

# ‘A leap forward’? Critiquing the criminalisation of domestic abuse in Northern Ireland

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## Abstract

*Following in the footsteps of other jurisdictions across the UK and Republic of Ireland, Northern Ireland is currently taking steps to criminalise ‘domestic abuse’. The proposed offence is strongly influenced by research into ‘coercive control’, a framing popularised by Evan Stark that captures both physical and non-physical forms of abuse. In this article, I introduce the Northern Ireland Domestic Abuse and Family Proceedings Bill, before analysing its likely impacts on victim-survivors. To do so, I draw from three key critiques of criminalisation that have emerged from both reformist and anti-carceral feminist scholarship: first, that implementation will pose practical challenges; second, that criminalisation will result in a range of unintended harms; and, third, that criminalisation alone is an ineffective response to domestic abuse. In light of these critiques, I argue for a more holistic response, which considers the underlying social structures and dynamics that contextualise the phenomenon of domestic abuse.*

**Keywords:** domestic abuse; coercive control; criminalisation; restorative justice; transformative justice.

## Introduction

Domestic abuse<sup>1</sup> is increasingly recognised globally as an issue of public concern and human rights implications which causes a wide range of serious physical and psychological effects for victim-survivors<sup>2</sup> and their children.<sup>3</sup> With COVID-19-related economic stress, restricted movement, social distancing and self-isolation exacerbating the

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1 Domestic abuse is one term used to describe patterns of threatening, controlling, coercive behaviour, violence or abuse (financial, physical, psychological/emotional, sexual) used by adults or adolescents against their current or former partners or family members. Other terms include domestic violence and partner violence or intimate partner violence in the context of intimate relationships.

2 This article refers to those who have suffered domestic abuse as ‘victim-survivors’ to acknowledge their victimisation while recognising that some prefer ‘survivor’ as a more empowering term.

3 Jane E M Callaghan et al, ‘Beyond “witnessing”: children’s experiences of coercive control in domestic violence and abuse’ (2018) 33 *Journal of Interpersonal Violence* 1551.

vulnerability of those for whom the home is unsafe,<sup>4</sup> debates about how to meaningfully respond to and prevent domestic abuse have never been more urgent. Across the world, criminal justice policies and legislative frameworks have dominated responses to domestic abuse for several decades.<sup>5</sup> However, these frameworks have been critiqued for failing to deliver justice to victim-survivors or reduce the prevalence of domestic abuse.<sup>6</sup> One critique that has gained particular traction amongst policy makers and legislatures in recent years has been that criminal law's focus on 'violent incident models'<sup>7</sup> has prevented appropriate recognition of the long-term patterns of physical and non-physical behaviours that can categorise domestic abuse.<sup>8</sup> Research has consistently shown that not only 'long-standing physical and sexual abuse' but patterns of 'threats, stalking, isolation, and numerous instances of control' create the context for many victims of domestic abuse,<sup>9</sup> with non-physical harms often having longer and greater negative impacts.<sup>10</sup>

Across the UK and the Republic of Ireland, sustained campaigns have spurred moves to criminalise non-physical abuse. Legislation prohibiting 'controlling or coercive behaviour' was introduced in England and Wales in 2015,<sup>11</sup> a criminal offence of 'coercive control' was introduced in the Republic of Ireland in 2018,<sup>12</sup> and 'partner abuse' was criminalised in Scotland the same year.<sup>13</sup> Following in these footsteps, a Domestic Abuse and Family Proceedings Bill (the Northern Ireland Bill) is now being debated in Northern Ireland. If passed, this Bill would create a new criminal offence, prohibiting patterns of psychological, emotional and physical abuse perpetrated against partners, ex-partners and family members. Although distinct in their formulations, each of these pieces of legislation have drawn to some extent on the concept of 'coercive control', a framing of abuse publicised by Evan Stark (and others) as a means of emphasising the importance of power and control in abusive relationships.<sup>14</sup> The concept highlights how 'minor' acts of violence and other non-physical forms of control, which might by themselves not appear to justify an intervention, become significant when viewed as part of a broader pattern of behaviour.<sup>15</sup> Stark has strongly argued that 'violent incident

4 'UN chief calls for domestic violence "ceasefire" amid "horrifying global surge"' (*UN News*, 5 April 2020) <<https://news.un.org/en/story/2020/04/1061052>>; Maria Luisa Moreira, 'The invisible pandemic: domestic violence within EU borders' (*LSE Blogs*, 11 June 2020) <<https://blogs.lse.ac.uk/wps/2020/06/11/the-invisible-pandemic-domestic-violence-within-eu-borders>>.

