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Foreword

I am pleased to introduce the second issue of the Sunderland Journal of Law and Criminology. Once again, I would like to thank our staff and student editors for all of their hard work in preparing this issue for publication. I would also like to extend my thanks to the students who took their time to peer review the articles and case note which appear in this issue, and for their very helpful and constructive feedback.

In this issue, we will explore the development of zemiology in the first of three articles by criminology student, Joshua England. Next, Keeley Davidson will analyse how the criminal justice system is able to respond to domestic violence, evaluating its effectiveness. Sophie Pattison then reviews how social and personal factors can act as barriers to the desistance journey for offenders. Kayleigh Atkins then poses the question whether society can be just and fair when it criminalises protest. This article examines the impact of the Public Order Act 2023. Next are two more articles by Joshua England. First Joshua looks at media violence, its origins and its through the lens of zemiology and penology. This is followed by his evaluation of Appropriate Adult Schemes when dealing with the needs of vulnerable women and ethnic minorities. We end with a case comment by Masters of Laws student, Nabeel Rahimi where he considers the consequences of the Court of Appeal's decision to invalidate the UK's Rwanda Policy on deporting asylum seekers under the Rwanda Migration and Economic Development Partnership (MEDP). I would like to thank our authors for their hard work and choosing to publish in our journal. And I hope you, as our readers, enjoy reading this issue of the SJLC.

Zach Leggett

Editor in Chief

About the Sunderland Journal of Law and Criminology

The Sunderland Journal of Law and Criminology provides students with an opportunity to present their work to faculty members and peers and aims to invigorate both undergraduate and postgraduate law and criminology students' active participation in the community of socio-legal research. The Journal unites students and staff by helping students to engage in the publishing process with support and guidance from experienced members of academia. The peer-reviewed, open-access journal is devoted to socio-legal research and is a platform to publish notes, case comments and papers. The journal is also interested in any proposals to draft and/or amend the existing laws. Our law and criminology students are invited to submit papers, articles and case comments engaging with any area of law and criminology.

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Contents

Research Articles

Favouring ‘social harm’ over ‘crime’ in criminology Joshua England.....	4
A critical analysis of domestic violence intervention practice within the criminal justice system Keeley Davidson.....	13
A critical review on how social and personal factors can act as barriers to desistance prospects Sophie Pattison.....	27
Is society just and fair if they criminalise protest? The case of the right to protest and Public Order Act 2023 Kayleigh Atkins.....	38
Critically examining media violence by applying relevant theoretical perspectives and critically evaluating its origins, impacts, and penological policies Joshua England.....	54
How do appropriate adult schemes fulfil the needs of vulnerable women and ethnic minorities? Joshua England.....	67

Case Notes

A legal analysis of the invalidation of the Rwanda Policy by the Court of Appeal: <i>AAA and others v The Secretary of State for the Home Department</i> [2023] EWCA Civ 745 Nabeel Rahimi.....	78
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Article

Favouring ‘social harm’ over ‘crime’ in criminology

Joshua England

Abstract

In criminological history, crime and how to prevent and identify it has been the focus of criminologists since the late 18th century whereby crime is an ‘infraction of the criminal law’ (Newburn, 2017: 8). The development of zemiology in the 1990s with a focus on the broader notion of social harm and relational justice asserted that crime is only surface deep. Social harm is the term given that governs the processes involved in individual harm and the ways individuals’ needs are prevented. These harms often result from corporate benefits that are often suppressed from the public eye. Invisible crimes, white-collar crimes and business crimes will be referred to in the context of social harm. Detaching criminology from creating laws for human behaviour and individualised justice ensures there is more attention directed towards structurally related harms that contribute to the neglect of human needs. Human rights abuses such as racism and sexism, and benches ‘replaced with uncomfortable seats that are impossible to sleep on’ (Kandel, 1992: 39) to stop homeless people from sleeping rough are origins of harm that are overlooked. The Chernobyl catastrophe will be sourced to better display the harms that are not considered and the consequences of reactionary justice within crime control. This article will present an overview of criminology and its core concepts. Then, the effectiveness of zemiology and the concept of social harm will be evaluated, addressing how the concept developed in the context of subsequent socio-political culture. A comparison will be formed by juxtaposing social harm and crime to assess which is more criminologically useful for criminal investigation and application. A conclusion will be met by addressing the merits and drawbacks of both concepts, substantiating the significance of the superior concept and considering the overall implications this has for the study of crime.

Keywords: Zemiology, social harm, crime, criminology, concepts.

Criminology is defined as the study of ‘crime’, ‘those who commit crime’, and ‘the criminal justice and penal systems’ (Newburn, 2017: 6). The coinage of the term Criminology is ‘generally credited to an Italian academic lawyer, Raffaele Garofalo’ (Newburn, 2017: 4) who published their book, *Criminology*, in 1885 at a time when scholars were concerned with how to define and manage crime. Cultural movements

emerged such as Classicism and Positivism to regulate behaviour to reduce criminality. Italian criminologist, Cesare Beccaria, developed Classicism in the 18th century and argued people have free will and control over their actions.

It was also believed that ‘the seriousness of the crime should be determined by the harm inflicted’ (Grant and Valier, 2002: 7) which highlighted the concept of proportionality when assessing crime. The founder of modern utilitarianism, Jeremy Bentham, believed humans behaved according to pain and pleasure principles which should be managed to achieve ‘the greatest happiness of the greatest number’ (Bentham and Mill, 2004). In response to the industrial revolution, economic evolutions were being made including Bentham’s concept of the panopticon prison structure. By the 19th century there were attempts to make criminology more science-based to determine criminality over assuming rationality in the offender. Cesare Lombroso developed Biological Positivism, asserting people are born criminals identifiable through physical traits such as ‘deviation in head size and shape’ (Wolfgang, 1961: 370). With Sigmund Freud’s psychological pleasure, reality and idealistic principles to the sociological shift to organic solidarity and geographical influence on crime, these key theorists aimed to develop a fair, equal and efficient justice system for all, collectively enhancing criminological thinking in more areas of society.

The 1960s saw the growth of hippieism and with it an emerging idealist paradigm of radical criminology. It asserted that ‘the ruling class’ create laws that operate society to dominate ‘the working class’, preventing their needs from being met whilst labelling and stereotyping them as mentally ill (Bernard, 1981). This right realist criminological framework has been prominent in the process of preventing, defining and reacting to crime determined by individual circumstances. Despite welfarism and rehabilitation, the prison population ‘increased steadily’ due to newly defined crimes which positioned more individuals in prison (Sturge, 2022: 17).

Post-Thatcherite consensus reappraised crime prevention with renewed strategies initiating feminist, radical and neo-classist criminological beliefs, and the later-emerging zemiology. The resurgence of crime control under neo-classicism at this time reintegrated the just deserts political philosophy with a renewed focus on rational choice, preventing and reacting to crimes rather than causes. With the belief that the individual calculates ‘the likely costs and benefits’ (Scott, 2000: 1) to achieve their self-interest, the aim was to make crime less rewarding to deter the offender. In summary, criminology has always been concerned with criminogenesis. Though, more modern crime solutions are not adapted to irrationality and harm – with the belief of punishing and reforming the offender against insistent legislation.

Since classical theory, crime and criminology have helped develop policies to abolish cruel and arbitrary methods of punishment such as the death penalty. Early inventions such as the panopticon blueprint for prison architecture formed the basis of prison construction useful in instilling control over prisoners and CCTV was developed in response to the increasing crime rates actively deterring criminal

activity. Criminology has drawn upon and contributed to the development of sociological, political, philosophical, biological and economic research. It considers theories from ‘Marxism, feminism, post-structuralism, post-modernism’ (Garland and Sparks, 2000: 6-7) and agencies from the ‘punishment of offenders’ through retribution, and ‘the reform’ of offenders through rehabilitation (Criminal Justice Act, 2003). This evidential foundation highlights that crime is criminologically useful in managing cultural values using legislation.

Crime also initiated proportionality, biological and psychological predispositions to criminality, and highlighted the inevitability of crime – all of which have proven useful to criminological applications. Moreover, when considering the impact crime has had on society it is important to consider monumental cases. Crime assessed the James Bulger killers in the 1990s, punishing them for their crimes despite the media-fuelled moral panics and social demonisation. Just desert beliefs were enforced by the Criminal Justice Act 1991 at this time though, one of the killers continued to commit crimes, highlighting criminology’s failure in preventing crime and protecting people from criminal harm by opting to primarily react to crime. Acts of reoffending are criminology’s greatest downfall whereby it fails to deter or reform the offender, resulting in increased crime rates, prison overcrowding and economic spending. In addition, methods from leftist to rightist beliefs of crime are socially controversial being either too soft by reforming the offender or too strict, by perceiving the offender as indisputably responsible for their criminality, which generates stereotypes and social movements. It is evident that criminology’s grand science of crime effectively highlighted causes and prevention strategies attributing to its criminological usefulness.

The grand scope of criminology also opens it up to heavy criticism. For example, feminist criminology asserted that ‘knowledge is limited and privileged by our position’ (Halpern, 2019: 5) whereby women were not recognised, attributing to the hidden figure of crime. Other crimes such as white-collar and corporal crime were also ignored which simulates criminology’s predisposition to certain types of crimes. Also considered a racist approach, positivism was critiqued for being outdated whereby biological, psychological and sociological factors were considered exclusively criminal. Structural marginalisation can still be seen in methods of hostile architecture which enforces ‘uncomfortable seats’ for homeless people (Kandel, 1992: 39) or spotlights to shift them somewhere else. These only reduce sleeping rough crime rate statistics instead of actively solving homelessness. Since the average person is ignorant of the structurally related factors that expose people to crime, it self-sustains public confidence in crime.

Criminology being so embedded into politics has also constituted several reforms, moral panics and protests. Some protests aim to divert spending cuts from policing showing ‘no correlation nationally between spending and crime rates’ to ‘neglected areas like education, public health, housing, and youth services’ (Cobbina-Dungy et al, 2022: 18-19). In summary, reactionary administrative criminology assuming rationality under autonomy disputes criminogenic risk factors such as poverty, mental illness,

and social inequality, focusing only on the criminal event. Crime's long-lasting and evidence-grounded ethos successfully achieves its motive of studying crime but fails to prevent the causes of harm considered to be unexplainable by criminal acts.

Originating in Ancient Greek, "Zemia" or harm was adopted in the late 1990s whereby zemiology emerged critiquing administrative criminology's neglectful focus on socially related harms caused by invisible crimes. Zemiology is defined as 'the study of harm' that can be 'economic, physical, financial, emotional, and psychological' and infringes on human needs (Tombs, 2018: 4-15). Despite more aggressive right-realist policing from the 1970s, the rise in crime rates highlighted the flaws of crime, causing a shift from individualized justice to left-realist social and relational justice to which the concept of harm was emphasised.

Social harm focuses on the origins of harm with 'poverty', 'preventable illness', 'pollution', and 'resource depletion', derived from levels of state intervention which are not recognised under the law (Kotzé, 2018: 5). Zemiology critiques crimes' neglectful attitude toward these harmful issues with it failing to address crime, declaring it is culturally and temporarily dependant. Zemiology disagrees with studies of presumed rationality, emphasizing that crime control fails to achieve criminology's objectives. Concerned with the far-right neo-liberalist culture of social disregard and exploitation to pursue economic growth, leaving the responsibility to the individual (Venugopal, 2015), zemiology calls for data to be used to apply to these preventable harms. Victor Jupp coined the term 'invisible crime' as 'white-collar, corporate or business crime' (Davies et al, 2016: 37) which can harm individuals and companies to be prone to debt, injury and bifurcation inevitably lowering social morale and instilling mental health issues yet are barely acknowledged in crime statistics. Zemiology situates the need to punish these crimes. These crimes that go unnoticed contribute towards the "dark figure of crime" often caused by the media's underreport and biases with crime statistics, leading to victimisation and withdrawn victim surveys.

As a consequence of current methods of crime prevention, there is no chance for justice since 'those who are responsible... are afraid to antagonize business men' (Sutherland, 1945: 137) with courts taking bribes and pay-outs. The study of social harm strives to punish these "invisible criminals" and recognises the "invisible victims" of harm caused by their marginalised 'gender' 'ethnicity and race', targeted by existing structures of power such as the police (Tombs, 2018: 6). For example, black people are '4.4 times more likely' to be arrested than white people (Statewatch, 1999 cited in Joyce, 2013: 405) whereby it situates the structure of society as racist. Additionally, state crimes such as genocide, torture and assassination are illegal activities and are silently performed by governmental agencies that illicit harm towards affected individuals.

Furthermore, zemiology also considers environmental harm. Green Criminology first coined by Lynch in 1990 describes the 'criminological work that focuses specifically on issues pertaining to

environmental harm' (White, 2013: 6). This has allowed for air pollution, plastic pollution, deforestation and fossil fuels – rendered invisible as a 'by-product' of 'technological development' (Davies et al, 2014) – to be highlighted for global resolve, pressurising the blameworthy companies to rethink their corporate strategies. In summary, zemiology critiques both the leftist and rightist sides of controlling crime since they both operate under some margin of harm and victimisation which negates the possibility of zemiology and criminology coexisting together. Zemiology has a limited but sustainable grounding for criminologically assessing crime by instead focusing on the harms that encapsulate more crimes from those in higher positions and applying the more culturally-applicable concept of harm.

Crime is no longer the only criminologically useful study anymore. Social harm has been useful in addressing 'social, psychological, physical and financial harmful consequences of social phenomena' (Naughton, 2003: 5) impacting the well-being of victims. It has also enabled the consideration of criminological harms rejected by governing crime agencies to provide information about why individuals are disadvantaged in addressing invisible crimes. Zemiology highlights that social harms are preventable based on social, cultural and economic factors to enact assistance to victims. Most importantly, acknowledging, identifying and cataloguing the crimes of the powerful was seen as shifting the blame to the actual crime pursuers and thus identifying criminogenesis. In recognising the stigmatised victimisation of marginalised groups by 'age', 'disability', 'gender', 'race', and 'religion' these were lawfully protected under the Equality Act 2010.

In addition to this, green criminology has highlighted the dangers of passively allowing environmental harm to be done and contributed towards the global effort to reduce 'toxic waste', 'bio-fuels' and 'the cutting down of trees' (Potter, 2010: 10-11). The Environment Agency (2022) acknowledged the need to "crackdown" on these widespread harms with the need to 'prevent waste crime', 'protect the environment', and 'pursue the criminals'. These harms are evident when considering tragedies like the Chernobyl disaster of 1986 - a nuclear powerplant explosion that led to '4.5 million... living in areas described as contaminated' (Bay and Oughton, 2005: 239). The 'health detriments from radiation exposure', and the consequential 'resettlement and lifestyle changes' showed the physical harm to the individuals affected (Bay and Oughton, 2005: 242). If the responsible engineers who violated safety regulations were better informed, the monetary costs of the accident and the harms attached could have been avoided, highlighting the effect corporate harm has due to negligence. The event also had a global impact on the environment, releasing radiation outwards from the explosion attributing to lingering harm through deaths and illness. Furthermore, the government decided to not release mortality rate data, covering up the event after 'no real attempts were made to fix' the problems (Kurylo, 2016: 57). This case highlights the ignorance government agencies can have over the public from the crime perspective – too concerned with economic status than the lives of the affected. It serves as a precedent to airing social

harm's criminological usefulness whereby crime would not consider the victims, also identifying multiple areas of harm emission which could coerce these individuals into crimes.

There are also numerous complex issues regarding the social harm approach. Considering itself a divergent to crime, harmful acts are not always perceived to be criminal thus zemiology leaves victims without help. Zemiology raises questions querying 'how we define harm; how we measure harm; and how we prevent harm' (Pemberton, 2016). Though judging by the differing levels of volatility, assessing and managing harm is subjective to the individual, thus replicability is limited. It also does not classify which harms are more important than others. So, it can be argued that everyone has experienced some form of social harm, leading to improper usage of victimisation. Overall, pursuing zemiology calls for the transformation of socioeconomic distribution, which is unrealistic. Though, the zemiological approach including social harm is exclusively criminologically useful in assessing harm by collating invisible crimes that are otherwise overlooked by criminological agencies.

From classical to contemporary versions of crime control, criminology has been critiqued for its ignorance of social harm and "invisible" crime (Davies et al, 2016). Considering this, crime has had a long-lasting legacy contributing to treatment methods including rehabilitation to deterrence equipment of CCTV and electronic monitoring, reducing prison populations and attributing reforms to make society comfortable. Though zemiology highlighted that crime allows "solutions" to problems without consideration of the harm caused. Developments such as the original panopticon prison structure and present-day hostile architecture instil harm and control. This showcases crime's continuing resilience to address the root causes of crime. In addition to this, considering that crime emerged and adapted in response to crime rate fluctuations showcases that it hardly manages crime opting to react to it. Meanwhile, social harm emerged as a critique of criminology's neglectful attitude to the '4,316 miscarriage cases' representing the tip of the zemiological iceberg (Naughton, 2003: 13). It is often subjective judgements about an individual's actions that are used in crime tests and are not objective. Whilst social harm highlights marginalised group categories that are now recognised under the law addressing the disparity between the average criminal and those in power positions. Social harm also identifies blameworthy criminals such as businessmen and the state that cover up their criminal activity evident in underrepresented crime statistics, accentuating that crime can pursue criminally attributing groups to alleviate harm.

