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## **A CRITICAL ANALYSIS OF ADOPTING A SOCIAL HARM PERSPECTIVE TO ACCOUNT FOR VIOLENCE AGAINST WOMEN AND GIRLS**

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### **Abstract**

Due to criminology's preoccupation with crime causation, punishment and crime control, criminology as a discipline fails to appropriately recognise 'harms' experienced by women and girls. A social harm perspective allows for the criminological gaze to extend beyond legal definitions of crime, and could therefore account for a more comprehensive understanding of the harms experienced. Using Female Genital Mutilation and Stalking as selected examples, this article demonstrates how a social harm perspective is useful in accounting for, and understanding, violence against women and girls. Moreover, this article also identifies that even when a harm is officially recognised as a crime, the lack of formal Criminal Justice sanctions suggests, that harms experienced by women and girls are not sufficiently addressed. However, although a social harm perspective offers for a broad understanding to which criminology has not achieved, it is not without its limitations. Harms against women and girls are not only endemic, they are arguably not characterised by homogeneity, thus making it very difficult not only to define, but also to measure. Notwithstanding, a social harm discourse can nevertheless expose harms that require politicisation to be heard, and allows the narratives of women and girls to be given a platform that criminology does not currently provide.

### **Keywords**

Violence against Women and Girls, Criminology, Social Harms, Feminism, Stalking, Female Genital Mutilation.

Crime is commonly understood with reference to the law (Lacey & Zedner 2012), although as Christie (2004, 3) notes, for a 'crime' to exist, an 'act' must have occurred. Therefore, 'acts' are only criminal if they have been legally defined as such (Lacey & Zedner 2012). As persuasive as such an analogy is, for a variety of reasons, a legal definition of crime is however, not without its problems (Croall 2011, 5). Firstly, it ignores the politics of the law making process (Henry 2006, 79); a point which is particularly troubling for feminists who are well aware that the law is not gender neutral (Kennedy 2005, 3). Secondly, legal definitions of crime are subject to historical disparities (Henry 2006, 78). For example, criminal offences are made and thus new laws introduced (Lacey & Zedner 2012). To illustrate, 'stalking' was formally recognised in law in 2012 (National Stalking Helpline

2015) and some criminal acts have been subject to a process of decriminalisation (Lee 2006, 114). For example, lesbian, gay and bi-sexual members of society have witnessed a variety of formal changes surrounding the legalities of their sexuality (Stonewall 2015). Furthermore, there are geographical disparities regarding certain 'crimes' (Henry 2006, 78). Although illegal in many countries, Female Genital Mutilation (FGM) is legal in Sierra Leone (Plan UK 2015); despite being an infringement of the Declaration on the Elimination of Violence against Women (DEVW) (United Nations 1993). Crimes are therefore social constructions, because without the introduction of criminal laws, 'acts' are legal (Hester & Eglin 1992, 27). Therefore, crime is clearly a nebulous concept (Henry 2006, 78), with no ontological reality (Young 2002, 254), but criminology as a discipline, has a serious deficit (Hillyard & Tombs 2007, 11), because whilst criminology concentrates on the competing narratives surrounding crime causation (Hopkins Burke 2011), the measurement of crime and the interpretation of statistics (Coleman & Moynihan 1996), punishment and crime control (Cohen 1985), issues surrounding what crime actually is, are often not stated and, moreover, at best, are simply assumed (Hillyard & Tombs 2007, 11). A social harm perspective allows for a range of widespread and damaging consequences, such as human rights violations, and psychological trauma for example, to be accounted for (Muncie 2000, 3).

Historically, criminology has only concerned itself with 'crime' as a fixed and definitive entity (Henry 2006, 78), paying more attention to the nature and content of crimes committed, rather than any analysis of the social, political and economic context present (Hillyard & Tombs 2008, 8). But criminology's obsession with traditional notions of the 'problem of crime' has been challenged in recent years (Muncie & McLaughlin 2001). Influenced by Sutherland (1983), who introduced the concept of 'white collar crime', criminology as a discipline has begun to accept that it should be concerned with 'harms' as much as 'crimes' (Muncie 2000, 1). For example, the development of 'green' criminology explores and addresses environmental 'harms' (White & Heckenberg 2014), breaches of workplace health and safety laws are now understood as 'safety crimes' (Tombs & Whyte 2007), and there is a general acceptance that atrocities which incur harms within nation states, must be appropriately acknowledged as 'war crimes' (Cohen 2001). Such 'harms' have begun to be politicised and have, consequently, prompted a re-conceptualisation of what constitutes 'crime' within the discipline of criminology (Muncie 2000, 3). Gendered harms however, do not appear to carry equivalent importance (Cain & Howe 2008, 13). Whilst there is now a societal understanding regarding domestic violence (Howe 2008, 44), many other areas of feminist concern are either not included in the discussion, or, like domestic violence, are under-enforced (Cain & Howe 2008, 15). Assaults upon women prompt harms which may only become apparent at a later