5 Aparna Polavarapu, 'Global carceral feminism and domestic violence: what the west can learn from reconciliation in Uganda' (2019) 42(1) *Harvard Journal of Law and Gender* 123.

6 See e.g. Cheryl Hanna, 'The paradox of progress: translating Evan Stark's coercive control into legal doctrine for abused women' (2009) 15(12) *Violence Against Women* 1458; Mandy Burton, *Legal Responses to Domestic Violence* (Routledge 2008); Susan Edwards, *Policing Domestic Violence: Women, the Law and the State* (Sage 1989).

7 Richard Gelles, *Intimate Violence in Families* (Sage 1997).

8 Evan Stark, 'Looking beyond domestic violence: policing coercive control' (2012) 12 *Journal of Police Crisis Negotiations* 199.

9 Evan Stark and Marianne Hester, 'Coercive control: update and review' (2019) 25(1) *Violence Against Women* 81.

10 Torna Pitman, 'Living with Coercive Control' (2017) 47(1) *British Journal of Social Work* 143.

11 Serious Crime Act 2015, section 76.

12 Domestic Violence Act 2018, section 39.

13 Domestic Abuse (Scotland) Act 2018.

14 Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press 2007); Evan Stark, 'Rethinking coercive control' (2009) 15(12) *Violence Against Women* 1509. See also Susan Schechter, *Women and Male Violence* (South End Press 1982); For other similar formulations, see e.g. Michael Johnson, *A Typology of Domestic Violence* (Northeastern University Press 2008); Richard Tolman 'The development of a measure of psychological maltreatment of women by their male partners' (1989) 4 *Violence and Victims* 159.

15 Stark (2012) (n 8) 204–205.

models' are failing victim-survivors, as 'the characteristic pattern of violence in coercive control involves frequent, even routine, low-level assaults that either fall below the radar of police screens or else result in few or no sanctions. Meanwhile, the forms of intimidation, isolation, degradation and control that comprise the infrastructure of coercive control remain largely invisible to law and criminal justice.'<sup>16</sup>

Although neither theoretically nor empirically uncontested,<sup>17</sup> Stark's concept of coercive control has had a significant influence on legal, policy and advocacy strategies around domestic abuse.<sup>18</sup> However, as observed by Walklate and Fitz-Gibbon, 'the mere introduction and "travelling" nature of such policies should not be misinterpreted as evidence of their effectiveness in practice'.<sup>19</sup> At the Second Stage of the Northern Ireland Bill debate in April 2020, Northern Irish Minister of Justice Naomi Long stated that '[w]hile the Bill is not a panacea, it is not just a positive step in the right direction but perhaps a leap forward in the fight against domestic abuse in Northern Ireland'.<sup>20</sup> In this article, I interrogate the assumption that the Bill will constitute 'a leap forward' in combatting domestic abuse. To do so, I engage with three key critiques that have emerged from the literature: first, that criminalisation will be challenging to implement in practice; second, that criminalisation will have unintended negative consequences; and, third, that criminalisation alone will be ineffective at addressing domestic abuse. Throughout, I situate these critiques in the particular context of Northern Ireland, a conservative patriarchy where religious, social and gendered norms have intersected with a history of political violence and continued economic strain, contributing to an environment where gendered violence has been both prevalent and hidden.<sup>21</sup> In doing so, I aim to contribute to the task of 'drawing out and differentiating that which is unique to the fabric of the criminal justice system in Northern Ireland', as well as those aspects that are shared with the rest of the UK.<sup>22</sup>

The three critiques outlined above are drawn from two schools of feminist anti-violence thought. The first is 'reformist' scholarship, which frames criminalisation as an important, if imperfect, avenue for addressing domestic abuse.<sup>23</sup> This prioritisation of criminalisation as an anti-violence tactic emerged from the liberal political roots of the women's movement in the USA and UK<sup>24</sup> and the desire to correct the 'legacy of judicial

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16 Ibid 212.