Social harm is newer and thus has less theoretical grounding though has already situated itself in the process of environmental stability to which crime has negatively attributed towards. Thus, social harm has already proven itself as a more influential criminological approach. With Chernobyl occurring before social harms emergence, harm was not immediately considered. Though due to its emergence, it highlighted the 'environmental and ecological harms' (Copson, 2018: 6) contributing to poverty, homelessness, mental health issues and pollution which crime forgets, electing to punish criminal events

that do not constitute harm. As a result, the engineers that did not follow protocols were blamed and arrested for the tragedy. Though social harm also considers the outwardly attributing factors of the USSR reducing spending. Considering other methods of assessing the harms of individuals allows for better insight into the ways the criminal justice system is accompanying them.

Asserting social harm as more criminologically useful would support the notion to adapt it into existing structures of criminological work. Crime is based purely on socially 'accepted models of normality' (Wykes, 2001: 17) whereby it has no ontological reality in that it varies based on culture. Whereas, harm is not constrained in this manner and thus applies to more cultures allowing for a larger range of its application, and expanding its criminological usefulness. Overall, the future of social harm may continue its identification of 'societal factors on harm production' striving to be fully disconnected from crime (Pemberton, 2016: 78). Though, crime could adapt more social harm methods into legislation and attribute its effective crime monitoring and identifying strategies to harm collated from corporal and business crimes. In summary, harm is a great critique of criminology whereby assessing crime based on harm can allow for more accurate and applicable sentencing for individuals not limited to the lower echelon of society.

In conclusion, the stress of managing the inflated prison population in the Thatcherite years led to the development of zemiology in the 1990s with a focus on social harm. When addressing which of the two would be more criminologically useful, in theory, social harm is a preferred option due to its careful consideration of criminogenesis though it requires a relapse on how offenders are dealt with which is unlikely due to its socio-political strain. This disadvantage originates from criminology's very long history and applications in crime detection and managing mechanisms. Despite recognition of patterns in criminal behaviour, it has led to marginalised individuals being targeted, instigating harm. Meanwhile, social harm allows for the prevention of invisible crimes overlooked by traditional crime organisations. Both are exclusively beneficial for criminology in their ways with crime being more appropriate for victims and rightist government agencies and social harm being more appropriate for accurate crime detection and prevention for leftist agencies. From a careful examination of social harm and its short lifespan, it is clear to see it has had its effective applications such as mitigating circumstances of minority individuals in law and lawful implementation of false reporting. Catastrophes such as Chernobyl were sourced to provide the evidential backdrop to the invisible acts of harm suppressed from the public eye for corporate gain. Though, some harms are not explainable by crime such as emotional, psychological or economic harms which have an adopted leftist view of supporting the victims. In summary, social harm has proven to be more suitable for managing crime and identifying criminogenesis and thus future crime developments may have a larger consideration of outwardly harms that contribute to a person's disposition.

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Article

A Critical Analysis of Domestic Violence Intervention Practice within the Criminal Justice System.

Keeley Davidson

Abstract

Increasing awareness of domestic violence (DV) as a progressively prevalent societal issue has contributed to the implementation of DV interventions within the Police and the wider Criminal Justice System (CJS). This critical analysis evaluates the relationship between DV and the CJS with a particular focus on the legislative responses to Violence Against Women and Girls through the current and statutory definitions of domestic abuse. While applying alternative theoretical and conceptual frameworks for analysis including social constructionism, essentialism, gender, and patriarchy to allow for a unique understanding of how DV is perpetrated. This research also examines the limitations of data collection methods in accurately capturing the extent of DV due to methodological constraints. Typologies of DV perpetrators are also assessed considering the different causes, consequences, and criminogenic needs of each subtype. In addition, the impact of patriarchal societal structures, cultural narratives of love, and gender inequality are discussed throughout to aid in the evaluation of DV interventions and highlight opportunities for further research in a push to highlight the ongoing efforts to eradicate DV and enhance interventions to protect victims.

Keywords: Domestic, Violence, Intervention, Criminal, Justice, Women, Girls, Abuse

Domestic violence (DV) has become increasingly prevalent as a societal issue this research aims to evaluate DV and the Criminal Justice System with a specific focus on the police including interventions and risk assessments. While applying alternative theoretical frameworks of DV using academic literature to support these theories. After critically evaluating the police and DV interventions a conclusion will be identified as to whether they are effective in reducing instances of DV. DV is currently characterised as ‘Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality’ (Home Office, 2013. P.1). DV can manifest in various forms of abuse and behaviour including psychological, physical, emotional, economic, and sexual abuse and threatening or violent, and coercive or controlling behaviour (GOV, 2012; Domestic Abuse Act, 2021). This current definition of DV was

implemented by governmental policy in 2013 to aid in reducing violence against women and girls (VAWG), increase awareness of DV amongst young people, and was extended to include coercive and controlling behaviour. The definition is now applicable to individuals between the ages of 16-19 as they were the grouping most likely to be subjected to DV (GOV.UK, 2012) the Serious Crime Act (2015) also recognises patterns of coercive or controlling behaviour as abuse. The current statutory definition implemented by the Domestic Abuse Act (2021) brings certainty to the legislation and is inclusive of age but fails to recognise individuals under the age of sixteen as victims of DV, However, there is still no specific criminal offence for DV (The Crown Prosecution Service, 2022). The coalition government launched The Violence Against Women and Girls Strategy (VAWG) (2010) to eradicate VAWG and prevent abuse, VAWG implemented abuse campaigns aimed at educating young people aged thirteen to eighteen on abusive relationships (DA Act, 2021; GOV.UK, 2015). VAWG uses a multi-agency approach making VAWG everyone's business this campaign approach was used to improve police response to DV, strategies are continually developed to raise awareness and have aided in the implementation of interventions (HM Government, 2016).

DV is measured through crime surveys, statistical analysis, and police statistics, however, data collection methods have methodological limitations in attaining accurate statistics (Dobash and Dobash, 1998). Limitations that affect the collection of data are vast as many women do not report DV out of fear of reprisal, abuse may not be recognised as it can manifest in many forms (Felson, *et.al.* 2002). The Crime Survey for England and Wales (2022) estimates 2.4 million individuals were affected by DV in 2022 this equates to one in twenty individuals. However, this survey can not accurately convey the extent of DV that is occurring due to the methodology used for data collection (OFNS, 2023). Police statistics of DV are also limited as the majority of DV goes unrecorded and unreported due to its private nature (Felson, *et.al.* 2002). The dark figure of crime needs to be considered it is more prevalent in low socioeconomic backgrounds due to levels of legal cynicism within these communities individuals may be sceptical about police involvement (Buil-Gil, et al, 2020).

The magnitude of DV is immeasurable (Mooney, 2000). Due to methodological limitations, it is unknown whether DV affects all groupings to the same extent when considering intersections such as ethnicity, social-class, age, disability, and sexuality (Harne and Radford, 2008; Mooney, 2000). Harne and Radford (2008) theorise that DV does not conform to social divisions, but the impact is severe across all groupings though abuse varies culturally. The impact of DV is considerable as abuse against intimate partners is aggravated as the severity and variation of abuse can increase compared to stranger assault as a singular incident (Mooney, 2000). Abuse between intimate partners leaves the victim in a state of fear, children are also impacted by DV, they are at risk of primary or secondary victimisation through direct abuse or witnessing violence, this may lead to considerable social

consequences for children affecting their education and ability to maintain healthy relationships (Mooney, 2000).

The gendered nature of DV is associated with males perpetrating violence as women have higher rates of victimisation and are subjected to coercive or controlling behaviour (OFNS, 2023; Dobash and Dobash, 1998). Alternatively, males are also victims of DV, but the extent of their victimisation is unknown, perpetrators of intimate partner violence (IPV) can originate from all backgrounds (Holtzworth-Munroe. *et al.* 1997). Characteristically perpetrators of DV act with hostility towards female figures it is postulated that males who commit DV have experienced some form of abuse during their youth (Holtzworth-Munroe and Stuart, 1994).

Johnson's (1995; 2005; 2006; 2008) typology of perpetrators identifies four typologies, patriarchal terrorism is generated through societal inequality between gender groups, social organisation of society sees male dominance and female subordination this is a form of terroristic control and is established through isolation, economic deprivation, violent threats or other coercive or controlling strategies exhibited by males. Violence resistance occurs in response to patriarchal terrorism, to resist control and prevent abuse, associated with females due to the reactive nature (Johnson, 2006). Common couple violence (CCV) is created out of dispute and conflict where violence occurs but neither partner asserts controlling behaviour, Similarly, mutual violent control (MVC) depicts partners who similarly perpetuate violence and controlling behaviours to assert dominance, CCV and MVC are gender symmetric (Johnson, 1995; 2005). Typologies enhance knowledge of perpetrators, each typology has different causes and consequences with each needing a specific form of intervention to manage risk factors and consider the criminogenic needs of each subtype (Johnson, 2008). However, research understanding the effects typologies have on survivors of DV is yet to be explored, understanding this would add to the advancement in treatment interventions for survivors (Bender and Roberts, 2007). Kelly and Johnson (2008) argue that typologies lack focus on the female perpetration of DV and do not capture the extent and complexity of DV.

Essentialism perceives gender as a product of biology, it is scientifically proposed that gender is assigned genetically and hormonally before birth, which is reflected through an individual's anatomy these divides in gender are fixed (Morton, *et al.* 2009). Through gender essentialism all males are biologically equal, and all females are biologically the same, each gender has masculine or feminine qualities and characteristics (Giddens and Sutton, 2021). This has been extensively critiqued as it perpetuates negative gender stereotypes and limits the life choices of an individual it also justifies social divisions (Rhodes and Moty, 2020). Feminist economics argue that a capitalist patriarchal society fails to recognise the needs of women creating gender wage gaps and inequality for women (Pearse and Connell, 2016). Essentialism rationalises that DV occurs through biological factors, studies have developed from Lombroso's theories

of atavism, and phrenology to genetic and chromosomal explanations (Lombroso and Lombroso, 2011; Baker, *et al.* 2010). Jacobs syndrome denotes the presence of an additional Y chromosome only present in males (Jarvik, 1973). The MAO-A gene is associated with aggressive and violent tendencies due to the increased levels of serotonin and dopamine which are stabilising neurotransmitters (Levitt, 2012). However, scientific research has rejected this as the presence of an additional chromosome in males is only ascribed to violence when correlated with economic and social considerations (Denno, 2006). Similarly, the MAOA genes linked with aggression have been criticised as environmental and biological factors influence whether the gene produces increased levels of aggression (Levitt, 2012). The legal considerations of individuals having a chromosomal abnormality that affects their behaviour and decision-making lead to mental capacity and criminal liability being questioned (CPS, 2019).

Social constructionism postulates that gender is a social construct produced through cultural norms, values, ideologies, and beliefs. This theory differentiates from essentialism as they believe gender is developed through social institutions and is fluid (Giddens and Sutton, 2021). Society has produced masculine and feminine roles socialised through interactions between institutions. However, gender as a creation of society is subject to alter as individuals can choose to not conform to these gender roles, they may mix elements of femininity and masculinity to create their own identity. Social constructionism rationalises that DV can occur out of societally pressured traditional gender roles that oppress women (Giddens and Sutton, 2021). Gender role theory suggests individuals are pressured to conform and internalise behaviour that is appropriately associated with their gender (Woodin and O'Leary, 2009). Masculinity and femininity are internalised sex roles created through socialisation, societal expectation, and biological status which are sex-specific (Connell, 2005). The functionalist sees sex roles as integral and fundamental parts of society as it increases the efficiency of labour through working collectively to ensure societal stability (Turner and Maryanski, 1978). Whereas Schrock and Schwalbe (2009) deem sex roles are oppressive leaving females subordinate. Connell (2005) states that masculinity is a product of societal and historical factors, Connell (2005) postulates hegemonic masculinity is the dominant form hierarchically which is valued within society as achievement consolidates power through career and societal goals that establish dominance over women these acts of manhood are how males distinguish themselves from females (Connell and Messerschmidt, 2005).

Walby (1990) postulates Patriarchy is the social organisation of societal structures and practices which caters to male dominance. The woman's social status through education, politics, and the economy is subordinate to the males, rigid gender roles create an imbalance where males hold societal privilege leaving traditional gender roles engrained within society, creating both perpetrators and victims as a product of patriarchal gender inequality (Bowen, 2011). Liberal feminists acknowledge that despite patriarchal control, women have progressed through the right to vote and access to equal education

(Bryson, 1992). Structural gender inequality places barriers on women leaving abusive relationships leaving them to rely on their abusers for economic security (Pearse and Connell, 2016).

Love is a socially constructed concept that produces paradoxical romantic ideals where victims of DV are conditioned to accept violence disguised as love (Wood, 2001). Love itself is contradictory and produces a variation of emotions that are accompanied by both positive and negative feelings that attribute to different emotions (Frazer, 2008). Cultural narratives dominate society about love which enables harm to be entrenched into the narrative, love comes with gendered expectations, the archetypal fairy-tale narrative portrays an intimate relationship where two individuals become one, they each give themselves to one another and live happily ever after (Frazer, 2008). Gendered connotations of love, the stereotyping of gender roles, and cultural narratives allow IPV to occur as love can be used as a mechanism to exert control producing justifications for perpetrators through the guise of love, this dark form of romance can manifest in many forms of DV (Lloyd, 2000). Within the relationship, re-gendering can occur when the dominant acts outside of their gendered norm to gain control over the relationship through seeking forgiveness (Wood, 2001). Second-wave feminists focused on love as a capitalist patriarchal control mechanism designed which reinforces gender oppression keeping women subordinate in their gendered role within society and the home (Frazer, 2003; Connell, 2005).

The 1970s saw women's rights campaigns to criminalise DV, DV was historically seen as a private matter not a societal issue. The CJS failed to deal effectively with DV perpetrators leaving victims unprotected as police were reluctant to involve themselves with family matters (Dobash and Dobash, 1992). Misconceptions of DV are deeply rooted within society such as DV must always include physical violence when DV can vary these misconceptions of DV lead to stigma (Women's Aid, 2023). The economic dependence of women upon men left many with no escape from patriarchal control. Women's Aid opened the first refuge in Britain in 1972 through aid from charitable organisations and the local council, government responded to societal pressure and facilitated the expansion of refuge services (Dobash and Dobash, 1992). After considerable criticism of the policing of DV in the 1990s, new guidance on recording and investigating DV was introduced by the Criminal Justice and Public Order Act (1994). Other legislative changes included Criminal Law Rape Within Marriage (GOV.UK, 1992) criminalising sex without expressed consent within a marriage, Protection from Harassment Act (1997) protected individuals from stalking and harassment and providing framework for injunctions.

The police are required to use discretion within their roles which can affect legitimacy if officers are selectively enforcing the law (Myhill and Johnson, 2016). The Home Secretary commissioned an investigation into police forces to determine the effectiveness of their approach to DV HMIC found that 'Domestic abuse is a priority on paper but, in the majority of forces, not in practice' (HMIC, 2014, P.6). HMIC cited multiple factors that contributed to this statement, officers were deficient in the

comprehension and training needed to competently work with victims of DV though not assessing risk successfully, which effected the collection of evidence at DA incidents and the experience victims of abuse had within CJS resulting in re-victimisation (HMIC, 2014). In 2010 the coalition government entered austerity, which led to a substantial reduction in police budgets impacting staffing, training, and efficiency resulting in a lasting impact on policing (Brown, 2014). HMIC (2014) advised training through the College of Policing to ensure officers have the knowledge and skills to aid victims of DV.

Non-Legislative reforms to aid in safeguarding victims of DV were introduced including Multi-Agency Risk Assessment Conferences (MARAC, 2003) bringing together local statutory agencies such as the police, probation, Independent DV advisors (IDVAS), child protection, healthcare, housing, and voluntary sector to share information on high-risk individuals. This enables them to discuss coordinated action plans that will safeguard the individual, ensuring their safety by identifying, managing, and reducing risks, IDVAS are present to advocate on behalf of the victim, IDVAS are specialist advocators who are an independent entity from the CJS (MARAC, 2003).

The societal and governmental pressure encouraged the CJS to move into risk-based practice (Beck, 1992). Police officers use the DA risk assessment (DARA);(2023) which replaced the DA, stalking, and honour-based violence questionnaire (DASH);(2009) to help aid in reducing risk to the victim and protecting them from further harm or abuse. DASH (2009) was critiqued as officers required to use the risk assessment did not use it appropriately even changing or omitting questions leaving information about the risk of harm incomplete (College of Policing (COP), 2022). DARA (2023) attempts to address the inconsistent information by using only key-identifying risk questions and offering an enhanced focus on recognising coercive and controlling behaviour. This allows officers to implement risk intervention RARA to remove, avoid, reduce, and accept risk, when implementing RARA police acknowledge risk escalating factors such as mental health and substance misuse (MARAC, 2003; HMICFRS, 2019). Additional risk assessment tools available for measuring risk in IPV cases are the spousal assault risk assessment and the stalking assessment and management tool used to provide a framework for managing stalking (HMIP, 2021). The statistically accurate evaluation of risk has been criticised as accuracy is problematic due to the human involvement in the calculation, officers' interpretations and decisions may differ from others allowing for discrepancies to occur (Kearney and Donovan, 2013; College of Policing, 2023). If risk is not accurately calculated individuals may be placed at significant risk of harm leading to escalation and patriarchal terrorism (Johnson, 1995;2006; Kemshall, 2001).