date (Box 1983, 11). For example, women who have experienced sexual assault, have feelings of distrust in men as a collective group, to the point where they consider they will be unable to embark upon a relationship with a man in the future (Stanko 1985, 46). Yet such harms are excluded from having a formal definition, and are thus rendered less important than those harms which meet the criteria to be identified as a 'proper crime' (Barton et al. 2007a). A long standing critique from feminists is that feminist issues are considerably neglected by criminology (Naffine 1997, 1). Furthermore, when women are brought into the discussion, there is an over analysis on female offending which relies on antiquated, Lombrosian lines of thought, which are biologically deterministic (Smart 1995, 18). Additionally, there is a notable absence of women as victims of harm, either as a consequence of being subjected to a criminal offence (Smart 2013, 176), or, as victims from the powerful discriminators operating throughout the law and the Criminal Justice System (CJS) (Kennedy 2003, ix). A social harm perspective offers an alternative view to traditional understandings of crime because it seeks to account for a range of social harms which criminology appears, on the whole, to be disinterested in (Pemberton 2007, 27).

Definitions of 'crime' are problematic in the sense that they offer a very narrow understanding of crime (Muncie & McLaughlin 2001, 11). However, when 'crime' is subjected to a series of critical deconstructions, a more complex picture emerges (Muncie 2000). For example, prior to 1991 it was *not* a criminal offence for a man to rape his wife (The Law Commission 1992). Whilst marital rape is now *illegal*, the difficulties surrounding successful prosecutions should however, not be dismissed (Crown Prosecution Service 2002). This justifies further discussion. If a woman is raped by her husband, although illegal, he is often not identified as a criminal due to the range of problems associated with 'policing the bedroom' (Kennedy 2005, 89). In addition to the methodological difficulties for researchers to qualify and quantify such offences (Walby et al. 2012), the harms to women are not accounted for, because they do not easily fall into a recognised or an accepted definition of harm (Cain & Howe 2008, 5). A social harm based discourse may be appropriate in such instances, because it draws attention to a host of emotions such as fear, insecurity, violation, grief, powerlessness and dispute, which are unwanted consequences generated from the original crime (Muncie 2000, 6). Additionally, when the attrition rate is scrutinized, it becomes obvious that women's accounts of rape, or indeed any sexual assault, are progressively reduced at every stage of the CJS (Gregory & Lees 1996), which can be defined as institutionalised harm (Dorling 2007, 123). A social harm approach allows for corporate and collective culpabilities to be raised as worthy of discussion (Hillyard & Tombs 2008, 17). In a harm-based discourse, the concept of 'crime' is important, but only in so far as it alerts us to power relations rooted in social orders, which generate

a whole series of repercussions, but of which, many are considered not worthy of criminal sanctions (Muncie 2000, 4). However, although a social harm perspective may be useful for appropriately acknowledging harms experienced by women (Pantazis 2007, 137), such a perspective is not without its own problems. Firstly, there is no uniformity in experiences of 'harm' (Cain & Howe 2008, 2), and in rape, for example, it has been suggested that *any* incident of rape amounts to a social injury or a harm to *all* women (Shanahan 1999, 1371), because women, where possible, adopt precautionary techniques to avoid being a receptacle for men's sexual misconduct (Stanko 1985,70). Secondly, even if it was possible to establish an agreed framework to assess levels of harms experienced by women, it would nevertheless be impossible to ascertain the extent of harm (Greenfield & Paoli 2013). Finally, harm does not only incite fear, it provides fascination, pleasure and entertainment for some individuals (Hopkins Burke 2011, 215). The 'seductions of crime', where deviance becomes a delight (Katz 1988), is arguably not conducive to feminist thought regarding harms against women, and therefore requires careful consideration.

Harms experienced by women are so endemic (Cain & Howe 2008, 3), they become 'ordinary experiences' (Stanko 1985); ordinary experiences on an immense level however, if consideration is given to the Everyday Sexism project (Bates 2014). Stalking is a deeply traumatic and intimidating experience and produces a range of consequences varying in intensity (Victim Support 2015). Figures suggest that 18.1% of women aged 16-59 have experienced stalking since the age of 16 (Home Office 2011, 5). Moreover, studies have confirmed that there is a correlation between intimate partner violence and stalking (McFarlane et al. 1999, 300). The Protection from Harassment Act 1997 was amended in 2012 to cover all forms of harassment, including stalking (Crown Prosecution Service 2015). As a consequence, in 2013 the number of prosecutions for stalking rose by 20% (Bowcott 2014). An uncritical analysis of such a statistic would suggest that the newly amended 'crime' of stalking has been a success. However, a conception of crime without a conception of power is meaningless (Muncie 2000, 4), and it must therefore be noted, that these figures may well be a reflection of operational practices of criminal justice agents, seeking to affirm political agenda (Crown Prosecution Service 2014a).