17 Sylvia Walby and Jude Towers, 'Untangling the concept of coercive control' (2018) 18 *Criminology and Criminal Justice* 7.

18 Michele Burman and Oona Brooks-Hay, 'Aligning policy and law? The creation of a domestic abuse offence incorporating coercive control' (2018) 18(1) *Criminology and Criminal Justice* 67.

19 Sandra Walklate and Kate Fitz-Gibbon, 'The criminalisation of coercive control' (2019) 8(4) *International Journal for Crime, Justice and Social Democracy* 94.

20 Transcript available at <[www.theyworkforyou.com/ni/?id=2020-04-28.2.28&p=24994](http://www.theyworkforyou.com/ni/?id=2020-04-28.2.28&p=24994)>.

21 See e.g. Jessica Leigh Doyle and Monica McWilliams, *Intimate Partner Violence in Conflict and Post-Conflict Societies: Insights and Lessons from Northern Ireland* (Political Settlements Research Programme 2018) 66–68; Alice McIntyre, *Women in Belfast: How Violence Shapes Identity* (Praeger 2004); Fidelma Ashe, *Gender, Nationalism and Conflict Transformation* (Routledge 2019).

22 Anne-Marie McAlinden and Clare Dwyer, "'Doing" criminal justice in Northern Ireland: "policy transfer", transitional justice and governing through the past" in Anne-Marie McAlinden and Clare Dwyer, *Criminal Justice in Transition: The Northern Ireland Context* (Bloomsbury Publishing 2015) 365.

23 See e.g. Lise Gotell, 'Reassessing the place of criminal law reform in the struggle against sexual violence' in Anastasia Powell, Nicola Henry and Asher Flynn (eds), *Rape Justice* (Palgrave Macmillan 2015).

24 While this movement emerged originally as a response to violence against women in the context of heterosexual intimate relationships, we now know that domestic abuse can impact people of all genders and sexual orientations. In this article, I will use inclusive language wherever possible to recognise this reality. This is not intended to minimise the serious nature or continued prevalence of male violence against women.

indifference to violence in the private matters of the home'.<sup>25</sup> As observed by Simon, 'domestic violence has emerged over the last three decades as one of the clearest cases where a civil rights movement has turned to criminalization as a primary tool of social justice'.<sup>26</sup> Dubbed 'carceral feminism'<sup>27</sup> by its critics,<sup>28</sup> this school of thought often centres around perceived gaps or limitations in legal frameworks, or the failure of law enforcement practitioners to adequately police or prosecute domestic abuse.<sup>29</sup> As such, it explores ways of making legal frameworks more effective and 'victim-centric'.

The second school of thought, known as 'anti-carceral feminism' or 'feminist abolitionism',<sup>30</sup> looks beyond interpersonal violence to consider the structural oppressions and inequalities that facilitate and enable violence in homes and families.<sup>31</sup> Drawn from the Black feminist movement in the USA,<sup>32</sup> this approach refutes the ability of criminal interventions to deliver justice,<sup>33</sup> condemns the violence perpetrated by the criminal justice system,<sup>34</sup> critiques its ability to respond to the socio-economic needs of victim-survivors,<sup>35</sup> and advocates for alternative community-led restorative and transformative justice approaches.<sup>36</sup> Rather than definitively placing this article in either school of thought, I engage in what Matsuda has termed the 'dance with the devil',<sup>37</sup> accepting the presence of criminal justice as part of a response to domestic abuse, while retaining an awareness of the inherent limitations and risks of such a response. As a result, I argue for a more holistic response to domestic abuse, one which may continue to encompass criminal sanctions, but which also looks beyond criminalisation to consider a broader range of preventative and responsive measures.