Increasing awareness of the prevalence of DV has led to legislation and governmental policy reform, the publicised murder of Clare Wood by her ex-partner led to an inquiry (IPCC, 2010) that found the police failed to assess the necessary risks posed to Wood, this disclosure of police inadequacy led to public demand for enhanced responses to DV (IPCC, 2010). This led to the establishment of the DV

Disclosure Scheme (DVDS) in (2011). DVDS allows police to share information with individuals who may be at risk regarding their partner's violent offending to prevent the perpetration or escalation of abuse. Under DVDS individuals have the right to ask and the right to know the police can disclose any necessary information in prescribed circumstances (Fitz-Gibbon and Walklate, 2016). DVDS is a victims-focused law that improves victims' experiences of the CJS (IPCC, 2010). Each request is checked by the police within 24 hours of the submission. MARAC (2003) also discusses the risks and whether disclosure is necessary and lawful to protect victims of abuse or violence (Fitz-Gibbon and Walklate, 2016). DVDS has been criticized for not providing a timely risk-sensitive response to women who are at risk of IPV (IPCC, 2010). Violent and sexual offenders are also managed under Multi Agency Public Protection Arrangement (MAPPA) introduced by Criminal Justice and Court Services Act (2000) later reinforced by the Criminal Justice Act (2003). MAPPA (2019) evaluates risks posed to society by the offender they also determine whether a disclosure of the information would protect future victims from harm. Baroness Casey Review (2023) highlights the need for further training on DV interventions and highlights that DV is a multi-agency issue in which the police play a role but are not fulfilling their obligations to the victims of DV.

There are several types of preventative protection orders used for DV, The DV Crime and Victims Act (2004) was introduced to enhance civil and criminal legislative responses to DV and by making the breach of civil non-molestation orders a criminal offence, it has been praised for supporting victims of DV through hybridised support (Bowen, 2001; Bates and Hester, 2020). DV protection orders (DVPO) and DV protection notices (DVPN) introduced by Crime and Security Act (2010) later strengthened by the DA Act (2021) and renamed DA protection orders (DAPO) and DA protection notice (DAPN'S) revised with further emphasis on coercive and controlling behaviours. DAPN is an urgent non-molestation notice used to safeguard victims of DV and is issued to a suspect by a police superintendent or inspector to implement immediate protective measures to secure the victim's safety. DAPNs offer immediate protection from further violence or threats, conditions of the notice include non-contact orders if a DAPN is breached the police have authority to arrest (GOV.UK,2022). Police have 48 hours from a DAPN being served to issue an application for a DAPO if deemed necessary to protect the victim, a DAPO is implemented for up to 28 days and has conditions including no contact orders, breaching a DAPO is an arrestable offence (GOV.UK, 2022). DVPOs have been critiqued a 2017 police inspectorate report disclosed that police forces failed to implement DVPOs when necessary to protect victims, reasons stated for not utilising interventions are lack of training and extensive paperwork, the report found evidence to suggest victims had to report breaches of DVPO's to the police multiple times before action was taken (HMICFRS, 2017). The DVPO is an extension of what the police can put in place to protect victims of DV (Bates and Hester, 2020).

In conclusion, the current and statutory definition of DV encompasses the magnitude of how DV can represent which reinforces legal protection for victims, however, DV is not limited to individuals aged over 16, children can also be subjected to DV. Both essentialism and social constructionism have alternate theories of gender and how DV occurs, but each recognises the prevalence, though due to methodological limitations, the extent of DV is immeasurable. The patriarchal society, stereotyping of gender roles, and cultural narratives of love contribute to the oppression of women and exacerbate the issue of IPV. Governmental legislative changes, strategies, and multi-agency developments have resulted in the implementation of multiple interventions including DVDS, DAPO, DAPN, and civil-criminalised non-molestation orders. This led to the development of risk assessments to recognise all aspects of DV. However, these interventions and risk assessments have been critiqued as they have not been successfully implemented in each case. These barriers still contribute to the protection of individuals at risk of harm, these interventions that have been collectively established and enforced by the government and CJS signify their commitment to preventing DV. Furthermore, there are opportunities for the enhancement of knowledge and intervention to eradicate DV.

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Article

A critical review on how social and personal factors can act as barriers to desistance prospects

Sophie Pattison

Abstract

Desistance is a process that offenders who want to shed their offending identity behind will embark upon. The social and personal challenges they can face will be discussed throughout this essay in conjunction with the theories that underpin those challenges. The differences between social and personal aspects will be discussed at length alongside how they can act as barriers to the desistance journey. The contrasting and interlinking theories of agency and structure will be explained and investigated with consideration for these factors. Alongside this, the responses, including government and society, that individuals may encounter along their journey will be investigated. Due to the many conflicting definitions of desistance, the responsibility of changing one's life often falls solely in the duty of the desister. This responsibility means it is often unseen how personal and social factors can weight so heavily onto someone struggling through desistance. Agency and structure help to understand the nature behind social and personal aspects as well as how they interlap, they can also have layers that further disadvantage an individual known as intersectionality. The roles of the government as well as the probation will be considered and analysed in conjunction with the presence of these obvious barriers in an offender's desisting journey.

Keywords: Desistance, structure, agency, social, personal, barriers, desister, intersectionality

There are many differing definitions when it comes to the theory of desistance as there are many frameworks and concepts that support the different definitions (Fox, 2022). Definitions often fall into either the agency paradigm or the structural paradigm and it is rare that theories of desistance agree on the causes of cessation of crime. On the one hand, we have definitions of desistance believing that to rid the habit of criminality to successfully become an adult, ridding oneself of the ways an adolescent behaves, suggesting that no successful adult should take part in any criminal behaviour (Trasler, 1979). On the other hand, desistance has seen studies in which men's criminality has been assessed from adolescence to late adulthood concluding that crime is something that people will grow out of for the most part. Having desistance fall within a maturational definition excludes all caveats when it comes to opportunities that

these men may have or not have access to (Sampson and Laub, 2003). Such studies ultimately can explain a portion of the criminality they study, however, they fail to take the bigger picture into consideration.

The different definitions make it a complicated concept if theorists cannot agree upon a definition, how are the individuals on the journey to know if and when they have fully desisted or, can they only be seen to be successful once they have passed away with no more offending? The result is that the offenders themselves as well as society do not have one measurement to determine when someone has become an ex-offender so it becomes harder for the stigmatisation against offenders to end (Bushway *et al.*, 2001). Research is trickier to undertake without one set definition to base studies around, this can also cause a lot of misconceptions for desistance as there is no one metric that can be measured (King, 2013b). While more research does continue to be done, there is still a lack of desistance included in state regulations and plans for crime reduction across the UK (HM Prison & Probation Service, 2022a, 2022b). These reports highlighting plans for reduction of offending in London and Yorkshire and Humber ignore the existence of desistance, suggesting the plans have made no acknowledgement of research in the field of desistance that would support and enhance their plans for reducing crime as to really tackle re-offending is to support individuals to desist (HM Prison & Probation Service, 2022a, 2022b).

Historically, development of criminological focuses and beliefs have shifted and progressed over time and this development helps to understand how desistance has also evolved (Rocque, 2017). Early theories of Criminology tended to focus on what caused crime opposed to how to successfully overcome it (Cullen and Gendreau, 2001). Desistance theories started to begin much later than that of criminological thought and in the beginning they focused on maturation in that an individual will get to an age when they have matured and will naturally cease offending as a result of their maturation (Farrall and Bowling, 1999; Rocque, 2017; Fox, 2022). The Gluecks, whose research surrounded maturational reform, believed that behavioural change had no impact from social or environmental factors and was solely based on coming of age and because of this, behavioural change would occur naturally (Glueck and Glueck, 1940 cited in Weaver, 2015). This natural behavioural change is understood through an individual perspective in desistance, with biological factors being the main concepts in this theory (Rocque, 2017). Maturation follows on from the age-crime curve that was developed in the 19th century that found a correlation between the increasing age of a criminal and the decrease in crimes they committed (Maruna, 1999; Rocque, 2017). While this may be true for a lot of young offenders, there is little from these concepts to explain those who do not cease offending when entering adulthood or take into consideration how this cessation may be impacted by personal or social aspects (Healy, 2010; Rocque, 2017). Like the Gluecks, there are and have been many theorists who have not acknowledged the notion of social factors affecting the desistance process, therefore, the operational side of desistance has a difficult task in supporting offenders as it is unable to assess the full picture (Farrall and Bowling, 1999). Research in the field of

desistance has found a need for longitudinal studies, studies that take place over a period of time, of desistance as change in behaviour does not take place as a single event (Farrall and Maruna, 2004; Lussier and Healey, 2009). This journey of desistance is often compared to that of recovering from substance misuse, in which there will be stops and starts, which emphasises the support and influence needed to maintain this recovery permanently (Best, 2019; Best, Hamer and Hall, 2020).

It has long been argued that offending is a decision based on rational choice made by the offender with no other circumstances playing into the decision to commit crime (Farrington, 2017). The emphasis on offending being a decision is a key concept in agential approaches to desistance as it holds the offender accountable for their decision making in ending their criminal offending (Clarke and Cornish, 1985). Theories of agency define desistance in many different ways as agency is constructed around the notion that individuals have the power over their destiny, they craft their behaviour, they choose how to be, and ultimately they achieve what they want in the way they want to do so (Healy, 2013). It is found that an offender can grow tired of committing crime and decide that it is no longer worth the potential prison sentence they may face (Farrall and Bowling, 1999), however, this argument is not supported by the structural factors that may then hinder the desistance process and make it an unrealistic one. Cognitive theories that support agency are defined by the lack of ability to make good choices and assess the outcomes of committing crime (Healy, 2013). Certainly, there is no age that can be agreed upon that people begin to mature, evidenced by the age of criminality responsibility being different across the world, these theories of maturation also do not account for other factors such as learning difficulties that affect the way one would mature and react to situations (Maruna, 1999).

Little is mentioned around mental health and learning difficulties when it comes to desistance as we know that choice making and the ability to assess actions are affected by these factors, therefore, will also affect criminality and desistance in the same way (Link, Ward and Stansfield, 2019). Neurodiversity is a divergence from what is classed as the average way in which the brain works and processes and is an umbrella term for a range of cognitive differences like mental health problems, autism, ADHD and more (Kirby, 2021). Research has found that there is a link with neurodiversity and delinquency and it is research like this that calls for questions of whether neurodiversity and mental health problems are being taken into consideration when individuals are expected to desist if they decide they want to (Link, Ward and Stansfield, 2019). The structural aspects with neurodiversity will also be experienced when it comes to the barriers felt with access to support for those who need it as well as employment, understandably this fact will support the need for an integrated approach, that combines structure and agency, to further support the multi-layered support individuals need (Link, Ward and Stansfield, 2019). From an agency perspective, barriers such as lack of motivation, lack of hope, and low self-belief are believed to be internalised struggles that individuals deal with, however, considering a structural perspective these barriers can also be explained

via the lack of opportunities in society that individuals experience that aggravate feelings of hope (Barry, Farrall and France, 2022). Agential barriers are present and affect individuals in different ways however the causation for these agential barriers is often also structure based and therefore we need to understand the structural aspects of desistance to gain more insight (Farrall and Bowling, 1999).

Gottfredson and Hirschi, who argued that no other factors than rational choice that they claimed developed in childhood, established that self-control was dependant on one's socialisation process which would suggest the presence of structure in the self-control notion of offending (Gottfredson and Hirschi, 1990 cited in Farrington 2017). This work has been critiqued as Gottfredson and Hirschi do not consider adulthood and how social contexts change through life (Healy, 2010). Farrington (2017) makes an argument for structure and social aspects, as well as individual factors, that can affect one's desistance, aspects that are not controlled by the aging of someone but are known as factors that can increase the chance of someone committing criminal acts and can equally hinder their chances of desistance. The structural paradigm of desistance sees this as happening due to changes in circumstances and society that can trigger the cessation of crime (Farrall and Bowling, 1999). Individuals embarking on a journey through desistance can be affected in many ways when it comes to the social factors impacting desistance. These social factors can also be very different for every individual. A lot of social factors facing individuals often affects their reintegration back into society as well as limiting the prospects they have once leaving prison or gaining a criminal record (King, 2013b). Deviant women have been found to experience higher levels of stigmatisation than deviant men therefore seek out what is seen to be normal values, such as having a partner and starting a family, as their influence for desisting (Giordano, Cernkovich and Rudolph, 2002). Unfortunately, there is far less research into women's experiences of desistance and arguably this could leave gaps in the knowledge that practitioners can use to fully assist women with their desistance journey (Barr, 2019).

Influences, such as having a partner, becoming a parent, or obtaining a job, are known as 'hooks for change' and they are seen to be positive influences in the desistance journey, often giving an individual a reason to desist and to shed their offending identity to become this new ex-offending person who is trying to better themselves (Giordano, Cernkovich and Rudolph, 2002). In individuals' desistance narratives it is adopting a new non-offending identity that is a catalyst for behavioural change, as mentioned the 'hooks for change' are points in life in which give an offender an opportunity to change for the better and it is often these hooks which make them want to leave their offending self behind (Healy, 2010). Ultimately for individuals wanting to desist, they will have these hooks that will enable them to change and it is the external factors that often influence this agential behavioural change (Healy, 2010).

There are three stages of desistance that have been identified, the first stage being primary desistance which involves the changing of behaviour and the absence of committing crime (Weaver, 2015).

The importance of behavioural changes in desistance is often compared to recovery theories as both follow a similar pattern and in the case of agency, we see these behavioural changes as decisions made opposed to happening naturally (King, 2013b). It has also been found that to desist it is this primary desistance along with secondary desistance, in which an individual moves their behaviour towards adopting a non-offending identity, in a dichotomous manner that supports successful desistance (Weaver, 2015). Primary desistance is not researched as heavily as secondary desistance as it is not believed to be as of the same importance to understand however, earlier understandings of desistance focused on this behavioural change so it would seem to understand primary desistance is integral to understand why secondary desistance then takes place (King, 2013a). When barriers are concerned here, establishing the drawbacks that people face at this early stage can support the shift into secondary desistance with early intervention (King, 2013a). The third phase in desistance which is a relatively new concept, is tertiary desistance. Tertiary desistance is the recognition that others in society have acknowledged the change and new identity of an ex-offender and accept that they are no longer an offender and are a respected member of society (Nugent and Schinkel, 2016). Identity is a strong focus within desistance as it is the identity of offender that needs to be shed to become an ex-offender and for society to view them as such, however, the structural barriers hinder this process as exemplified with the three stages of desistance (Nugent and Schinkel, 2016). Through this acknowledgement will come new opportunities and a continuation of the ex-offender identity then known to other's as well as themselves (Best, Hamer and Hall, 2020).

The agency thought behind desistance asserts that potential desisters should choose to want to reform and, therefore, should be leading their own path with desistance however it is shown that with a lack of motivation it is hard for individuals to be able to desist (Weaver, 2015). Lived experiences make for great insight for researchers and should influence practitioners when it comes to the approaches they have with offenders, however, it is these experiences that are not taken into account and offenders are expected to follow this one size fits all programme (King, 2013a). Studies have shown that for individuals to desist they do have to have a level of agency to them that helps them and motivates them to desist which aids in their journey into desisting from crime (McMahon and Jump, 2018). There needs to be effort made by an individual as well as the decisions to take themselves out of situations that may find them committing crime again, this ultimately needs to be a decision made to disassociate with friend groups and establish positive relationships (McMahon and Jump, 2018). For positive relationships to first be established there needs to be a mutual relationship formed and maintained that is often gained through education or employment, this is not always an easy feat when it comes to those who have criminal records struggling to gain employment or enter education (Weaver and McNeill, 2015; Mann, Devendran and Lundrigan, 2021). On the flip side, there is a need to understand the potential for negative impacts that come from relationships such as offending behaviour, once an individual leaves prison there is every

potential they will end up back in these circles and finding it hard to break the cycle of committing crime (Weaver and McNeill, 2015).

Locational issues can heavily impact an individual's desistance as, already discussed; they are going back to the same communities while maintaining the same relationships they had before going to prison which influenced their offending behaviour (Webster, MacDonald and Simpson, 2006). Along with this, the structural factors that underpin the excessive hinderances to desistance, including poverty, lack of career and educational opportunities and hostility from society do not make it easy for an individual to desist even if they do have the motivation to do so (King, 2013a; Mann, Devendran and Lundrigan, 2021). The setbacks that individuals may face with unemployment and lack of access to education are known as macro-level and these are aspects in which the individual has no control over and ultimately are too large of an aspect for the individual themselves to be able to manage (Farrall and Bowling, 1999). Research has found that the majority of individuals who leave prison remain unemployed for a significant amount of time afterward due to their criminal record and the lack of acceptance employers have to employ someone with a criminal record, ultimately they would have to work drastically harder than other applicants for jobs due to this (Maruna, 2012; Barr, 2019). This is a huge barrier to being able to successfully desist as not only will someone continue to be unemployed, but they can also face poverty, and further stigmatisation as a result of having to claim benefits and face the predicament of having to commit further crime to support themselves (Nugent and Schinkel, 2016).

These factors are all part of the structural barriers that offenders face when they come to try and desist from crime and if these barriers were not experienced, their journey would likely be very different (Mann, Devendran and Lundrigan, 2021). Research has found that this lack of motivation can come in an array of areas, areas out of control of the individual, including feeling the need to isolate oneself and stay away from friend groups that encouraged offending (Nugent and Schinkel, 2016). This isolation can also be as a result of family and friends wanting to distance themselves from an individual due to their offending which in turn will further hinder an individual's ability to feel that they can desist (Mann, Devendran and Lundrigan, 2021). Feeding into this distance from family or friends comes the stigma attached to an individual from being an offender, this is felt from friends and family and further society as well as with jobs and educational prospects (Cid and Marti, 2012; Best, Hamer and Hall, 2020; Barry et al, 2022). This stigma can and does affect the opportunities that individuals have in changing their lives for the better and making amends and it is these factors that need to be considered rather than just an agential approach (Cid and Marti, 2012; Best, Hamer and Hall, 2020). Alternatively, the personal factors cannot be ignored when it comes to the importance of structural barriers as they have such a huge impact (Barry, Farrall and France, 2022). Family support offers offenders the encouragement and motivation that can enhance their desistance process as it incites positivity and belief for change (Cid and Marti, 2012).

