced and that they are intransigent social problems (Ministry of Justice, 2011: 5-6; see also Travis).

Human rights principles have been, as noted earlier, identified as the 'last grand narrative' but these fine words have not always touched the lived realities of violent men nor are they always tangible in state-led responses to violence against women. Recent attempts by the successive neo-liberal governments to modernise crime policy, though well intentioned, are less progressive if measured against human rights ideals. In turn, women are subordinated by male interests and power.

#### ***Violent masculinities - the inhibition of human rights***

Men are quite clearly culpable for most violence and are the *inhibitors* of human rights ideals. The New Labour mantra that with rights come responsibilities and the present Conservative government's prioritisation of personal autonomy and self-sufficiency may be taken as an invitation to men to assume personal responsibility for the victimisation they cause, particularly of women. To be more precise, the discriminatory nature of male domestic and sexual violence and the responses to it undermine the freedom and dignity of women (see Articles 2, 'the right to life' and 3, 'the prohibition of torture'). More generally, the social and economic costs of male crime and anti-social behaviour can have an indirect effect on other economic and social rights because of the drain their actions has on the increasingly finite resources available for the delivery of health and social services. By adopting this stance we make both a political and a pedagogical case for bringing about change in men to ensure they respect the human rights of others. While men and masculinities are characterised by difference and diversity there is the potential for a common language to be developed, which gives equal respect to the freedom and dignity of all citizens. An emphasis on bringing about change can be found in some interpretations of masculinities and crime.

One way of conceptualising this is to draw on the thinking of Messerschmidt (1993), who combines a structural analysis with the micro-level analysis offered by ethnomethodologists. This contribution shows how three structures - labour, power and sexuality - are permanent features of social relations, but that gender relations assume different forms as they are negotiated in different historical contexts. Masculinity is 'accomplished' in everyday life by agents who aspire to attain the ideals of 'hegemonic masculinity' or the dominant ideals of masculinity that subordinate women and marginal masculinities. Domestic and sexual violence, for example, may be chosen as a way of 'doing masculinity', entailing the exertion of power to control women. Because hegemony is not static and negotiated in this way change is a possibility. The Human Rights Act and the initiatives acknowledged above presented an opportunity for change, but the available evidence shows that social structures are not being transformed, at least palpably. Change at the level of individual social actors is achievable, though, and an aggregate of individual changes over time might lead to more fundamental structural change. Yet despite the

principles of managerialism placing greater emphasis on the individual and personal responsibility this is an area where a more individualised focus has not reached.

Gadd's (2002, 2003) psychosocial approach is critical of this structural analysis because although it draws on the micro sociology of ethnomethodology it neglects what goes on in the human psyche. Drawing on psychoanalysis Gadd (2002) looks at men's subjectivities and the workings of their unconscious, showing the ambivalent thoughts and feelings domestic abusers experience about their victims and their own behaviour. Gadd (2003) argues that violent individuals have the capacity to recognise a need to change although there are 'stubborn psychic investments' relating to their orientation towards their masculinities.

Both perspectives offer persuasive explanations and although there are profound epistemological differences preventing any synthesis they do share a view that there is nothing inevitable about existing gendered relations and even though violent masculinities may be 'stubborn' they are changeable. Such optimism may be misplaced given the persistent and obdurate nature of interpersonal violence. Moreover, as Graham (2006: 194) observes these contributions have focused more on causal factors instead of looking at what needs to be done to bring about change.

In an attempt to develop an integrated strategy on violence against women, Coy et al. (2008) emphasise a focus and intervention at the perpetrator level. Despite an emerging international consensus that programmes addressing perpetrators should be part of a co-ordinated response, they note that such provision across the UK remains patchy. With a focus on prevention, they argue that there are a significant number of men who could be engaged if services were available:

'If we are calling on men to change, we must ensure that appropriate services are available which not only support this, but enable men to understand the complex roots of their behaviour. If agencies and communities are to respond appropriately to perpetrators, information about availability of services is essential.' (Coy et al., 2008: 37)

Such an approach would, they argue, 'encourage professionals and agencies to think beyond the reactive management of dangerous individuals, to imagine how to create deeper and longer term change' (ibid).