The article proceeds as follows. It first provides context to this discussion by outlining the background to the Northern Ireland Bill and its main provisions. It then engages with the first of the three critiques outlined above, arguing that there will be significant

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- 25 Deborah M Weissman, 'The community politics of domestic violence' (2016) 82 *Brooklyn Law Review* 1479.
- 26 Jonathon Simon, *Governing through Crime* (Oxford University Press 2007) 180.
- 27 Elizabeth Bernstein, 'The sexual politics of the "new abolitionism" differences' (2007) 18(3) *Journal of Feminist Cultural Studies* 128.
- 28 '... to my knowledge no feminist scholar has explicitly embraced this label': Chloe Taylor, 'Anti-carceral feminism and sexual assault – a defense' (2018) *Social Philosophy Today* 1543.
- 29 See e.g. Heather Douglas and Lee C Godden, 'The decriminalisation of domestic violence' (2003) 27 *Criminal Law Journal* 32.
- 30 Patricia O'Brien et al, 'Introduction to special topic on anticarceral feminisms' (2020) 35(1) *Affilia: Journal of Women and Social Work* 5.
- 31 Gillian McNaull, 'Contextualising violence: an anti-carceral feminist approach' in Rachel Killean, Eithne Dowds and Anne-Marie McAlinden (eds), *Sexual Violence on Trial* (Routledge 2021).
- 32 Beth E Richie, 'Reimagining the movement to end gender violence: anti-racism, prison abolition, women of color feminisms, and other radical visions of justice' (2015) 5 *University of Miami Race and Social Justice Law Review* 257, 268.
- 33 Leigh Goodmark, *A Troubled Marriage* (New York University Press 2011).
- 34 Beth E Richie, *Arrested Justice* (New York University Press 2012).
- 35 See e.g. Deborah M Weissman, 'The personal is political—and economic: rethinking domestic violence' (2007) *Brigham Young University Law Review* 387.
- 36 See e.g. Emily Thuma, *All our Trials* (University of Illinois Press 2019); Ejeris Dixon and Leah Piepzna-Samarasinha, *Beyond Survival* (AK Press 2020); Mimi E Kim, 'From carceral feminism to transformative justice: women-of-color feminism and alternatives to incarceration' (2018) 27(3) *Journal of Ethnic and Cultural Diversity in Social Work* 219.
- 37 'For now feminists must dance with the devil – demanding that the existing criminal justice system protect women from violence even as we criticize and work toward the abolishment of that system': Mari Matsuda, *Where is Your Body? And Other Essays on Race, Gender and the Law* (Beacon Press 1996).

challenges associated with implementing the proposed Bill. To do so, it focuses on the difficulties criminal justice practitioners may face in identifying, investigating and evidencing the new offence. It then turns to the second critique, arguing that criminalisation will result in secondary victimisation for victim-survivors, both as a result of their engagement with the criminal justice system and as a result of the outcomes that follow that engagement. Turning to the third critique, the article argues that prioritising a criminal justice response will be an ineffective means of reducing domestic abuse perpetration. As a result of this analysis, the article's final section explores how we might look beyond criminalisation to consider a more holistic response, one which places domestic abuse in its broader structural and societal context and which encompasses a range of preventative and responsive measures.

### 1 Criminalising domestic abuse in Northern Ireland

While underreporting can make it difficult to determine the full extent of domestic abuse in Northern Ireland,<sup>38</sup> available statistics nonetheless demonstrate that it is a substantial problem. The Police Service of Northern Ireland (PSNI) recorded 31,682 domestic abuse incidents in 2018/2019, the highest level recorded since the data series began in 2004/2005,<sup>39</sup> with an average of five domestic homicides taking place each year.<sup>40</sup> It is estimated that about one in every five to six women<sup>41</sup> and about one in every 10 to 12 men experience domestic abuse,<sup>42</sup> with domestic homicides accounting for a quarter of all homicides in Northern Ireland.<sup>43</sup> Indeed, Northern Ireland has been reported as having one of the highest rates of domestic homicide in Europe.<sup>44</sup> The recent COVID-19 lockdown has tragically highlighted the prevalence of this phenomenon, with 2000 domestic abuse calls made to the PSNI in the first three weeks of April 2020 and three deaths attributed to domestic abuse between March and April.<sup>45</sup>