A breakdown of a family unit whether that be before or after offending has huge impacts on individuals and the importance they may attach to their offending or want to desist (Mann, Devendran and Lundrigan, 2021). Laub and Sampson (2005) attest to family ties, job security and marriage having strong ties in the cessation of crime in adult life which supports the need to focus on structural aspects as well as agential aspects of desistance. However, Laub and Sampson also found that juvenile delinquency often linked to a lack of social bonds and that social bonds changed over one's life course and thus different bonds were experienced with age (Sampson and Laub, 2005). This contradicts their own research when finding that access to such things like employment and familial support positively affect desistance when they are also considering how maturation affects desistance. Even with this critique there is still support for desistance as a journey opposed to a static event with this shift of social bonds as one moves through childhood into adulthood proving that as social bonds change, desistance can be affected in the process (King, 2013b). When it comes to the personal and social factors that impact desistance it is arguably what should be seen as an integrated approach that should be thought of even with the barriers to desistance as well as desistance itself (McMahon and Jump, 2018). To have an integrated approach to desistance enhances the understanding of the barriers of desistance interlapping with each other and having great influence and effect on each other. Personal factors feed into social factors and vice versa subsequently meaning that no individual will experience only personal or social factors in their desistance journey (King, 2013b).

A shift in focus around research of 'nothings works' to 'what works' found a resurgence of probation in the 1980s in the UK (Rex, 1999; Farrall and Maruna, 2004). 'New Labour' took a step towards risk and management-based responses to desistance and an offender's journey once released from prison and has put the offender themselves in the spotlight and given them the responsibility to desist (Rex, 1999). The use of probation and risk management is often what is used by governments to aid offender reintegration (Maruna, 2012). Probation deals with the rehabilitation of offenders and we see rehabilitation and probation implemented as a way to support individuals desistance journeys (Rex, 1999). Risk based management is usually a way to keep the public safe from the offenders, however, it does little in the way of giving the offenders what they need to then succeed in their desistance journey (King, 2013b; Mann, Devendran and Lundrigan, 2021). The language used in this area is arguably negative when it comes to discussing management and risk, as well as in the rehabilitative aspect, as it sees people as needing to be fixed (Maruna, 2012). Offenders are known to do what it takes for them to get through their risk assessment so they can attempt to put it behind them and focus on their desistance journey (Maruna, 2012). This does not prove that the use of risk assessment or probation is doing much in the way of support for the individual's barriers of desistance however, it is simply using the same formula for every individual that passes through the service (King, 2013b). Offenders often experience frustration with

having to prove themselves to probation staff that they can and have changed and it is the staff that ultimately hold all the power in the dynamic as they judge the level of risk themselves (Maruna, 2012).

A lot of the work with risk assessment is assumption based on their previous offending and does not factor in any work individuals have done in prison or how they feel about their offending presently (Webster, MacDonald and Simpson, 2006; Maruna, 2012). Risk assessment claims to make these judgements based on what led to offending behaviour and use this as the basis for their levels of risk, however, little in the way of support then addresses these issues when the reasons for offending can continue to act as barriers to desistance (Webster, MacDonald and Simpson, 2006). Risk management is often seen as a tick box response to managing risk that takes on an impersonal approach to offenders with no attempt to get to know the individual (Healy, 2012). This is what is known as a prescriptive resolution, meaning one size fits all, and there is no deviation from the prescribed support, when in actual fact an individualisation to the process would help probationers to understand individual needs (King, 2013a; Barry, Farrall and France, 2022). In the end, the probation service attempts to rehabilitate those who interact with their service, however, they are failing to address the landscape of an offender's life that that offender has returned to upon leaving prison, simply walking back into the lifestyle they once had has the potential to challenge their desistance process (Healy, 2012). Ultimately the prime goal when it comes to the Criminal Justice System is to reduce crime and reoffending and it is on this metric that the success of the system is often judged (Klinge *et al.*, 2019). The involvement of the government's research in their justification for the support they offer offenders through the likes of the probation service are arguably looking to hold the individual accountable as it reduces the blame on the services and shifts all responsibility of reoffending onto the individual (Healy, 2012). This notion can be suggested to save the government money as they don't feel it is their responsibility to put money into resources (King, 2013b). Individuals are leaving prison experiencing stigmatisation because of their criminal record suggesting that the Criminal Justice System is doing little in the way to support offenders as it is structured to stigmatise those it proposes to rehabilitate from the get-go (Cullen and Gendreau, 2001; Maruna, 2012; Barr, 2019).

An integrated approach is what needs to be asserted when it comes to desistance so all aspects can become the discourse around desistance and therefore be tackled accordingly by understanding that structural aspects will impact the personal aspects and vice versa (Best, Hamer and Hall, 2020). An integrated model helps to understand that an individual may make a voluntary decision to change, yet structural aspects will push back on that decision and cause desistance to be a difficult process, a process that is desperate for an approach that acknowledges this (Best, Hamer and Hall, 2020). Further research maintains that an integrated approach can address that decisions that are made to offend or re-offend need social and structural context to fully understand why these decisions may have been made to begin with (Healy, 2010; Barry, Farrall and France, 2022). With this emphasis on the individual, it can be argued that

a heavier focus upon training practitioners and help from the state would aid in the overall success of the Criminal Justice System as it makes the services better equipped to help the individual with the personal aspects they face (Weaver and McNeill, 2015). A focus on desistance and further understanding of how the state can support the needs individuals have through their desistance journey can make for better results in the long run (Klinge *et al.*, 2019).

In conclusion, it is easy to see how personal and social factors can act as barriers to the desistance process for individuals. It is also clear that, to fully understand how they can and do actively affect desisters every day, an integrated approach to desistance is needed as it is not a personal or a social issue that can be dealt with but it is both intertwined. To fully support someone in their desistance journey there needs to be an emphasis on the positives that surrounds an individual's life as well as taking heed of the knowledge that can be gained from lived experiences in the field. Furthermore, an integrated definition of desistance would give the government and probation services alike better understanding so that their resources for individuals matched what the process of desistance really looks like (Rex, 1999). By understanding that someone can relapse into crime and not emphasising this as being such a negative aspect, taking influence from substance misuse recovery would be better suited to see relapses in a more positive manner and support individuals to continue their journey opposed to beginning the process again. Finally, the lived experience of those who have embarked on the complicated journey of desistance should be the examples that are held important as these lived experiences can provide crucial knowledge about the process, how it is supported and the drawbacks along the way.

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Article

Is a Society Just and Fair if they Criminalise Protest? The Case of the Right to Protest and Public Order Act 2023

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Abstract

This article will address the right to protest and Public Order Act 2023 linking government rhetoric/political discourse revolving heavily around the “damages” of interrupting the economy, fostering indemnity amongst society which demonise, criminalise and blame the individual exerting their human rights to challenge social harms, instead of taking political responsibility and recognising the harms caused (Amnesty UK, 2023). Social inequalities and injustices, causing social harms, have been brought about by the erosion of trust in government and affiliated bodies, with social unrest due to corruption, cronyism and disintegration of services - with the UK representing the biggest fall of G7 countries, falling to 18th on the Transparency International’s Corruption perspective index (Lawson, 2023 and Maddox, 2021). A historical analysis of protest and the evolution of policies concerning protest will be explored, including examples of protests concerning Covid 19 that were limited/criminalised, the envioning media coverage and statements made about it. Theoretical perspectives will include, neoliberal discourse, social control and risk society, critical and left realism, zemiological thought to recognise the harms caused and framing theory to analyse the widespread interpretations of events, leading to a moral panic (Arowolo, 2017).

Keywords: Protest, Human Rights, Inequality, Policy Analysis, Zemiology, Social Harm, Left Realism, Critical Realism, Covid-19

Protest has a long and proud history as a fundamental foundation in facilitating change to forge the society we live in today. Protesting is a powerful tool for human rights, with things we take for granted such as a woman’s right to vote, pride movement or better working hours being implemented today, because of protestors asserting their beliefs to change agendas and mindsets (Amnesty UK, 2023). Not only can protests pave way for change but they can result in decriminalisation of acts constituted as crimes such as homosexuality, recognising the harms caused to those who are criminalised are greater than the punishable offence (Clement, 2016).

Whilst there is no specific right to protest in UK law, it is respectively protected within articles 10 (freedom of expression) and 11 (freedom of assembly and association) of the European Convention on

Human Rights (ECHR) and is incorporated in British Law by the Human Rights Act 1998 (Siddique, 2022). Originating from talks in 1948 by members of the Council of Europe (CoE), Denis de Rougemont listed five pledges to be considered, including; ‘free movement of persons, ideas and goods ... [and] ... liberty of thought, assembly and expression as well as the right to form a political opposition ... [concluding, it] ... offers the last chance of peace and the one promise of a great future for this generation and those that will succeed it’ (Congress of Europe, 1948:2). The ECHR was formally drafted in 1949, with the UK being the first country to implement it in 1951 and by 1953 it was fully implemented. Article 15 (derogation in time of emergency) states specific rights in the ECHR can be removed in an emergency but must be absolutely required and consistent with international law (Council of Europe, 2014). Nonetheless, limitations to the right to protest were introduced in the Public Order Act 1986, following the Brixton Riots in 1981, providing police with powers to restrict or prohibit protests in England and Wales (Mohdin, 2021). In 2022, part 3 of the Police, Crime, Sentencing and Courts Act expanded these powers to significantly restrict our protest rights (Nickolls, 2023). The Public Order Act followed in 2023 including new offences that criminalise certain protests altogether based on lowering the threshold of what constitutes “serious disruption”, including disruption unrelated to the protest as a form of cumulative disruption and peaceful but disruptive protests (Liberty Human Rights UK, 2023 and Siddique, 2022).

More than 150 organisations asserted that, the Police, Crime, Sentencing and Courts Act, 2022 and the Public Order Act, 2023 fundamentally attack the human rights of UK citizens, causing a huge detrimental effect on civil liberties, claiming the new powers of the police are draconian – the Conservatives responded, with co-chair Amanda Milling claiming the acts bring ‘tough new laws to keep people, safe, including many vital measures to protect women from violent criminals’ (Allegretti and Wolfe-Robinson, 2021:1). Labour MP, Jess Phillips called Milling’s response a ‘disgusting and untrue statement’... [stating] ... ‘it does nothing about street harassment and assaults. The ... [Public Order] ... bill is full of divisive nonsense like locking up those who damage statues for longer than those who attack women’ (Allegretti and Wolfe-Robinson, 2021:1). In 2009 the Constitution Committee identified potential issues with fast-tracking legislation, however the public order bill was fast-tracked through parliament without consideration for anyone to fully understand, possible implications and presumptions it was favourable (Allegretti and Wolfe-Robinson, 2021; Parliament UK, 2023). Many opposers of the legislation claimed the focus on combatting violence, as an exceptional circumstance, took focus away from the “non-essential elements” such as the rights to protest, to address urgent matters that are not going away (Allegretti and Wolfe-Robinson, 2021; Horton, 2022; Syal, 2022). Caroline Lucas (2022), of the Green Party, tweeted ‘this is not a public order bill – it’s a public oppression bill...our right to peaceful protest should be protected, not attacked’ (Lucas, 2022 cited in Syal, 2022:1).

The Home Office (2022) justified the Public Order Act, 2023 by saying ‘these are sensible and proportionate measures designed to allow the police to better balance the rights of protestors and the public’ (Home Office, 2022:1). Examples of disruptive protests included “Just Stop Oil,” between October and December 2022, costing £14.5 million to police, with 750 arrests costing £7.5 million alone and 13,600 police officers being diverted from other duties in the community to respond. Another example used was the Extinction Rebellions protests between April and October 2019, causing a disproportionate impact to the local area and costing £37 million to police the operation (Home Office, 2022). YouGov UK (2022) concluded that most of the public agreed with these measures in the Public Order Act, 2023, with 35% saying it is not strict enough, 31% saying it is just right and 16% saying it is too strict. Further analysis indicated Conservative voters were much more likely to say policing is not strict enough than their Labour counterparts (57%-15%) and less likely to say it is too strict (5% to 31%) (YouGov UK, 2022). These statistics are consistent with neoliberal ideologies as a form of social order and back up the justification for the passing of legislation based on prevention over cure, public protection, and cost effectiveness (Garland 2001; O’Malley 1992; Reiner 2006)

Friedrick Hayek, considered the founding father of neoliberal ideology based his theories on methodological individualism and preservation of the economy (Kolev, 2020). Methodological individualism looks at the phenomenon of individual knowledge with division of knowledge as a core concept to maintain and nurture modern civilisation – a framework interdependent on the state, law, and science, encompassing the order of economy and societal order (Kolev, 2020). Neoliberalism became prevalent in the UK in the 70’s and 80’s, with Thatcher’s government, the Conservative party, prompting legal, social, and cultural processes through economic policies, influencing criminology, crime, and the Criminal Justice system, with the return of classical criminology (Farrall, 2006). Classic criminology looks to individual rationale and everyone being equal in the eyes of the law, supporting the entrenched utilitarianist approach, warranting the greatest good for the greatest many (Bentham, 1879) – justified in the interests of society, to encourage ‘decent and useful members of the community’ for a collective societal goal (Mannheim, 1946:62). Utilitarianism, in political terms legitimised ‘policies favouring the majority at the expense of the few’ serving the majority and diminishing minorities (Berlin, 1968 cited in Barton and Oliver, 1997:15). This is important when considering the justification of the Public Order Act, 2023, passed by the Conservative government, to understand how political shifts of trajectories in contemporary Britain shape societal values, convincing the public that it serves their best interests to combat crime and preserve the economy (Farrall, 2006).

Similarly explained in “risk society” and “social control” theories by thinkers like, Ulrich Beck, Stanley Cohen and Anthony Giddens – debates are centralised around emerging risks in society, communicated through media sources, which are not sufficient alone to warrant a “risk society”, until they

are perceived as a problem by most of society and a tangible connection is made (Beck, 1998; Giddens, 1984 and Sørensen & Christiansen, 2014). The concept of an encompassed accumulation of shared risk, allows people in power to respond to and shape risks to fit with their trajectory, to enable a social contract, whereby rules and laws must be abided (Beck, 2008). However, Beck (2011) recognises that the centre of these risks has manufactured uncertainties, dependant on human perceptions and decisions not being line with experienced risks, because of capitalism and that risk is a temporal concept which evolves over time. Cohen (1985) identifies that individual power is taken away by justifying the response to an overwhelming presence of risk, which creates the urge to conform for protection – incited by fear and the anticipation of endangered futures in an exclusionary system. Criminalising protest vilifies protestors, creating a perception of risk amongst the public, resulting in disruption of the groups protesting and the causes protested – however it is difficult to determine whether some groups pose a risk to society or are at risk themselves and are challenging harmful narratives (Rushton, 2013). Both neoliberal discourse and risk society/social control theories focus on crime control and are less focused on social structures causing crime, whilst marginalised sections of society are addressed, political accountability, through a critical lens, is neglected (Brown, 2011 and O'Malley, 2016).

Critical criminology emerged in the 1960's, with the development of Left Realism in the aftermath of the Brixton riots in 1981, due the grievances surrounding social and political marginality (Lea, 2016). Left Realism emerged as a political intervention rejecting rational choice theory and the norms of social control, recognising the reality of crime, challenging social relationships between the oppressed/exploited members of society and political power - addressing the 'increasing global social inequality, social polarisation and economic crisis supervised by increasingly authoritarian neoliberal security states' (Hallsworth and Lea 2012; Lea and Hallsworth 2012a cited in Lea, 2016:2). Left Realism infers 'epistemological and methodological orientations which substantially cohered with those of Critical Realism' – Critical Realism recognises the phenomenon of individual subjectivism in defining reality and acknowledges this reality within social injustices (Lea, 2016:2; Taylor, 2018). Building on Marx's work as a foundation to recognise social structures that cause harms and criminalise marginalised individuals (Clement, 2016). People experiencing harms often turn to crime to survive, but the belief in the power of protest emerged as a mechanism to influence and change consciousness, to promote change in society, enabling access to equal opportunities through tactical rebellion instead of crime (Scott, 1990 cited in Clement, 2016). However, Farrall (2006) contests that left realism fails to address specific policies, instead, concentrating on macro-level analysis – taking away the importance of individual experiences and the influence on events.

Dorling (2014) states that the United Kingdom has become 'one of the most unequal societies in Western Europe' and political marginalisation continues to increase - to combat neoliberal austerity, the

success of local democracy is essential (Dorling 2014, cited in Lea, 2016:6). Koczanowicz (2015) pertains, the reality of crime can only be understood as an outcome of democratic debate, where all members of society participate as a ‘critical community’ (Lea, 2016:3). If most of the public agree with the measures imposed in the Public Order Act, 2023 as a form of social control in response to the proposed risks, the marginalised groups do not have a democratic public sphere and the policy fundamentally excludes, isolates and labels the protestors as deviant, without recognising the harms they are protesting (Young, 1999 cited in Lea, 2016).