Thus it would seem ill considered to deny that governments, both currently and in the recent past, have not formulated policies that focus on the needs of women. The mechanisms used to deliver reform - such as legislation and a policy making process that is best characterised as incremental in orientation - are supposedly committed to gender equality yet the financing and implementation of crime policy results in stark inequalities. The proportion of resources allocated to challenging men who abuse and assault women pale into insignificance compared to the surveillance and pursuit of terrorists, rioters and street criminals. Violent men may or may not be conscious of their relative immunity when they victimise women but the outcome is the same in the sense that survivors are

all too painfully aware of their vulnerability and under-protection (see Worrall & Gelsthorpe (2009: 342).

### **New directions and concluding thoughts**

This article has considered the interface between crime control policy and human rights in the context of female victimisation. In the case of domestic and sexual abuse and violence women are much more likely to be the victims of male perpetrators. We have argued that this asymmetry and inequality might be addressed if human rights values were adopted more fully than they currently are to safeguard vulnerable groups. Whilst there has not been a shortage of state led activity with numerous legislative and policy interventions targeting violence against women and girls there are inherent paradoxes and contradictions in government policy. In addition to the current Conservative government (2015-) and its sceptical orientation to the Human Rights Act (1998) and related international agendas, the six drivers underpinning the modernisation of crime policy go against the grain of human rights by prioritising the diminution of the roles and responsibilities of the state through budgetary cuts. More emphasis has been placed on the personal responsibility of the individual, which has left victims increasingly vulnerable and violent perpetrators facing further difficulties in ameliorating their behaviour.

Social scientists and the players participating in crime and public policy patently pay more than lip service to gender issues than ever before and this is a progressive move. Despite legislation and a plethora of policy initiatives across the criminal justice sector, gender based differences bound up with violent crime still exist. This article has exposed continuing and new forms of inequality, some of which have arisen in part out of attempts to create equality. Ironically, our usage of human rights discourse, where the emphasis is on the universal, shows that general principles must interact with the particular. Men and women have different social experiences as victims and perpetrators and while all should be treated equally on the basis of universal values, there are powerful contradictions producing many paradoxes. While the freedom, equality and dignity of all human beings is respected in policy statements there are two separate processes heading in the same direction. The violent masculinities enacted by individuals and neo-liberal values underpinning modernisation in the arena of criminal justice policy intersect, leading to the subordination of female interests and amplification of male power and influence at structural and individual levels.

To close our paper we offer some tentative observations concerning how the past Coalition and current Conservative governments moulded these modernising principles, and the consequences of this activity for understanding gendered violence. In May 2010 the Coalition government announced 'there is no alternative' and embarked on a fundamental reform of public services calling for a less centralised state and more discretion for local authorities, hence the deep and sustained cuts in public expenditure, announced on October 20<sup>th</sup> 2010 by the Comprehensive Spending Review (Crowther-Dowey & Long, 2011). This Review, covering 2011/12 to 2014/15 impacted on the core functions and responsibilities of the Home Office and Ministry of Justice respectively with cuts in funding. Even the Conservative government's *Ending Violence Against Women and Girls Strategy* (HM Government, 2016), which has committed additional funding to this

problem will in all likelihood be offset by cuts across central and local government departments announced in the 2016 budget (HM Treasury, 2016). Localism and the thinking behind the 'Big Society' is seen as pivotal because it creates opportunities for third sector and grass roots organisations to become involved in the design and delivery of public services, thus creating more individual autonomy and choice in communities. Apart from the austerity measures and fiscal retrenchment there is nothing resembling a profoundly new or distinctive philosophy in crime policy and the Conservative and Coalition governments share with New Labour a proclivity towards paradox. The political economic circumstances faced by both are similar although the ongoing global situation confronting the former is more troubling. Some of the choices taken by the government, though influenced by political economy, are also consequences of political and ethical agency. The Conservatives have made many ambitious and progressive statements but the refusal to ratify the Istanbul Convention, the pledge to repeal the Human Rights Act (1998) and the proposed cuts suggests their commitment to eliminating human rights violations, like violence against women, is partial. Meanwhile, the commitment of criminal justice agencies to ending violence against women may be compromised and violent masculinities actually remain unscathed.

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## THOUGHT PIECE

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## PROBATION TRAINING FOR A BRAVE NEW WORLD

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### Abstract

Probation services have undergone a dramatic change as a result of the government's *Transforming Rehabilitation* strategy and, consequently, so have the training arrangements for probation officers. This article offers an initial analysis of Community Justice Learning as it is being implemented from the perspective of learners, employers and the universities involved in its delivery. It is a complicated framework reflecting the complexities of the present penal system and the many players active there. Despite these difficulties, the commitment of those engaged in the CJL as learners, trainers and educators should ensure it represents a viable professional qualification route.