Recognising the need to address this pervasive harm, the Northern Ireland Department of Health, Social Services and Public Safety (DoHSSPS) and the Department of Justice (DoJ) in Northern Ireland published a seven-year Strategy, 'Stopping Domestic and Sexual Violence and Abuse in Northern Ireland' in 2016.<sup>46</sup>

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38 The Northern Ireland Crime Survey 2010/2011 found that the PSNI was only alerted to approximately one-third of the 'worst' cases of domestic abuse, cited in DoHSSPS and DoJ, *Stopping Domestic and Sexual Violence and Abuse in Northern Ireland: A Seven Year Strategy* (March 2016) <[www.health-ni.gov.uk/publications/stopping-domestic-and-sexual-violence-and-abuse-northern-ireland-strategy](http://www.health-ni.gov.uk/publications/stopping-domestic-and-sexual-violence-and-abuse-northern-ireland-strategy)>.

39 PSNI, 'Trends in domestic abuse incidents and crimes recorded by the police in Northern Ireland' 2004/05–2018/19 (*Annual Bulletin*, 8 November 2019).

40 DoHSSPS and DoJ, *Developing a Workplace Policy on Domestic and Sexual Violence and Abuse: Guidance for Employers* (November 2018) <[www.nibusinessinfo.co.uk/sites/default/files/Developing-a-Workplace-Policy-on-Domestic-and-Sexual-Violence.pdf](http://www.nibusinessinfo.co.uk/sites/default/files/Developing-a-Workplace-Policy-on-Domestic-and-Sexual-Violence.pdf)>.

41 Women's Aid Annual Survey 2015 <[www.womensaid.org.uk/womens-aid-releases-annual-survey-2015-statistics](http://www.womensaid.org.uk/womens-aid-releases-annual-survey-2015-statistics)>.

42 DoHSSPS and DoJ (n 38) 22.

43 PSNI, 'Trends in domestic abuse incidents and crimes recorded by the police in Northern Ireland' 2004/05–2014/15 (*Annual Bulletin*, 6 August 2015).

44 Eurostat, 'Intentional homicide victims by victim-offender relationship and sex: number and rate for the relevant sex group' [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=crim\\_hom\\_vrel&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=crim_hom_vrel&lang=en).

45 Jayne McCormack, 'Coronavirus: three domestic killings since lockdown began' (*BBC News*, 28 April 2020) <[www.bbc.co.uk/news/uk-northern-ireland-52440662](http://www.bbc.co.uk/news/uk-northern-ireland-52440662)>. See also Ronagh McQuigg, 'Domestic violence – the "shadow pandemic"' (Queen's Policy Engagement, 28 October 2020) <<http://qpol.qub.ac.uk/domestic-violence-the-shadow-pandemic/>>.

46 DoHSSPS and DoJ (n 38).

Reflecting the influence of Stark's coercive control model, the Strategy produced a new definition of domestic abuse, encompassing:

... threatening, controlling, coercive behaviour, violence or abuse (psychological, virtual, physical, verbal, sexual, financial or emotional) inflicted on anyone (irrespective of age, ethnicity, religion, gender, gender identity, sexual orientation or any form of disability) by a current or former intimate partner or family member.<sup>47</sup>

This framing of abuse is not reflected in Northern Ireland's criminal law. Existing criminal offences capture some behaviours associated with domestic abuse, including common assault,<sup>48</sup> assault occasioning actual bodily harm,<sup>49</sup> wounding with intent to cause grievous bodily harm,<sup>50</sup> sexual assault and rape,<sup>51</sup> and harassment and 'putting people in fear of violence'.<sup>52</sup> This is reflective of the 'violent incident model' and has been criticised both for its failure to recognise patterns of abuse and for making non-physical abuse almost impossible to prosecute.<sup>53</sup> Statistics highlight the challenges of prosecuting perpetrators under the existing legal framework: data from the Criminal Justice Inspection (Northern Ireland) (CJINI) indicates that a third of domestic violence and abuse cases do not meet the required standards to proceed to a prosecution, with under a third resulting in a conviction.<sup>54</sup>