Following the aftermath of the 2008 financial crisis and the austerity agenda, which led to economic crisis and social conflict, 2011 saw a peak in protest and 2019 saw the highest number of reported protests in the media since the 1980’s (Bailey, 2020). In 2007 before the global economic crisis, there were only 83 reported protests and by 2019 there was 275, highlighting that protest had risen due to a response to sociopolitical harms (Bailey, 2020). It is important to recognise the types of people conducting protests has uncharacteristically evolved to reflect the effects of sociopolitical structures and relationships, that do not only effect stereotypical marginalised sections of society but professionals like doctors and lawyers (Bailey, 2020). Many of these protests, since 2011, have influenced policymaking processes - the protest against tuition fees resulted in raising the threshold to £25,000 instead of £21,000 before the fees had to be repaid. The decade of 2010 brought about acrimony with growing frustration against the lack of democratic accountability, with levels of dissent increasing in the 2020’s, due to things like, but not limited to, the aftermath of Covid-19 and the current cost of living crisis. So, is it not more important than ever to assert our rights to protest, for social movements to overthrow ‘a global system being exposed as tyrannical, austere and ripe for destruction’, rather than criminalise those who speak out against social harms (Clemet, 2016:188)?

Hillyard and Tombs (2004) believe social harms go unpunished in our society and historically, only actions established as crimes are punishable, through law. ‘Zemiology provides a deeper theoretical basis,’ ... [compared to criminology and the notion of crime, to make sense of social injustices, brought about by social harm] ... ‘and the connection to crime’ (Atkins, 2023:2). Zemiology enables a field of study, providing ‘an alternative lens that captures the vicissitudes of contemporary life’ (Pemberton 2015:7). Systematically denying and criminalising the right to protest could result in individual and social stratifications, leading to social exclusion (Hillyard and Tombs, 2004). The right to protest has been explored through a case study; the catastrophic consequences of inequality and social harm caused during the Covid-19 pandemic and related protest (Hudson, González-Gómez and Claasen, 2021 and Syal, 2023).

The panaceas put forward by Boris Johnson’s government, during the Covid-19 pandemic, to address public health concerns encompassed political inertia of the consequential harms marginalised sections of society could face - restrictions of daily life and social distancing measures imposed, sacrificed

our freedoms, causing unprecedented harm and sacrifice, justified as a public health approach ‘to protect society from a specific harm’ ... [but caused] ...’many other exacerbated harms’ (Atkins, 2023:3). Marginalised sections of society experienced systemic harms at distinct and intensifying levels, with affluence minimising these harms - ‘the uber-rich moved into their yachts, the merely rich fled to their second homes, the middle class struggled to work from home’ (Saad-Filho, 2020: 480, cited in Atkins, 2023:3). The political accountability was largely ignored by those in power, who capitalised on their features by sacrificing the needs of certain sections of society – a systemic pursuit, as a form of structural violence, in an unequal system, branding those affected as ‘losers upon the field of neoliberal capitalism’ (Briggs *et al.*, 2021:15 cited in Atkins, 2023:4).

Some of the consequences of the panaceas were, but not limited to, unemployment rates rocketing to 318,000 more in September 2020 to the previous year and 314,000 redundancies between July and September 2020 – consistent with 50% more businesses closing in September 2021 than the same month in 2019 (ONS, 2021 and Williams, 2021). Expectedly, there was 6.5 million people experiencing extreme poverty in 2020, a rise of 4.8 million since 2003 (Butler, 2022). Education was massively disrupted, intensifying educational inequalities, poorer households spent 1.5 hours a day less accessing education and 1.9 million families had no internet access (Harris and Jones, 2020, cited in Atkins, 2023). The above paired with social isolation and lack of meaningful structure resulted in the rates of people experiencing mental health issues escalating – with 80% of 2036 children surveyed saying their mental health was worse since Covid-19 and consistent with one in seven adults experiencing suicidal thoughts and feelings of hopelessness (Young Minds, 2020 and O’Connor *et al.*, 2020). Domestic Violence rates fell from 65,716 in December 2019 to 61,947 in April 2020. However, upon investigation, 50.7% of women claimed their abuse worsened during lockdown but because the Crime Survey for England and Wales changed their survey to a telephone system, they did not declare it and 15.9% said they had no support network due to isolation and their partner being at home more (Austin *et al.*, 2020; ONS, 2020). The capacity of the NHS was a focus of the government and to free up space, Do Not Attempt Cardiopulmonary Resuscitation (DNACPR) orders were placed on certain individuals’ files, without consent, based on their health conditions – subordinating their life (Booth, 2020). Many died in hospital due to DNACPR and Sally-Rose Cyrille, the sister of Sonia Deleon, said ‘Sone was totally written off. She was devalued, dehumanised and her life was not of value,’ due to her having learning difficulties (Buchanan, 2021:1 cited in Atkins, 2023:6). The moral and ethical use is currently being investigated, nonetheless, nobody has been held accountable (Compassion in Dying, 2020).

It is evident that irreversible harms inflicted, represented ‘the purest and most extreme embodiment of the abusive, negligent and exploitative relationships between the capitalist socio-economic system and the individual’ (Hall and Wilson, 2014: 650 cited in Atkins, 2023:6). The new range of powers,

under the Covid Act 2020, given to agencies to impose strict measures were branded ‘utterly ridiculous’ ... [and a] ... ‘misleading spin’ used to serve those in power (Elgot and Weaver, 2021:1 cited in Atkins, 2023:7). When family members, living outside the home, could not enter your home, police could enter, without permission, to enforce lockdown rules – issuing Fixed Penalty Notices (FNP’s) and imprisonment of up to ten years for those breaching travel restrictions, by misleading investigations to evade quarantine hotels (Brown, 2020). The disproportionate punishments surrounding travel and lockdown restrictions, meant you could ‘get a longer sentence for lying about travel than you do for carrying a firearm in the street’ (Elgot and Weaver, 2021:1 cited in Atkins, 2023:7). When MP Dominic Cummings travelled 30 miles during the first lockdown, he evaded prosecution, resulting in the decline of public support surrounding the imposed measures, known as the “cummings effect” (Bland, 2020:1). Luke Majeed, then, decided to travel out of his town, the same as Dominic Cummings and was prosecuted and fined (Weaver, 2020). It is not surprising that ‘the consequences of power inequality through the lack of political accountability’ brought about a feeling of unrest associated with social systems, leading to an upsurge of protests – the interactions and collective perceptions led to amplified tensions, bringing together individuals as a form of civil resistance, to try and mobilise change (Atkins, 2023:8; van der Zwet *et al.*, 2022).

Several protests have taken place since the covid-19 restrictions were implemented, including protests relating to Black Live Matters movement, Reclaim These Streets (following the murder of Sarah Everard by a Police Officer), policing of the pandemic and anti-lockdown/freedom marches (Parliament UK, 2021). For the purpose of this study, several protests concerning covid 19 restrictions (to enable a deeper analysis), were explored through the lens of the media compared to content published from those in support. To highlight how the media introduce ‘news items with predefined and narrow contextualisation ... as a form of agenda-setting’, which influences the audiences thought and how to perceive the issue, analysis was conducted through framing theory/moral panics, which as discussed justifies the Public Order Act 2023 and the criminalisation of protestors because society perceive them as a risk (Arowolo, 2017). Seen in Stuart Hall’s study, which examined moral panic and sensationalist newspaper reports concerning a rise in muggings by young black youths living in London – headlines incited a fear in the community, of black youths, segregating them based on societal reactions and victimisation. Contrarywise, Halls research evidenced the rate of muggings was less than that of the previous decade, supporting the stratifications presented theoretically in this case study (Hall et.al, 1978).

‘Coronavirus sceptics, conspiracy theorists and anti-vaxxers protest in London’ was a headline from the Guardian, reporting a protest held in August 2020 regarding coronavirus restrictions and civil liberties. Protestors including Piers Corbyn, the former Labour leader Jeremy Corbyn’s brother, called for MPs to contest to renewal of the Coronavirus Act, asserting authoritarian objections (Gayle and Blackhall,

2020). Elisha Edwardes said ‘A lot of the scenarios we are seeing now do not make sense and people are not questioning it. The lockdown has affected more people than the virus itself,’ with another demonstrator commenting ‘If you want to profit off the back of my health, then it’s not my health that’s important to you’ (Gayle and Blackhall, 2020:1). The headline labels and frames the individuals involved and does not address the harms, they are articulating which are evidenced in this work. Corbyn informed the Guardian on the eve of the protest that people had united to join the cause and ‘In terms of whether you believe that the virus is a hoax or not, whatever is happening now is less than or equal to a normal flu, so the lockdowns and all that goes with them is unjustifiable in any terms’ (Gayle and Blackhall, 2020:1). Consistent with statistics shown by the Office for National Statistics ‘COVID-19 is mentioned on fewer death certificates than flu’ (ONS, 2022). Corbyn’s statement is not elaborated or supported with facts, which again solidifies the headline used and incites a societal reaction that these people are sceptics, conspiracy theorists and anti-vaxxers, to diminish their cause.

Piers Corbyn, who continually maintained the measures brought in during covid-19 whittled away civil liberties, was later arrested at a protest which took place on November 5th, at Trafalgar Square (Dunne, 2020). Following this protest the Metropolitan Police issued a statement concerning the planned protest on the 28th November; ‘the Met is urgently reminding those looking to attend that protest is not currently a permitted exemption to the prohibition on gatherings under the current Coronavirus regulations’ (Dunne, 2020:1). Police Commander, Chief Superintendent Stuart Bell, said: ‘our city is in a critical fight against Covid-19, and we cannot allow gatherings to jeopardise the progress and sacrifices our communities have made in fighting this virus’ (Dunne, 2020:1). On the 28th of November 2020, 143 people were arrested or detained by the Metropolitan Police, with 82 receiving FPNs and 10 people being charged separately for Covid offences - 1,340 officers were deployed to the scene, costing £794,870.07 (Met Police UK, 2022). The law surrounding protest during lockdown was unclear, whilst the law prohibited mass gatherings and leaving the home without a valid reason, it did not state you could not leave for the purpose to protest, which as discussed is protected with Article 10 and 11 ECHR and is deemed a reasonable excuse to leave the home (Parliament UK, 2021).

The headline in the Guardian, the evening of the protest read ‘Police arrest 155 anti-lockdown protestors in London’ with the subheading of ‘Police say demonstrations are illegal and risk spreading coronavirus, but rights groups say claim is outrageous’ (Gayle and Busby, 2020:1). The figures do not match with those above, released by the Metropolitan Police as part of a Freedom of Information request (ref: 01.FOI.21.022161) and it is inciting it is outright illegal, despite the report from the House of Commons and the House of Lords stating the law is blurred and unclear (Met Police UK, 2022 and Parliament UK, 2021). The article also reports that the number of people in attendance was unclear, although similar protests have seen tens of thousands of people (speculation) – there was 1,340 officers at

the scene, which is a considerable amount and adds to the total of people gathered at one time, but this is not reported (Gayle and Busby, 2020). It frames the narrative that the protestors are a risk to society and are spreading the virus, which creates a moral panic and vilifies the protestors. Nevertheless, it then goes on to say it is causing travel disruption and people are urged not to travel into London – they are proposing a nonsensical risk when travel is restricted under lockdown rules. The findings are challenged, with barrister Adam Wagner’s tweet quoted ‘The only remaining question is whether protest is a ‘reasonable excuse’ to be outside of the home and I think since regulation 10 allows gatherings to be organised it would be strange if attending a protest wasn’t an unlisted reasonable excuse’ (Gayle and Bushby, 2020:1). However, with the nature of the article, this will alter public perceptions and influence them to think it is not a reasonable excuse because of the public health risk (Arwolo, 2017).

Other headlines include; ‘Covid: Arrests during anti-lockdown protests in London,’ ‘Covid: Clashes as police shut down protest over new rules,’ ‘Eight officers injured policing anti-lockdown protest in London’ and ‘Anger in Met after violence at London anti-lockdown protest’ (Badshah, 2021; BBC, 2020; BBC 2021; Grierson, 2021). The headlines listed use language which infer that the individuals involved are criminals, labelling the protestors as law breaking, taking away political accountability which serves their national agendas – consistent with the ideologies of framing theory which focuses on certain aspects of events through natural frameworks (physical occurrences) and social frameworks which are socially driven to manipulate social players (general public), by objectively presenting the data to be processed in a certain way to build up a narrative (Goffman, 1974). Drake *et al.* (2023) propaganda studies recognise constructed narratives influence political discourse and public perspectives – coining the term “copaganda” which fits with these headlines that uncritically promotes and endorses police practices. Bernabo (2022: 488) defines the phenomenon as ‘stories ... [that] ... promote supportive images of police and undermine efforts at systemic reform’. The narrative present here is that the Public Order Act 2023 is necessary because the protestors pose a risk to society – when it challenges our democracy and our capacity to collectively voice dissent, which has been crucial during the pandemic and the curbs on our civil liberties (Bradley, 2020). Liberty (2020) claimed ‘countless people have been wrongly criminalised under the rushed and draconian Coronavirus Act ... coming into force at the stroke of a minister’s pen, with parliament given an opportunity to vote only weeks later’ (Liberty, 2020 cited in Bradley, 2020:1). Criminalising the right to protest is another way for the government to limit our ability to stand up to power inequality, weakening our human rights and the ability of courts to hold them accountable (Bradley, 2020).

However, there was not many available sources, which leads to the question on the ability of the press to document events, freely. Angela Christofilou questions ‘will we be able to capture, document and share powerful images such as these, that raise awareness of injustices, the same way we have done until

now and if so, at what cost' (Christofilou, 2021:1)? Four journalists were arrested on suspicion of conspiracy to cause a public nuisance, covering a protest in November 2022 - a review was requested and revealed that 'police powers were not used appropriately ... [and] ... were a threat to press freedom ... with the individuals' freedom of expression under article 10 of the ECHR' (Gayle, 2022). Kevin Blowe, from Netpol, said ' Hertfordshire constabulary's actions fit a template where police forces' approach was to disregard people's rights to protest ... and to deal with any fallout later ... yet nobody is individually accountable for what amounts to false imprisonment and that just leaves a civil action, which the police will settle in a couple of years' time without admitting liability, ' (Gayle, 2022:1).

It appears that the ECHR does not achieve its purpose and its jurisdictional powers risk becoming a symbolic venue for the imposition of a hegemonic political order, with the power to apply Article 15 of the ECHR lying on the nation state and their national agendas – there have been many problems identified by criminologists concerning the functioning of the law and upholding the ECHR (Soliman, 2021; Vervaele, 2019). Soliman (2021), argues that evidence shows 'the need to move beyond crime-based categories in favour of a social harm approach' (2021:228). This is not possible when the harms articulated are criminalised, through harmful policies such as Police, Crime, Sentencing and Courts Act 2022 and the Public Order Act 2023.

To conclude, is a society just and fair if they criminalise protest? Lockdown restrictions amplified marginality with consequences remaining to this day - with no immediate action and a lack of democratic accountability from the government. It is not surprising that the consequences and harms endured brought about a feeling of unrest associated with social systems, leading to an upsurge of protests. Systematically inhibiting and criminalising the right to protest could result in individual and social stratifications, leading to social exclusion by criminalising those who speak out against social harms. It is more important than ever to assert our rights to protest, for social movements to overthrow a system that embodies exploitative relationships between the nation state and the individual. It is evident that human rights are being exploited, the Public Order Act 2023 systematically denies our human rights protected in article 10 and 11 of the ECHR, which denies our rights to challenge the articulated harms and to assert our beliefs to change agendas and mindsets to combat these harms. Criminalising the right to protest is a neoliberal ideology focused on crime control through risk society and social control discourse, which serves the powerful and dismisses the minorities, convincing the public that it serves their best interests to combat crime and preserve the economy – it is neither just nor fair!

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Article

Critically examining media violence by applying relevant theoretical perspectives and critically evaluating its origins, impacts, and penological policies

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Abstract

Media violence has presented itself as an emergent zemiological harm on society. Present in many ways, media violence appears in films, music, games, news and most recently, social media. The development of contemporary methods of media from their origins highlight the addiction to violence society has acquired and the neoliberalist ideals in soliciting violent content in response. From films and music, these have often influenced gang culture, desensitising viewers, and listeners to violence. Moreover, games have progressively gotten more realistic and as evident in the Columbine High School Massacre of 1999, seem to influence the killers to commit horrendous murders, though is often debated amongst researchers for its harmful impact. News sources sometimes highlight violent content to large audiences, which globalises tolerance for violence but can also perpetuate false narratives as evident after 9/11, when the Muslim community was forced into an environment of strain. Lastly, social media has cosmopolitanised the globe into a heavily government-regulated digital world on the abundance of easily accessible violent content. Now, more than ever, the importance for violent media regulation is needed. From PEGI ratings to governing bodies that restrict hateful content, a new issue has emerged - human rights abuses with freedom of speech. The path for media regulation is underwhelming thus the educating of the public is necessary for the future.

Keywords: Media Violence, Games, Films, Social Media, News, Music, Cosmopolitanism, Neoliberalism, Zemiology, Criminology

Since the formation of criminology in the late 18th century on the back of earlier crime detection and regulatory systems such as the watchmen and the parish whereby crime was an ‘infraction of the criminal law’ (Newburn, 2017: 8), criminology has been notoriously centred around violent physical acts committed by criminals. However, the development of zemiology in the 1990s alongside the widespread availability of the internet has allowed for astonishing progress in technological development with electronic mail and entertainment (Sowmya and Roja, 2017) also contributing to the pervasive influence of media and exposure to violent content as online harms, presenting challenges with regulation. This essay will first

focus on the origins of violent media, collaborating the instantiation of the internet and early research such as the Bobo Doll experiment. Then, violent media will be explored in the entertainment industry involving films and music and how they manipulate people's tolerance to gore and promote gang violence. More concerningly, the influence of media in games has fuelled the committing of ghastly crimes as will be explored in the Columbine High School Massacre of 1999, assessing how the popular video game, DOOM, facilitated the motivations of the killers due to the 'immersion' and 'realistic graphics' (Lavender, 2007: 1), resulting in the demonisation of gamers worldwide. Additionally, news sources will be explored and their influence on spreading violent media to the public. The September 11th attacks will be sourced analysing how the media is used as a catalyst for information but also violent media exposure and the detrimental impacts with PTSD and moral panics involving Muslim individuals that came from its documentation. Moreover, the internet has played a significant role in cosmopolitanising the globe with social media but has enabled the sharing of violent content online causing vast social harm displacement. These methods of media violence will be collectively analysed to recommend regulatory advancements given the future progression of media. Throughout the article, there will be a constant critique of the socio-economic environment as well as neoliberalist political ideals. Lastly, there will be a consensus drawn based on national and international organisational and governmental policy in response to media violence, considering the issues with regulating these types of media. Then a conclusion will be made recommending policy additions and improvements concerning the severity of violent harm currently and the outlook for the future with the emergence of more realistic films and games and the evolution of screen culture.