Such positive reporting creates a false impression because, despite a 'new crime' being created and backed up by an increase in prosecutions, in practice it is actually very difficult for women to pursue criminal justice procedures, because there is no legal definition for stalking (Crown Prosecution Service 2015). The legislation merely stipulates that Section 2A of the 1997 Act 'prohibits a person from pursuing a course of conduct that amounts to stalking' (GOV.UK 2012), but it does not define

what stalking is. With as many as one in five women claiming to have experienced stalking (Centre for Crime and Justice Studies 2014), it seems absurd that a clear and concise legal definition of stalking has not been established. Yet, when the Home Office introduced the amendment to the 1997 Act, their purpose was to account for stalking (GOV.UK 2012). The lack of a clear definition is somewhat surprising, because to ascertain levels of prevalence, a clear definition would be a helpful, if not an essential prerequisite (Finch 2001, 1). Section 2A (3) of the 1997 Act identifies a list which, in their own words, 'is not an exhaustive list but gives an indication of the types of behaviour that may be displayed in a stalking offence' (GOV.UK 2012). Listed behaviours include: 'following a person, contacting, or attempting to contact a person by any means, loitering in any place (whether public or private), interfering with any property in the possession of a person or, watching or spying on a person' (GOV.UK 2012). These 'listed behaviours' are a description of an offence rather than a legal category in its own right (Finch 2001, 1), which serves to deny women protection from harm (Cain & Howe 2008, 16). Clearly, language plays a crucial role in shared understandings which can put obstacles in the pathway to justice for women (Finch 2001, 91).

Helen Pearson endured a 5 year stalking campaign by Joseph Willis. In this case, her car tyres were slashed and the bodywork of the vehicle damaged, a dead cat was left on her doorstep, graffiti was daubed around the streets near her flat, and she received threatening letters. Although Devon and Cornwall Police were alerted to 125 separate complaints, they did not take any formal action against Willis. Willis was eventually charged, but only with her attempted murder, when he repeatedly stabbed Helen Pearson with a pair of scissors (BBC News 2014). It is difficult to see how his previous actions did not fulfil the 'listed behaviours' criteria which amount to an experience of stalking. Moreover, this is not an isolated case study; research has shown that there is a connection between stalking and femicide (McFarlane et al. 1999, 300). In 2013, after their relationship had broken down, Caroline Parry's estranged husband stalked her and shot her dead, despite Caroline Parry having made several earlier complaints to the police about her estranged husband's behaviour towards her. Caroline Parry had also warned the police about her husband's unsuitability to own shotguns. Regrettably, the police were wrong in not considering Caroline Parry to be 'at risk of serious harm' (Morris 2014). These case studies highlight concrete evidence of women being denied justice, despite fulfilling criteria stated by legislation, and raise questions as to why these women were silenced when they made their complaints (Cain & Howe 2008, 9). When the Home Office claim to include stalking as a priority in their commitment to end violence against women (Home Office 2011, 3), it is offensive, indeed 'harmful', that such violence is overlooked (Cain & Howe 2008, 9). The wider picture is that some women are at significant risk of violence or death should they

reject a man (Campbell 2013). It must therefore be questioned whether this failure to protect women is in itself, a social harm (Cain & Howe 2008, 16).

Women are susceptible to a range of harms throughout their life course (Pantazis 2007), and as Joshi (2003, 155) notes, these harms are gender specific not gender related. Harms to women should be understood in a global context, because there is evidence that many governments do not pass laws to criminalise 'customs' and traditions that subordinate women (Cain & Howe 2008, 10). In this respect Julie Bindel argues that FGM is a particularly abhorrent form of abuse which is embedded in superstition (2014, 6). The procedure involves the partial or total removal of the external female genitalia for non-medical reasons (World Health Organisation 2014). It is predominately performed on children by forcible restraint, accompanied with no anaesthetic. In addition to psychological trauma, FGM can have lifelong adverse gynaecological and obstetrical consequences (Equality Now 2015) and has been known to result in disease or death (Pantazis 2007, 137). There are four different types of the procedure, none of which have any health benefits (Forward 2015). FGM specifically concerns minority cultures where the practice is rooted in patriarchal systems (Patel 2003, 252). FGM, which leaves girls maimed and traumatized, is however commonly portrayed as a 'cultural' practice, which serves to perpetuate its practice (World Health Organisation 2014).