Moves to introduce a new criminal offence recognising patterns of coercive and controlling behaviour began with a consultation in February 2016.<sup>55</sup> Although respondents were generally favourable of such a move, progress was slowed by the collapse of the Northern Ireland Assembly in January 2017. However, a subsequent consultation was held in 2019 to explore options for legislation prohibiting victims of domestic abuse from being cross-examined by perpetrators in person in family proceedings.<sup>56</sup> This also garnered positive responses, and, following the re-establishment of the Assembly in January 2020, the Minister of Justice introduced the Domestic Abuse and Family Proceedings Bill to the Northern Ireland Assembly on 31 March 2020.<sup>57</sup>

The Bill aims to 'improve the operation of the justice system by creating an offence that recognises the experience of victims, the repetitive nature of the abusive behaviour and the potential cumulative effect of domestic abuse'.<sup>58</sup> To do so, it introduces a new

47 Ibid 18.

48 Offences Against the Person Act 1861, section 42.

49 Ibid section 47.

50 Ibid section 18.

51 Sexual Offences (Northern Ireland) Order 2008, Articles 7 and 14.

52 Protection from Harassment (Northern Ireland) Order 1997.

53 Julia Tolmie, 'Coercive control: to criminalize or not to criminalize' (2018) 18(1) *Criminology and Criminal Justice* 50.

54 CJINI, *No Excuse: A Thematic Inspection of the Handling of Domestic Violence and Abuse Cases by the Criminal Justice System in Northern Ireland* (June 2019). See also PSNI (n 39).

55 Details available at <[www.justice-ni.gov.uk/consultations/domestic-abuse-offence-and-domestic-violence-disclosure-scheme/](http://www.justice-ni.gov.uk/consultations/domestic-abuse-offence-and-domestic-violence-disclosure-scheme/)>.

56 Details available at <<https://www.justice-ni.gov.uk/consultations/consultation-prohibition-cross-examination-family-proceedings>>.

57 Details available at <[www.niassembly.gov.uk/assembly-business/legislation/2017-2022-mandate/primary-legislation---bills-2017---2022-mandate/domestic-abuse-bill/](http://www.niassembly.gov.uk/assembly-business/legislation/2017-2022-mandate/primary-legislation---bills-2017---2022-mandate/domestic-abuse-bill/)>

58 Explanatory and Financial Memorandum, NIA Bill 03/17-22 EFM, paragraph 17.

offence of domestic abuse;<sup>59</sup> an aggravation of domestic abuse which can be applied to other offences;<sup>60</sup> and two child aggravators associated with the domestic abuse offence.<sup>61</sup> It also makes a number of associated changes to procedures in criminal and family proceedings.<sup>62</sup> Although the new offence does not specifically criminalise 'coercive control' by name, the influence of this framing is evidenced by the offence's focus on courses of behaviour (defined as at least two incidents of behaviour) including psychological, emotional and physical abuse.<sup>63</sup> The offence is broader than Stark's conceptualisation of coercive control as violence perpetrated by men against their female intimate partners. In keeping with the definition used in the 2016 Strategy outlined above, it is, instead, gender neutral and extends to abuse perpetrated by partners, ex-partners and family members (defined as 'personally connected' persons).<sup>64</sup>

Further reflecting the influence of coercive control, the Bill explicitly acknowledges relevant effects that could indicate that behaviour is abusive. This includes behaviour that causes victims to become dependent on or subordinate to the abuser, that isolates the victim, that involves the controlling, regulating or monitoring of the victims' activities, that restricts freedom of action, or makes the victim feel frightened, humiliated, degraded, punished or intimidated.<sup>65</sup> In recognising dependency, subordination, control and isolation, the proposed offence moves beyond the 'violent incident model', criminalising the 'underlying architecture' of domestic abuse.<sup>66</sup> Importantly, rather than requiring proof that a victim felt those specific effects, an offence is committed when a 'reasonable person' would consider that the course of behaviour would be likely to cause physical or psychological harm, including fear, alarm and distress, and when the accused either intended to cause harm, or was reckless as to whether it did or not.<sup>67</sup> In removing the requirement of a specific effect (required in England and Wales), the Northern Ireland Bill mirrors the approach taken in Scotland, praised as the 'gold standard' of coercive control legislation.<sup>68</sup>