When analysing violent media, it is important to understand what the terms mean. Violence is constructed as 'the intentional use of physical force or power ...resulting in injury, death, psychological harm, maldevelopment or deprivation' by the World Health Organisation (2004), a global organisation that categorises the harms of violence. Media can be social media, newspapers, radio broadcasts, videos, games, films, or pictures. The intersection of these terms catalyses the displacement of online harms consciously or subconsciously onto groups of individuals. To contextualise violent media, the Bobo Doll was a psychological experiment done in the 1960s whereby an adult would enter a room with a child present and start punching a doll (Bandura and Walters, 1963). After regular exposure to the aggressive behaviour, the child would mimic the same behaviour, acting as the basis for media violence's newly found zemiological interest. Around the time of this experiment, it was considered the golden age of theory where criminological thought began to branch into new avenues of thinking, seeing the growth of hippieism and the idealist paradigm of radical criminology. Prior to this, original harsh criminological punishment methods evident from the Bloody Code were reflected in early research with Classicism which emerged alongside the technological advancements of the Industrial Revolution. From classical retributivist 'eye for an eye' to positivist utilitarianism, these early approaches did not consider the

individual nor were the punishments equivalent to the crimes. The militaristic development of ARPANET in 1969 and the globalised Internet in 1983 emerged a new dichotomy in that the Internet can be suitable for crime prevention but also as a function of criminal activity. Radical criminological developments and opposing areas of thought during a period of industrial conflict were critiquing administrative criminology for its expensive punishment methods and ignorance of crimes of the powerful. Post-Thatcherite consensus transpired a reappraisal of crime prevention with feminist and radical criminology and the study of harm in Zemiology. This contrasting paradigm which emerged in the 1990s alongside the switch from individualised justice to left-realist social and relational justice posits a multitude of ‘economic, physical, financial, emotional, and psychological’ harms (Tombs, 2018: 4-15), critiquing administrative criminology’s neglectful attitude to harm and striving to detach it from creating legislation in emphasising the addressing of structural harms relating to violent media. Such analysis by Pearce (1973) highlights that ‘the legal structure would help rather than hinder the actions of these powerful men’, presenting an issue when considering the neoliberal connotations embedded into contemporary society regarding the switch from traditional methods of media to purchasable and advertisable media whereby organisations care more about profits than the potential harms dispersed. Additionally, in the societal switch from liberalism in the lessening of state control by prioritising individual rights and freedoms to authoritarianism with greater advocacy for state control, it is important to punish the newfound harm with greater regulatory and surveillance systems. However, neoliberalist thought in the 1980s conveyed that ‘winning at any cost becomes the primary objective’ (Davies and Gane, 2021) highlighting the societal dichotomised debate of media safety whereby too much control stifles innovation whereas not enough control results in exploitation, especially by organisations that profit from media.

Media violence can come in a myriad of ways and one of the most marketed is the film and entertainment industry. Early criminological work by Bandura, which expanded upon the psychological research of the Bobo Doll, involved the concept of Social Learning Theory which perceives that observation, imitation, and modelling influence individualised learning (Bandura and Walters, 1977) which has been adapted into criminological explanations that crime is learned by criminogenic relations. Alternatively, a concept such as the Hypodermic Needle posited that audiences passively accept mediated messages injected into them via the mass media, believing that violent behaviour in films causes anti-social, criminal behaviour in real life (Finklea, 2017) aligning with biological frameworks of behaviourism, cognitivism, and constructivism that were typical in the 1920s. From traditional theatrical and cinematographic arts to the first silent films throughout the 20th century, the visual experience was pivotal for audience engagement. However, the abolition of the Hays Code in the United States invoked that ‘the technique of murder must be presented in a way that will not inspire imitation’ (Milne, 2019). Alongside political unrest in the 1960s, this allowed for newer violent films to emerge such as *The Texas Chain Saw*

Massacre (1974) which used imagination, quick cuts, and fake utensils to create an engaging and gory experience. Forwarding five decades, shockumentaries displaying terrorist content were newly accessible with the marketing of television and emerging films such as “Gorenography” in 2021 displaying the sociological want for violent content aided by technological advancements in Computer-Generated Imagery (CGI), formulating the concern that films have gotten too real. Some studies highlight that ‘PTSD symptoms’ and ‘physiological reactivity to movie violence’ are growing concerns however, more addictive watchers aim to seek violent content, additionally highlighting the need for more research on the effects of violent media on routine consumers (Mrug et al., 2015: 7). But a more concerning product of film media is its interception and fuelling of gang culture. In the United States, examples such as “Scarface” in 1983 and “New Jack City” in 1991 received backlash due to the ‘apparent violent aftermath these movies had on real-life gang activity’ highlighting the widespread harm of publishing media which can be interpreted as opposing to what was intended (Przemieniecki, 2005: 42). Contemporary music such as rap and drill music in the United Kingdom have echoed this sediment, being synonymous with connotations of gang culture, being blamed by police, politicians, and the media for fuelling a surge in violent crime in London (BBC News, 2018). Overall, the entertainment industry has solicited an engaged audience that enjoys the thrill of violence and fear, though as argued by Presdee (2000) the commodification of crime enables the consumption of criminal acts and behaviour as pleasure, highlighting the corrosive nature of neoliberalist cultural values aimed at profiting from violence addiction, portraying gang violence to impressionable young audiences, harming their development. Beck’s (1998: 259) work with risk societies highlights that as knowledge and technology improve ‘we are left behind panting in ignorance ... unable to understand or control the machines we depend on’. This collates the ideas of which media is harmful but regulating its effect is uncompromisable due to the individualised nature of tolerance to violence, thus it leaves the responsibility to the individual.

There is also contention in research in assessing if the game industry is harmful towards players’ sensitisation and aggression. Early board games such as chess in the 16th century and digital games such as Pacman and Space Invaders in the 1980s highlight the innocent nature of games as a means of entertainment. However, as technology has developed alongside the film industry, more action-based and militaristic narrative-driven games have been created. The psychological and sociological impact that games have on society has been of concern with conducted experiments determining that short-term exposure to video game violence increases aggressive behaviour (Rodgers, 2014) to which most documented results return inconclusive. However, the Columbine High School Massacre of 1999 contests this whereby two shooters entered a school and ‘murdered 12 students and a teacher and wounded 23 others before shooting themselves’ (Radford, 2000) with the suspicion that they were influenced by the video game DOOM, which has been previously ‘licensed by the US military to train soldiers to kill’ (Ibid.)

highlighting the governmental intent to utilise games as a means of desensitisation. Despite the impact games had on behaviour at the time being unknown, it sparked up the zemiological research of violence depicted in games with some researchers believing games promote long-term ‘aggression-related scripts’ (Ibid.). A commonly analysed game for its desensitisation is the Call of Duty series. The player is often employed in combat grounds whereby soldiers are rewarded for killing the opposition, multiplied if they hit a headshot, demonstrating the conjuring of violence (Mukherjee and Pitchford, 2010). The press and political figures have historically involved themselves with the demonisation of gamers with Hillary Clinton labelling gaming as the ‘silent epidemic of media desensitization’ (Perry, 2005) and news articles warning that violent video games may be more harmful than violent television or films due to their interactive nature (BBC News, 2000). Alternatively, a spokesperson for the British Psychological Society argues that there is a world of difference between gaming and shooting classmates in a college (Radford, 2000).

Moreover, extremely interactive games such as the billion-dollar installations of the Grand Theft Auto series and the Red Dead Redemption series by Rockstar highlight the development of video game graphics over time and the extremely inappropriate and offensive acts such as gambling, sex scenes and NPC torture. This desensitisation to life because of the engagement with violence in games, as Atkinson and Rodgers (2016) argue is reflective of the nature of the capitalistic, systemically violent outside world, following a left realist mindset. It cannot be overstated that games are becoming more engaging as evidenced by the capital market of being £3.86 billion, more than double its value in 2007 (BBC News, 2019) due to the globalisation of the internet and the COVID-19 pandemic, making it greater than that of the film industry and music industry combined. This highlights the contentions with gaming and its inconclusive production of long-term psychological harm and trauma, though gaming companies will not deviate from creating games in high demand which perforates that the industry is in a limbo stage of social acceptability. In addition, more recent developments as of 2023 highlight that a new game engine, Unreal Engine 5, can produce graphics that are undistinguishable from real life as present in a beta game preview of “Unrecord”. This, in collateral with the development of Virtual Reality that immerses the player in actively pursuing violent actions, demonstrates the need for greater regulation of the gaming industry. More research is needed to define if gaming can solicit aggressive tendencies long-term, and if it does, should games be banned by organisations or the government, or should the responsibility be left to the individual and parental figures to manage the content they are consuming? After all, there are other methods of violent media which are more influential in the daily lives of the public that are heavily overlooked.

Another relevant area of media violence is the type infused by corporations that are supposed to deliver the news to society. However, the existence of political and newsworthy bias within the news on multiple levels can cause violence in catastrophic ways. The most prominent historical misuse of news

media was used in Nazi Germany with the publication of far-right ‘propaganda influence’ to legitimise genocide and manufacture consent in the 1940s (Zimmermann, 2006: 441). This collaboration with powerful elitists highlights the risk to the population who are injected with disinformation by the news believing false narratives and catalysing violence. Fast forwarding to the application of news media in contemporary society, the September 11th terrorist attacks were documented by the media live for the public to witness. Not only is this bleed-through of violence in the news as a widely accessible source through television fuelling the disbursement of emotional harm, but it also spreads the marginalisation of the Muslim community. Firstly, it is evident that the news has been indirectly causing psychological harm displayed through post-traumatic stress symptoms and anxiety in a longitudinal study conducted by Silver et al. (2002: 1240) with nearly two-thirds of the sample reporting fears of future terrorism two months after the attacks, all but 6% of the sample having watched some news media about the tragedy afterwards. Secondly, the news coverage stigmatised and sensationalised Muslims, labelling them all as being ‘terrorist,’ ‘extremist’ and ‘militant’ (Wood, 2008) and forming an Islamophobic moral panic at the time. According to labelling theory, the act of labelling an individual acts as a self-fulfilling prophecy whereby the individual conforms to their label due to the sociological pressure endured onto them, which in this scenario, constructs Muslims as folk devils and perpetuates a societal moral panic surrounding them (Cohen, 1972).

Therefore, not only has the coverage of the tragedy been harmful to the viewers but it has solicited the societal demonisation of Muslims, generating emotional harm for them also. Most notably, the increase of arrests of individuals with Asian ethnic appearance increased by 36% taking the number to its highest since the tragedy, undoubtedly creating an environment of strain (Mohammed, 2021). This perpetuates the corrupt nature of the news in shaping the public’s perception of real-world violence and the power that news media has in forging violence due to “newsworthiness.” The news media is often influenced by factors such as ‘drama,’ ‘immediacy,’ ‘celebrities,’ ‘sex’ and especially ‘violence’ due to their high click rate from the public’s addiction to shocking stories as ‘a fundamental rupture in the social order’ (Greer, 2007). This influence is also affected by the government's political stance, ignoring the harm caused by constant exposure to violent news, heightening fear, and anxiety, and conversely, the media may downplay or overlook the crimes of the powerful. However, it is also evident that reporting on public disputes and trends is incredibly dangerous with the widespread usage of phones to get the latest news information forging today’s golden age of conspiracies. For example, the World Health Organisation (2020) described the overabundance of false or misleading information on COVID-19 as a new form of “infodemic” influenced by news and social media in creating ‘sadness,’ ‘fear’ and ‘anxiety’. Although the right to freedom of information is upheld, the widespread silencing of harmful conspiracies is more valuable for public safety and the NHS. Overall, the news is not as neutral as what is made out. From systemic violence to the violent imagery inserting itself into every household, it is evident the potential risk to society these

“credible” sources have due to the uncompromisable amount of harm that can be conjured. However, the paradigmatic shift from traditional news sources formulating societal attitudes to the emergence of social media provides an even larger problem to solve.

In contemporary society, phones are intuitive and engrained into the lives of billions of people across the globe, forming a cosmopolitan society whereby the transition ‘from a nation-state definition of society and politics to a cosmopolitan outlook’ (Beck, 2016) has allowed a more interconnected network of communication – but also suffering. This transition to a mobilised society has provided disadvantages coinciding with “screen culture” whereby individuals are addicted to their screens. With the introduction of modern media forms such as Twitter, YouTube, TikTok and Instagram, content visible on these apps promotes the engagement of users and creators alike, thus it is inevitable that this will be taken to the extreme. Social trends and challenges such as the “One Chip Challenge” have led to the death of those who have attempted it (Richardson, 2023) to “Snapchat Dysmorphia” with the social media application Snapchat enhancing the negative self-perceptions and self-esteem of users to get plastic surgery mimicking the filters provided by the app (Ramphul and Mejias, 2018). Consequently, social media is powerful in channelling physical harm globally but also in that individuals become ‘temporarily suspended from normative sociality and thus enabling permission to engage in otherwise transgressive experience,’ as posed by Atkinson and Rodgers’ (2016) “cultural zones of exception” theory to explain the link between contemporary media and violent tendencies. Evident in the emergence of meme culture online has devolved media sites into racist and homophobic joke pots of hatred. This has often been interpreted by organisations such as the police implementing “copoganda” used to ‘promote, endorse and glorify police work and to justify, excuse and legitimate police malpractice and illegal activity’ (Drake et al., 2023: 8) from the transition to social media to sensationalise the mugshots of suspects (Northumbria Police, 2023), forever defaming those accused and demonstrating the invisible systemic violence ongoing. In addition, there has been an increase in terrorist-related and violent content that is released online. Media violence has ‘increased the risk of arguments and fights at school,’ also contributing to ‘20-25% of cases of serious youth violence’ from watching distressing content (Social Finance, 2021: 46) leading to a society that is fuelled by anti-social media. The terrorist attacks in 2017 highlight the obsession between war violence and online hate speech microaggressions against Muslims (Williams *et al.*, 2020), demonising an entire religious group on the front of racist opinions published across social media. Wood (2017: 3) highlights a concerning point regarding the interaction between ‘online activity and a site’s personalisation algorithms’, named “Algorithmic Deviancy Amplification” whereby the content promotes or condones illicit acts. With limited control over the content that appears on social media, kids can be recommended right-extremist podcasts that contribute to a toxic online environment or violent imagery enduring ‘re-traumatisation,’ feeding the ‘trauma loop’ (Social Finance, 2021: 39). A few concerns arise regarding this: the

commercialisation of advertisements to satisfy society's contemporary model of neoliberalist gain, the subliminal and unethical controlling of society by recommending content that suits the organisations' agenda, and the surveillance of watch history in breaching the users' privacy. All these issues harm society whereby the possession of social media omnipotence is treacherous and is only going to get greater with artificial intelligence improvements. Plus, the systemic regulation of the content being pushed to its viewers highlights the need to regulate social media's power over its users however it is a difficult challenge to solve since too much regulation equates to decreased creativity, constrictions on freedom of speech and increased control.