Although FGM is a violation of International Human Rights and is an accepted mode of child abuse (Forward 2015; NSPCC 2015), the figures relating to FGM are illuminating in terms of the numbers involved, and the geographic extent of this abhorrence (Bindel 2014, 6). FGM is prevalent in 28 African countries as well as in parts of the Middle East and Asia (HM Government 2014, 8). It is believed that over 130 million girls worldwide have undergone the practice (Forward 2015). In Somalia, as many as 98% of women and girls have had the procedure performed (Ibid. 2014, 10). Moreover, global migration has seen significant increases in populations in England from countries where FGM is prevalent (Bindel 2014, 6). This offers an explanation for the 137,000 women and girls in this country who are living with the consequences of having had the procedure performed upon them (Forward 2015). Although estimations are difficult to ascertain, due to the clandestine nature surrounding FGM (Johal 2003, 33), it is estimated that a further 60,000 girls in England are believed to be at risk (Forward, 2015). Despite these statistics, there is however, a significant lack of information for medical professionals to detect FGM and it should be noted that FGM is not currently on the nursing curriculum (World Health Organisation 2014).

Under the Prohibition of Female Circumcision Act 1985 (Bindel 2014, 7), and the Female Genital Mutilation Act 2003, FGM is illegal in England (HM Government 2014, 8). However, whilst laws have been in place since 1985, to date there has only been one prosecution (Crown Prosecution Service 2014b). Whilst this prosecution is welcome, because it conveys the message that FGM is an unacceptable and illegal practice subject to sanctions (Barron 2014), questions must also be raised as to *why* FGM has been a criminal offence in England for nearly 30 years, yet only seen one prosecution (Ditum 2014). A solitary prosecution is not a panacea for FGM (Barron 2014).

Overall, as Howe rightly observes, any 'controversial' issues which concern feminists are under invested and significantly neglected (Howe 2008, 44). Issues surrounding the true extent of violence against women are noticeably absent in 'traditional' criminology, with often only a token chapter on 'gender and crime' in *The Oxford Handbook of Criminology* (Hillyard & Tombs 2008, 7). Whilst criminology has had very little to say about mass harms suffered by women, a social harm perspective provides a more accurate portrayal of harms because it departs from the rigid measures of culpability sought by the CJS (Hillyard & Tombs 2008, 17). FGM itself is a controversial subject (Siddiqui 2003, 285), which invites conflicting viewpoints; even from feminists. Germaine Greer's comments that FGM is comparable to modification in the name of beauty in contemporary society (Greer 1999, 120), was certainly not well received (BBC News 1999).

Harms against women are a significant problem in all societies, but there appears to be a limited correlation between the presence of a sanction and the presence of a 'harm' (Cain & Howe 2008, 16). Traditional criminology's recurring limitation is that it allows state and legally defined conceptions of crime to prevail (Muncie 2000, 7), which is unhelpful when 'crime' is difficult to define comprehensively (Henry 2006, 78). For this reason, it is therefore important to identify power structures surrounding the applications of the criminal label (Barton et al. 2007b, 207). Criminology as a discipline offers those who have suffered harms a very limited platform in which to politicise their harmful experiences, which may, or may not, have been accepted as a crime (Muncie 2000, 7). A social harm discourse can make attempts to account for the invisibility of such experiences within criminology (Hillyard & Tombs 2008, 21). However, although 'harm' clearly has its merits for analysing violence against women, it is a negotiated concept (Cain & Howe 2008, 3). Stalking and FGM are just two examples amongst many others, which raise a variety of problems for feminists and those who are interested in gender equality and (in)justice. Crimes are difficult to define, and harms equally so (Henry 2006). What is apparent, however, is that such examples suggest a need to delve deeper, to capture the full meaning of both social harm and crime (Muncie 2000, 7). A social



harm approach does not require a total rejection of traditional criminology (Hillyard & Tombs 2008, 21), for it is evident that there is a clear relationship between crime and social harm (Box 1983). A collaboration of the two may prove beneficial for feminists and all concerned. Violence against women can only be reduced through a consensus of opinion that it encompasses harms that are pervasive and insidious forms of behaviour (Brown 2014, 5). Whilst we currently have a combination of vague, ambiguous and outright contradictory messages from government legislation, it is the duty of all parents to socialise their children, both male and female, in respect of the unacceptable behaviours that comprise violence against women, in order to assist feminists in their struggle for equality.

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