When considering the instantiation of new ways of media violence harm, it is important to also consider the national and international policies and regulations to combat the harm displacement. Firstly, the international application of the Human Rights Act (1998) via the European Convention on Human Rights (ECHR) is often concerned when regulating the consumption of media in breaching the right to freedom from harm and its influence on shaping societal perceptions and behaviours. The National Online Safety Bill, which was renamed from the Online Harms Bill, potentially conveying that online activities are not "harmful," was released consolidating that a 'higher standard of protection is provided for children than for adults' when browsing online (Online Safety Act, 2023). However, an issue arises whereby it enforces that social media companies be legally responsible for keeping young people safe online by enforcing age limits and age-checking measures (Ibid.) whereby the content could be subjectively removed for its violence. Not only does this initiate the issue of social control by companies in power over freedom of speech (Human Rights Act, 1998) but it is also combated by users manipulating the age settings on their accounts. However, the issue lies deeper than the media whereby society has founded a social factory on the internet that wants attention. China's online platforms 'proactively monitor, filter and remove content' reflecting stricter regulation and limiting freedom of expression whereas the United States pursues that 'most speech, including hateful and violent speech, is protected' under the First Amendment allowing social media violence (Apillalamarri and Stanley, 2021). Thus, the increase of online surveillance over self-regulation in the United Kingdom may sway the pendulum the other way rather than addressing the root harms such as why the nation is addicted to violence. This sediment is shared concerning news media, which is regulated by Ofcom, operating under the Communications Act 2003, however is 'funded by fees paid ... by the companies' which concerns its legitimacy if the interests of capital gain are shared between the organisations (Ofcom, 2003). Though heavier restrictions on media content urge the breaching of the freedom of expression (Human Rights Act, 1998) which has historically been used in Nazi German propaganda. With exploring the fundamental areas of media violence, common threads emerge regarding the incompatibility of the regulatory systems. The British Board of Film Classification is the regulatory statutory of films and games under the Video Recordings Act 1984 (Department for Culture, Media, and

Sport, 2014). Despite relaxation in its regulatory power since the 1990s, it has revised guidelines in January 2014 increasing its censorial stance due to technological developments requiring stricter regulation (Pett, 2015). This and the regulation of films and games via PEGI labels highlight the concern of deeming harm concerning age as the primal factor for sensitive content, inconsiderate of vulnerable people or independent sensitivity levels in adults, thus regulation advancements are necessary. Apparent in a game called *Manhunt 2*, the player can participate in killing innocent people in barbaric orchestrated snuff films was restricted from being purchased despite being advertised as a PEGI 18 by the British Board of Film Classification (2020). Moreover, a similar system of labelling films and games media with the Entertainment Software Ratings Board (ESRB) in the United States has recently started to scan faces to verify the age of the parent using Gray Level Co-occurrence Matrix (GLCM) by extracting facial texture features to ensure parental consent is provided (Wang and Chen, 2021). However, the influx of facial recognition technology is bordering the line of breaching the right to privacy (Human Rights Act, 1998) with the ESRB confirming that ‘data or images are intended to be never stored ...or shared’ though critics have issued it is ‘likely to raise alarm bells’ (Dwiar, 2023). Given the limitations in facial recognition and the reliance on parents to self-regulate in a society containing greater harm, there is truly no way to know whether children have access to age-locked content. Violent content, despite showing its harmful impacts does not seem to currently concern the government as much as hate speech online to risk breaching human rights thus instead public awareness is encouraged regarding the dangers of media violence, especially to demographics such as the elderly populations, neurodivergent individuals, and international citizens who may not understand the gravity of the media’s harmful nature.

In conclusion, this essay has outlined the origins of violent media as a new form of harm in addition to the perpetuated violence the internet has brought to newer generations. This assignment has analysed the early implications of aggression such as the Bobo Doll experiment regarding the emergence of Zemiology in the way that violent media is a new form of social harm. Firstly, films and game violence have proven to manipulate people’s tolerance of gore and influence violent tendencies with the added concern of the rise of technological advancements in CGI and Unreal Engine 5, having progressed more violent and lifelike productions accustomed to the “demand” manufactured by society that needs the reconsideration that age is not the primal factor of violence tolerance in the regulatory PEGI and ESRB systems. Additionally, news sources and the September 11th attacks were analysed to express how the media can be used to catalyse violent imagery information causing emotional harm, moral panics and the demonisation of Muslims as terrorists often for “newsworthy” organisational monetary gain. Additionally, with the emergence of social media and its cosmopolitan effect on society’s communication, applications such as YouTube and Twitter install beliefs on the public via mediated algorithms and advertisements and hosts as grounds for hate speech, which has been combatted by regulations of criminalisation. But more

seriously, a heightened rate of experiencing invisible violent media in social media highlights the harms of screen culture and the difficulty in balancing freedom of speech and breaches of human rights. Lastly, current media violence regulation has been critically analysed to highlight the challenge in that although the internet is a catalyst for information, too much graphical and violent information is exposed to the public which requires occasional temporal monitoring to assert how to regulate the content. Thus, with the direction criminology is taking in branching into new avenues of thinking there could be harsher surveillance which may enact the societal pushback of the government being too controlling and the breaching of the human right to privacy, thus the harms of media violence is a challenging problem to solve humanely.

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Article

How appropriate adult schemes fulfil the needs of vulnerable women and ethnic minorities?

Joshua England

Abstract

The Appropriate Adult Scheme (the organisation is one of many appropriate adult schemes in the United Kingdom that aims to safeguard the rights and entitlements of vulnerable people in custody. Since its formation, the scheme has allowed volunteers to contribute to this effort by aiding in interviews and the custody process following the guidance from PACE code C. The one male and four female interviewees that partook in this qualitative study agreed that the scheme is efficient in its understanding and appropriate application of resources, satisfying the needs of vulnerable suspects. Additionally, religious food and textbooks are provided and female sanitary products if needed, showing that the scheme goes above the standard at eliciting a comforting experience for vulnerable suspects. Though when considering minority individuals, the availability of gender-preferred appropriate adults and of interpreters is not always possible due to a lack of funding and advertisement, leading to an underpopulated rota and the rejection of the suspect's wishes. Undoubtedly, the organisation and its volunteers treat everyone respectfully, though recommendations such as redefining the term 'vulnerable' to include minority individuals could improve the experiences of possible hidden vulnerable people in custody and allow for more appropriate adult availability.

Keywords: Ethnic, Minority, Scheme, Appropriate, Adult, Women, Organisation

The National Appropriate Adult Network (NAAN) and the term "appropriate adult" (AA) were formulated in the Police and Criminal Evidence (PACE) Act 1984 after public concern following the Maxwell Confait murder case in 1972. This case presented a problem with holding vulnerable suspects: three innocent boys, under 18 years old, were held without contacting their parents and one of the boys, having learning difficulties, could have presented false information when interrogated for many hours without a lawyer (Robins, 2019). The Appropriate Adults Scheme (the organisation), a third-sector organisation including volunteers, was introduced in March 2017 and aims to 'safeguard the rights, entitlements and welfare of juveniles and vulnerable persons' (Home Office, 2019) in accordance with Code C of the PACE Act 1984, providing a positive impact on society.

The current research available acted as the epistemological influence to assessing how service users' needs in the National Local Appropriate Adult Scheme are fulfilled. However, many studies on the organisation's effectiveness have overlooked the specific challenges faced by women and ethnic minorities using the scheme - two groups of individuals which can be deemed particularly vulnerable due to being subject to gender and racial prejudice. This review draws on references from Sunderland University's Library, crucial to address these gaps in existing literature.

The National Appropriate Adult Network reports that there are 650 monthly requests for Appropriate Adults (AAs) in London (Home Office, 2011: 6), suggesting that offenders see this support from AAs as extremely valuable and since many vulnerable suspects report not understanding what is going on or what to say or do when being interviewed by police as observed by Farrugia and Gabbert (2019) research, having an AA can help alleviate the pressure they might feel in custody whilst laying out the support networks for them. Despite this, the "Child Q" protests revealed that 52% of 2,847 recorded cases lacked an appropriate adult during strip searches (Addo, 2023). This gap in oversight suggests systemic failures in providing necessary protections for vulnerable individuals, reinforcing the need for better monitoring and support mechanisms.

The term "appropriate adult" refers to individuals from organized services who are trained and CRB checked (Home Office, 2011: 5), meanwhile, vulnerable adults include those with mental disorders, learning difficulties, or disabilities, which may affect their capacity to avoid self-incrimination (Peacock and Cosgrove, 2021: 7-8). Donna Peacock, noted that labelling someone as "vulnerable" can be stigmatizing and problematic, potentially impacting the individual's dignity and the perception of their needs (Wilkin, 2021, 34:42-36:06), thus basing a strain of vulnerability on someone's gender or cultural experience may not always be acceptable as the person may not feel vulnerable or feel like they require an appropriate adult which could accelerate into increased tension in custody.

In another study conducted by Jessiman and Cameron (2017: 249), 'the presence of the AA, who should act as their AA, ...and the attributes they wanted in an AA' are all concerns regarding appropriate adults who play a major role in the custody process. From being authoritative and supportive allowing for a comfortable and communicable environment to vulnerabilities in mental illness and learning disabilities to greater risk factors such as 'being female in a predominantly male environment' or 'being a black male in police custody' (Ibid., p.250), it is important that the scheme ensures these standards of care are maintained. Specifically, with the term "vulnerability" being loosely defined in policy, it could exclude vulnerabilities deemed risk factors meaning some individuals may not receive 'resources, finance and support' (Wilkin, 2021, 36:02-36:22) in being attributed AAs. This perspective is offered from the viewpoint of an unbiased, white, non-criminalised male university student, though a more inclusive understanding of vulnerability will incorporate diverse lived experiences.

Therefore, attributing the lived experience of women - women should be separated from men to ensure safety, supplied sanitary products, and given a female appropriate adult if requested. As highlighted by the Me-Too movement, the police brutality associated with the killing of Breonna Taylor brought focus to ‘the systems that enable harm’ (Me Too, 2021: 7). Thus, it is understandable that women feel vulnerable in police custody since historically females have been ‘treated more harshly by the criminal justice system’ (Olawunmi, 2023: 3) resulting from being considered doubly deviant. Addressing these issues is essential for ensuring that women receive equitable and respectful treatment within the justice system.

Additionally, ethnic minorities should be given religious and cultural materials and have access to an interpreter if required. Campaigns such as Black Lives Matter have aimed to provide justice for racially prejudiced individuals and work towards Black liberation and freedom (Black Lives Matter, 2021), helping towards the construction of laws for racially aggravated violence (Crime and Disorder Act, 1998). Though the police still ‘generates and sustains an occupational culture supportive of racism’ (Lea, 2000: 222) highlighting that ethnic minorities are being socially prejudiced, which makes supporting them even more important and since the organisation collaborates with the police, researching these issues is crucial.

This article seeks to explore how the organisation ensures the fulfilment of vulnerable people’s needs, particularly in women and ethnic minorities. From the acknowledgement of their discrimination to the resources they are provided, an evaluation discussing the treatment of vulnerable people in custody to enhance current knowledge surrounding the organisation and advance scientific understanding of institutionalised discrimination. The findings aim to explore what impacts the fulfilment of service users’ needs, to analyse what support is given to women and ethnic minorities in custody, and to explain the barriers that impact their needs from being met.

Research Design

Primary research was chosen since it allows the collection and analysis of first-hand testimonies from appropriate adults that secondary research does not provide. The used qualitative method of interviews utilising thematic analysis highlights the ‘complexities of human behaviour’ (Lakshman et al, 2000) in the organisation. Quantitative methods that produce statistical data such as questionnaires do not evoke expansive responses.

The study of knowledge – epistemology, infers ‘existing expert literature’ (Goertz and Mahoney, 2012: 211) thus the utilized epistemological interpretive framework commonly used in qualitative research allows for grey areas in research to be explored such as “vulnerability” being loosely defined as children and vulnerable people with ‘learning disabilities’ or ‘mental ill health’ (National Appropriate Adult Network, 2022). Additionally adopting an explanatory approach gives insight into how the participants

understand the needs of the service users, their knowledge of the procedures and available resources to conclusively answer the research question.

The study of reality, ontology, tests the knowledge's realistic truth 'concerning the definition of concepts' (Goertz and Mahoney, 2012: 207). The ontological social constructivism approach asserts that social phenomena are 'continually being accomplished by social actors' (Bryman, 2016: 29) which enforces the use of interviews for this environment. Semi-structured interviews were scheduled on Microsoft Teams for the ease of the participants and to extract the transcripts so that no information was lost. These consisted of structured questions to keep an 'open mind about the shape' (Ibid., p.10) of the research and further questions for elaboration and deeper knowledge allowing for replicability and consistency. This gathered descriptive and individualised experiences that no other method could accommodate whilst ensuring the participants felt comfortable speaking freely.

The opportunity sampling strategy was used, accommodating the volunteers on a sequential basis. It involved the contact and scheduling of interviews with available volunteers using the associated WhatsApp chat. This was a quick method to obtain the data and is easily replicable for each participant. The interviews were approximately 30 minutes long containing 15 structured questions and a sample size of 5 participants. Having this small sample size allowed for high efficiency in this experimental design, and lower expenditure of research resources and time.

Four of the participants were female and one was male, all of whom were White-British. Both male and female perspectives must be acquired as the gender of the assigned appropriate adult could present barriers of anxiety or the providing of 'unreliable, misleading or incriminating information' (National Appropriate Adult Network, 2018) if the person decides to have no AA due to this issue. This could also transfer over to ethnicity and the "intersectionality" (Phoenix and Pattynama, 2006: 1) of the individual. The dynamic associated with being a non-criminalised, white, male such as myself may instil these feelings more towards a criminalised, black, woman, than a criminalised, white, male. There is also a power dynamic by the meaning of "appropriate adult" and "vulnerable person" (Wilkin, 2021) putting the volunteers on a pedestal above the service users assuming they are unable to think or act for themselves, which is not always the case.

When conducting the research, the British Society of Criminology's (2015) ethical guidelines were followed to allow for more authentic data for accurate and applicable results, disallowing reputation, financial or organisation credibility loss, whilst creating a trustworthy bond between the researcher and participants. Additionally, considering that the organisation works with the public sector of the police who provide essential services to the public, AAs must follow the ethical guidelines in the PACE code of practice (Home Office, 2013). In the disadvantage of public sector organisations being unresponsive to sociological

change, the scheme also ‘supports whistleblowing by AAs’ (National Appropriate Adult Network, 2018: 50) to raise concerns if the service users are not getting satisfactory treatment.

Firstly, before conducting the research, an information sheet [Appendix 1] was sent to the participants before the interviews to make them aware of what they were participating in and if they had any questions about the procedure. A consent form [Appendix 2] was sent for the participant to sign, indicating their informed consent to the publication of their responses. These participants were sent a Qualtrics Form so the process could be done online. The participants were informed that they had the right to withdraw at any point at which their transcripts, recordings, and other tied information would be discarded.

Coding the Microsoft Teams transcripts in NVIVO [Appendix 4] was safer than having papers littered around and when referring to the participant in the interview, pseudonyms of Abby, Ben, Claire, Dianne and Emma were used to ensure anonymity so that their status was not damaged. Additionally, the questions [Appendix 3] asked were formulated to not be double-barrelled and not contain sensitive information, jargon or demand characteristics so the participants could answer the questions honestly, to which they were free not to answer. Due to qualitative research being not directly translatable into data, the conducted thematic analysis of identifying, interpreting and inductively extrapolating ‘implicit and explicit ... themes’ (Guest, et. al., 2011: 9) such as Resources, Understanding and Funding, allowing for data analysis to display the personal experiences in connection with the aims of the study. A frequency graph was utilised to analytically display the common terms said in the interviews. Throughout this process, the information tied to the participant was not shared, kept on a protected computer and once the research concluded, the information was safely destroyed.

Findings and Discussion

The appropriate adults hold a special role in ensuring the vulnerable person is provided with any needs quickly and effectively to safeguard ‘the rights, entitlements and welfare of juveniles and vulnerable persons’ (Home Office, 2019). The availability of appropriate adults in the third sector and the distribution of resources were concerns of the participants.

Emma: *“We need more volunteers. Before it was only five of us on the rota”.*

For women requesting a female appropriate adult, most of the participants expressed that this is not an issue and is supported however the problem arises if one is not available. Depending on the custody clock, another appropriate adult could be called, or the interview could be continued with an available

appropriate adult even if it goes against the vulnerable person's wishes following guidelines from the National Standards (National Appropriate Adult Network, 2018). If the problem arises for minority ethnic individuals, the same approach is taken but no guarantee can be made that the appropriate adult will be suitable to the person.

Ben: *"If it was a case that they were unavailable – it would have to be one of us available".*

Dianne: *"Request a message to be put in the group".*

Sanitary products are provided for women and religious equipment for ethnic individuals. These acknowledgements not only provide for the needs of these individuals but also makes them feel comforted in an already fearful situation. Additionally, interpreters are freely available to solicit effective communication in the interview for any 'hearing or speech impediment' or 'translations' (Home Office, 2019). Peacock and Cosgrove's (2021) study states, there is a 'risk that more complex cases of vulnerability could be missed' as evident in the concerns of participants over interpreter availability which could impact the suspect's understanding in interviews if there is a language barrier.

Ben: *"Yes, very freely. But there is the problem of sometimes getting hold of them".*

Claire: *"Courtier food, halal food and religious textbooks so the Bible, the Koran – they have started bringing in the arrows in the cells that point towards Mecca".*

The NAAN standards require appropriate adults to understand and respond effectively to contexts including women and race needs (National Appropriate Adult Network, 2018). As evident, not every woman or ethnic minority needs the same requirements to be satisfied but the scheme offering them showcases the effectiveness in making the experience tolerable.

As an appropriate adult understanding the custody processes, rights, individual experiences, mental conditions and disabilities, and how to provide for vulnerable people's needs in custody, ensures the appropriate adult and vulnerable person are cooperatively working together and not as a power division. Jessiman and Cameron (2017: 249) state that vulnerable people are interested in 'the attributes they wanted in an AA' and as evident, the participants believe these attributes assist in the appropriate adult's effectiveness:

All: *"Confident", "Attentive", "Caring", "Adaptable", "Understanding", "Non-judgemental", "Empathetic", "Respectful", "Intuitive", "Flexible" and "Availability".*

The amount of experience of the AA correlated with their understanding of providing for women and ethnic minorities impacting the resolution of their needs being met. Having this understanding of females being ‘treated more harshly by the criminal justice system’ (Olawunmi, 2023: 3) from being “doubly deviant” and the police sustaining ‘an occupational culture supportive of racism’ (Lea, 2000: 222) allows the provision of resources to satisfy specific needs, thus highlighting the effective responsiveness of the AAs in the organisation.

Claire: *“It’s pretty much male-dominated. It’s very patriarchal”.*

Dianne: *“They were more prone to discrimination, abuse, and harassment while in custody”.*

Communication skills are also important when issues arise, and the organisation seems to act quickly and adaptively to resolve the issues additionally striving to improve relations with vulnerable adults with annual reports and training opportunities.

Abby: *“As soon as that was flagged up, they seemed very understanding”.*

Dianne: *“We are doing ... a new training program for a new qualification and ethnic minorities and women are included in there”*



As shown, “vulnerable” was the most popular term relating to the study at 2.28%. This highlights the issue of the word being not universally defined, having a ‘range of interpretations across different contexts’ (HMICFRS, 2022). Most participants explained it is an umbrella term including a range of vulnerabilities such as physical disabilities, mental health and emotional vulnerabilities with some participants explaining anyone could be vulnerable. The PACE definition of a “vulnerable adult” is a

person aged 18 or over ‘who may have difficulty understanding the purpose of an authorisation’ (Police and Criminal Evidence Act, 1984). Taxman and Caudy’s (2015) study classified ‘family dysfunction’, ‘self-control’, and ‘substance abuse’ as factors that affect the extent of individuals’ vulnerability. Therefore, suspects must be risk assessed to determine whether they require an appropriate adult – but this is where issues arise. Some vulnerabilities such as being a woman or ethnic minority in custody as Jessiman and Cameron (2017: 249) identify are ‘greater risk factors’ but are not presented in the NAAN definition of vulnerability people having ‘learning disabilities’ or ‘mental ill health’ (National Appropriate Adult Network, 2022). Thus, participants shared the consensus that this definition should be expanded to include these individuals and other vulnerable candidates.

Emma: *“It can be loads of different things. It can be mental issues, learning difficulties, physical disabilities – sometimes even just stress”.*

Abby: *“We need to be changing the definition of vulnerable. So, anyone with any sort of vulnerability can have an appropriate adult”.*

It is evident that in the interest of maintaining statutory services, ‘increasing numbers of local authorities have decided to defund services’ (National Appropriate Adult Network, 2022). The participants agree that this could be a serious issue impacting availability and resources:

Dianne: *“Restrict them from getting their travel expenses paid so availability will be affected”.*

Claire: *“Being able to provide the other essential things – like religious textbooks, meals, and sanitary products”.*

As highlighted in Jessiman and Cameron (2017: 249), ‘the presence of the AA’ is crucial for getting vulnerable people to access the support they need thus having limited advertising results in an empty rota and unavailability. Additionally, resources such as diversity training may see a decline due to cutbacks impacting the acknowledgement of potential risk factors and the fulfilment of ethnic minorities. Luckily, this is not problematic currently as the organisation has adapted itself for these individuals. But due to the nature of the scheme being managed and funded by the local Police and Crime Commissioner (2021: 6) granting ‘£33,935’ to organisation in 2021, budget cuts could impact the organisation and the experience of the service users. Additionally, having a privately-funded scheme could be beneficial for the organisation, providing more training and pay and thus more availability, though is often impersonal and managerial.

Emma: *“I wouldn’t say the organisation is advertised much at all”.*

Ben: *“There’s always more diversity training we could go for obviously the factors are cost and availability”.*

Ben: *“A good contrast would be the XXX scheme because they are a private and funded, paid-for scheme”.*

Overall, the research confirmed the legitimacy of previous research whilst providing insight into further resources provided to women and ethnic minorities. The research had a representative balance of males and females but had a small sample size of White-British participants from the same organisation, limiting the research's generalisability. The utilised semi-structured style of interviews led to extensive talking on some questions and thematic analysis could have been subject to researcher bias as 'analysts often come up with preliminary findings that strike them as interesting' (Guest, et. al., 2011: 134). But it is a strength for qualitative research to embed this approach than a structured style of impersonal questionnaires. Additionally, a limitation of interviewing service providers instead of service users may have reduced reliability as their perspectives and experience may not always align. Overall, these limitations would be improved upon if the research was conducted again.

Recommendations the organisation could take to improve the experience of volunteers and vulnerable suspects are as follows: (i) Saheliya, a private mental health and well-being support organisation for BAME women and girls could be looked upon when integrating further diversity training into the intersection of being a woman and ethnic minority bringing additional needs that should be communicated about and provided for (Saheliya, 2023). (ii) Communicating to the NAAN the need for a more encompassing and universal definition of vulnerability will help assess if suspects require an appropriate adult. Often vulnerability is determined by the officers beforehand, but women and ethnic minorities are not considered vulnerable for an appropriate adult. (iii) Communicating to the NAAN the need for paying the appropriate adults. Alternatively, the University could advertise the scheme more on campus and to more cohorts allowing for more availability for high-risk women and BAME individuals and other unregistered vulnerabilities not provided with appropriate adults. Privately funded schemes such as the Durham scheme do not have this issue of coverage. (iv) The research participation link used was often buried underneath general WhatsApp chat thus moving to Microsoft Teams could be beneficial for effective communication and documentation management for AAs and organisation coordinators.

With vulnerable people experiencing emotions of fear and confusion when in custody, these feelings must be minimised as much as possible. The performed interviews have demonstrated the additional needs of women and ethnic minorities in custody, the barriers the organisation faces, and the strengths of appropriate adult communication and safeguarding strategies. The organisation ensures the individuals are treated well and that their needs are satisfied in custody though improvements can be made.

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Case Note

**A Legal Analysis of the Invalidation of the Rwanda Policy by the Court of Appeal:
AAA and others v The Secretary of State for the Home Department [2023] EWCA
Civ 745**

Nusratullah Nabeel Rahimi

Abstract:

The Rwanda Deportation Case is considered one of the most controversial legal disputes in the last decade. This case has two aspects: The first aspect of this case is the issue of deporting asylum seekers, and the second aspect of the case is the invalidation of the UK and Rwanda Migration and Economic Development Partnership (MEDP) which is set out in a MoU. This paper argues that the Court of Appeal's judgment has three critical points: first, this judgment failed in applying proper consideration in the good faith of the Secretary of State for the Home Department (SSHD). Second, was the absence of any mention of the right of the UK government to remove asylum seekers to a third safe country under the principle of a safe third country in the concluding remarks. Finally, this judgment did not address lack of any review on the substance of the MoU.

Keywords: Immigration; Deportation; Third Safe Country; Asylum; Asylum Seeker.

On 14 April 2022, Home Secretary Priti Patel made a speech and announced the partnership with Rwanda on migration and economic development. The title of this partnership is called the UK and Rwanda Migration and Economic Development Partnership (MEDP), and the main aim of this agreement was to tackle the global migration crisis. Ms. Priti Patel on behalf of the Secretary of State for the Home Department (SSHD), stated that:

Our approach as two outward-looking countries has led to the signing of a new international partnership... which is migration and economic development partnership with the country of Rwanda and UK. This will see some of those arriving illegally in the UK, such as those crossing the channel in dangerous small boats, relocated to Rwanda to resettle and rebuild their lives. (Speech by Priti Patel, Secretary of State for the Home Office, 'UK and Rwanda migration and economic development partnership' (14 April 2022)).

The objective of Rwanda policy which is set out in a Memorandum of Understanding (MoU):

Is to create a mechanism for the relocation of asylum seekers whose claims are not being considered by the United Kingdom, to Rwanda, which will process their claims and settle or remove individuals after their claim is decided, under Rwanda domestic laws, the Refugee Convention, and current international standards. (Patel (14 April 2022)).

Under this partnership, the UK government promised to invest £120 million in the economic development of Rwanda state. This funding was also for the financial support of the process and social settlement of asylum seekers including operations, accommodation, and integration (Patel, 'World first partnership to tackle global migration crisis' (Home Office, 14 April 2022)).

Under the Rwanda Policy SSHD on 1 June 2022 announced that: "the first flight of asylum seekers is expected to take place on 14 June" (Patel, 'First migrants set for Rwanda to be given final notice' (Home Office, 1 June 2022)). This decision prompted more than 20 claims, filed between 8 June 2022 and 14 June 2022. On 10 June 2022, the Administrative Court heard and refused an application for an interim injunction to prevent the individual Claimants in that claim from being removed from the charter flight. On 13 June 2022, the Court of Appeal dismissed an appeal against that decision. Later, on 14 June 2022, the Supreme Court dismissed an application for permission to appeal against the decision of the Court of Appeal. On 14 June 2022, some of the Claimants made applications to the European Court of Human Rights (ECtHR). ECtHR granted an interim measure preventing them from being removed to Rwanda until the final domestic decision in the ongoing trial or judicial proceedings. On 14 June 2022, the Court of Appeal further considered the position on interim relief following the decisions of the European Court of Human Rights in *NSK v United Kingdom* (28774/33). The consequence of the grant of interim measures was following the case in the UK domestic courts. The High Court quashed SSHD's decision to remove asylum seekers to Rwanda based on procedural unfairness, and because it is in contradiction with Article 3 of the ECtHR. Meanwhile, this court dismissed the claims on generic challenges to the Rwanda Policy and announced that this policy is lawful *AAA and others v SSHD* [2022] EWHC 3230 (Admin) 438. On 14 March 2023 Court of Appeal in *AAA and others v SSHD* [2023] EWCA Civ 266 decided to allow 11 individual asylum seekers to appeal against the decision of the High Court.

Held, affirming the High Court's earlier decision Lord Burnett of Maldon announced that the removal of any appellants to Rwanda under the Rwanda Policy would give rise to a real risk of refoulment, therefore it is considered in breach of Article 3 European Convention on Human Rights (ECHR) 1953. Further, the

Court of Appeal ruled against the High Court judgment declaring that this Policy was unlawful due to the generic challenges (at [525]).

Commentary:

The Rwanda Deportation Case [2023] is considered one of the most controversial cases of the last decade. This case unfolds against the backdrop of two overarching dimensions, each carrying profound legal implications. The first aspect of this case is deporting asylum seekers as individuals. The second aspect of this case related to generic challenges of Rwanda Policy or the invalidation of the MEDP.

The focus of this commentary, looks at the second aspect of this case which is the invalidation of Rwanda Policy. In this regard, there are three critical observations. First, the Court of Appeal failed to give proper consideration to the Secretary of State for the Home Department under the principle of good faith. Under international law, according to Article 26 Vienna Convention on the Law of Treaties (1969), and Article 2(2) UN Charter 1945 “Good Faith Principle” is an accepted legal principle. This was recognised by the UK courts in *James Hugh Allister and Others v Secretary of State for Northern Ireland* [2022] NICA 15 where it was affirmed by Lady Chief Justice Keegan (at [473]). Likewise, Lord Bingham of Cornhill confirmed that the government’s good faith can be considered as a matter for justification for state action in *A (FC) and others (FC) v. SSHD* [2004] UKHL 56. His Lordship added that any measure under this principle must have been strictly necessary (at [177]). SSHD in several oral Statements to Parliament, speeches, and meetings stated that the main aim of the Rwanda Policy was the prevention of illegal migration including crossing the English Channel by dangerous small boats (see Patel 2022) and (Suella Braverman KC, HC Deb, 7 March 2023, Vol 729, Col 151). Indeed, the Rwanda Policy was for protecting the lives of people who are crossing the English Channel illegally by discouraging risky and potentially life-threatening migration routes. The Home Secretary at the time claimed that the risky migrations are facilitated by smugglers and criminal gangs, and asylum seekers pay considerable sums of money for these groups (Braverman ‘Home Secretary meets French counterpart on tackling illegal migration’ (Home Office, 15 June 2023)). In applying the Rwanda Policy it can be argued that the SSHD sought to protect other asylum seekers entering from safe third countries, in addition to protecting public safety in line with her obligations to do so under legislation such as part 4 of Nationality, Immigration and Asylum Act 2002 and part 1 of the Terrorism Prevention and Investigation Measures Act 2011. The Court of Appeal seemingly overlooked the overarching objective of the deportation policy and somehow the court failed to give proper consideration to the good faith of SSHD. More Interestingly, Lord Burnett of Maldon in his conclusion considered the SSHD's good faith in Rwanda Policy as a political concern rather than a legal one (at [456]). Therefore, the court by not considering the SSMD good faith in Rwanda Policy,

did not fully appreciate the complexity of balancing legal norms with the practical imperatives of protecting human lives on a large scale.

Second, the Court of Appeal misled the UK legal system by not talking about the right of SSHD to remove asylum seekers to a safe country under the principle of a safe third country in the concluding remarks. The court's decision on the unlawfulness of Rwanda policy and not considering its relevance to the safe third country principle may influence any legal practice under ECtHR precedents such as *Mohammed v. Austria* (2283/12), and *Othman (Abu Qatada) v. United Kingdom* (8139/09). In *Mohammed v. Austria*, Hungarian authorities tried to send back asylum-seekers who had entered Hungary by crossing the Serbian border under the "principle of safe third country". In this case ECtHR accepted that the principle of moving asylum seekers to a safe third country is an accepted legal principle but it is followed with substantial grounds such as the principle of non-refoulement. Also, under *Othman (Abu Qatada) v. United Kingdom*, the United Kingdom government tried to remove the applicant who was detained under the Anti-terrorism, Crime, and Security Act 2001 to Jordan. The ECtHR considered the deportation to be a violation of Article 6 of the European Convention on Human Rights. Meanwhile, this court affirmed the principle of removing asylum seekers to a safe third country is a legal principle if all substantial grounds are fulfilled.

The decision in this case has the potential to highly influence the legal practices in the domestic law of the United Kingdom under the Illegal Migration Act 2023, paragraph 345D of Immigration Rules 2017, section 3 of Immigration Act 1971, and Nationality and Borders Act 2022. It is submitted that the hypothetical scenario set out by the Court of Appeal on the Rwanda Policy has produced a careless decision and may result in challenging the practicing principle of removing asylum seekers to a third country in England and Scotland. By the way, the legality principle of removing asylum seekers to a third safe country and the right of SSHD to remove asylum seekers under this principle is not added in the concluding remarks of Lord Burnett of Maldon, however, it ought to have been discussed and emphasized as part of the case's concluding remarks (see [319]). It is submitted that it would have been desirable to include wording to the following effect in the judgment: *The principle of the safe third country is an internationally accepted legal principle and If Rwanda's policy met all the relevant requirements and substantial grounds, then this policy was lawful.*

Third, the Court of Appeals judgment does not address the Migration Economic Development Partnership (MEDP) with Rwanda which was set in a MoU as a political arrangement. As MoUs record international commitments but are not binding as a matter of international law, it does not require parliamentary review (Duquet *et al* 'Upholding the Rule of Law in Informal International Lawmaking Processes' (2014) 6 *HJRL* 75, 92). The question is how an important agreement like the Rwanda Policy can be set out in a MoU. As the policy talks about human rights issues it is vital that it should be capable

of being sent to Parliament for review rather than circumventing this process via the MoU process (House of Lords International Agreements Committee ‘Memorandum of Understanding between the UK and Rwanda for the provision of an asylum partnership agreement’ (7th Report of Session, 2022-23, HL Paper 71, 18 October 2022) at [5]). These concerns are well reflected in reports of institutions such as the UK Parliament Human Rights and the House of Lords International Agreements Committee report (House Lords IAC) (Joint Committee, oral evidence: the UK-Rwanda Migration and Economic Development Partnership and Human Rights (HC 2022-08, 293)). As the House Lords IAC stated in the summary of a special report: *‘Agreements that fundamentally affect individuals’ rights should be entered into through a formal treaty so that the rights of those affected can be fully protected’* (at [293]). Assessing the absence of parliamentary scrutiny is not our core argument here, the point is such an important issue which is not addressed in the Court of Appeal’s judgment.

In conclusion, the *Rwanda Deportation Case* [2023] is considered one of the most controversial legal disputes in the last decade. This case has two aspects: The first aspect of this case is the issue of deporting asylum seekers, and the second aspect of the case is the invalidation of the MEDP which is set out in a MoU. The controversy is reflected by the fact that three distinct judicial decisions were rendered, each of them showing the narrative of the legal proceedings. High Court quashed the SSHD decision on the deportation of asylum seekers based on procedural unfairness and because of the breach of Article 3 of the ECHR. Meanwhile, this court dismissed the claims on generic challenges to the Rwanda Policy and announced that this policy is lawful. The Court of Appeal, against the high court’s decision on the generic challenge, declared that Rwanda's Policy was unlawful. The Supreme Court approved the Appeal Court’s decision, meanwhile emphasizing in direct wording that if all requirements and legal grounds under the safe third country principle were fulfilled the Rwanda Policy was lawful.

The Court of Appeals' legal test on issues such as the possibility of refoulment, recognition of Rwanda as a safe third country, the unlawfulness of deporting asylum seekers as individuals and generic challenges of the Rwanda Asylum system meets the relevant laws and there is nothing to say about that. Meanwhile, the judgment has three critical points: first, this judgment failed in applying proper consideration in the SSHD good faith, second, not talking about the right of the UK government to remove asylum seekers to a third safe country under the principle of a safe third country in the concluding remarks which may lead the UK Legal system to challenge practicing the principle of removing asylum seekers, and third, this judgment did not address lack of review on MoU.

The Court of Appeal’s decision was approved by the UK Supreme Court where it was held that the Court of Appeals applied a correct legal test. Meanwhile, the Supreme Court emphasized the UK government has the right to remove asylum seekers to a third safe country if all legal grounds are fulfilled.

Indeed, the Supreme Court applied a remedy to the Appeal Court's decision and facilitated to practice safe third country principle.

On 6 December 2023, James Cleverly Secretary of State for the Home Department addressed Parliament on the Rwanda Policy. According to him, a new Rwanda Policy will be drafted under the Supreme Court concerns including the "principle of non-refoulment", "principle of safe third country", and "required capacity building in Rwanda". Further, according to him a new partnership with Rwanda will be in the form of a treaty rather than MoU (James Cleverly, HC Deb, 6 December 2023, Vol 742, Col 433).

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How do appropriate adult schemes fulfil the needs of vulnerable women and ethnic minorities?

Joshua England

Case Notes

A legal analysis of the invalidation of the Rwanda Policy by the Court of Appeal: *AAA and others v The Secretary of State for the Home Department* [2023] EWCA Civ 745

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