If passed, the Bill is likely to please those who consider the criminal law a positive tool in changing people's lives.<sup>69</sup> Certainly, the offence delivers on its aim of better recognising the 'experience of victims, the repetitive nature of the abusive behaviour and the potential cumulative effect of domestic abuse'.<sup>70</sup> This, it has been argued, has symbolic power. As reasoned by Tadros, criminal law should reflect domestic abuse's 'moral distinctiveness' as a specific form of violence.<sup>71</sup> This recognition may in turn send a message about the state's condemnation of such behaviour, facilitating a change in

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59 Domestic Abuse and Family Proceedings Bill, as introduced in the Northern Ireland Assembly on 31 March 2020 (Bill 03/17-22) (the NI Bill), section 1.

60 Ibid, section 15.

61 Ibid sections 8–9.

62 Ibid sections 21–26.

63 Ibid section 2.

64 Ibid section 5.

65 Ibid section 2(3).

66 Tolmie (n 53) 52.

67 NI Bill (n 59) section 1(2).

68 Burman and Brooks-Hay (n 18) 78.

69 Charlotte Barlow et al, 'Putting coercive control into practice: problems and possibilities' (2020) 60 *British Journal of Criminology* 160.

70 Explanatory and Financial Memorandum (n 58) 17.

71 Victor Tadros, 'The distinctiveness of domestic abuse: a freedom based account' (2005) 65(3) *Louisiana Law Review* 989.

societal norms about the acceptability of such behaviour.<sup>72</sup> Similarly, it has been argued that criminalising non-physical abuse could have a broader educative function, enabling victim-survivors to put a name to their experience and reducing the stigma associated with staying in an abusive, violent situation.<sup>73</sup> However, while potentially symbolically important, the ability of increased criminalisation to meaningfully address domestic abuse and improve the lives of victim-survivors remains unclear. In the following section, I turn to the first of the three critiques outlined in my introduction, namely that there will be significant challenges associated with implementing a new domestic abuse offence.

## 2 The challenges of implementation

Law does not exist in a vacuum, and the Bill's implementation will inevitably be shaped by how criminal justice practitioners exercise their discretion when responding to reports of a domestic abuse incident.<sup>74</sup> Stark has argued that, by requiring police officers to place incidents of violence in their historical context through 'enhanced' questions and investigations, they will be encouraged to pursue a 'proactive response', applying sanctions designed to curtail the course of conduct.<sup>75</sup> Moves to criminalise coercive control in other jurisdictions have been praised for encouraging criminal justice professionals to view abuse as a process rather than an isolated incident,<sup>76</sup> and for enabling police interventions in instances where they might not previously have been able.<sup>77</sup> By facilitating earlier interventions, there is the hope that victim-survivors will be given time and space to implement safety plans,<sup>78</sup> potentially preventing future escalations to acts of physical violence and victim fatalities.<sup>79</sup> However, much will depend on the extent to which criminal justice practitioners are given the tools and knowledge required to correctly identify domestic abuse.<sup>80</sup> Police officer decisions taken at the scene, such as whether or not to carry out arrests or take other further action, will be formed by their ability to identify behaviour falling within the parameters of the new offence, conduct an accurate assessment of the risk posed, elicit relevant evidence from the victim-survivor and other sources, and correctly assess that evidence for the purposes of laying charges.<sup>81</sup> Following investigations, decisions as to whether to prosecute will be similarly influenced by prosecutors' understanding of the new offence and the evidence required to initiate and succeed in a prosecution.<sup>82</sup>

72 Leigh Goodmark, 'Should domestic violence be decriminalised' (2017) 40 *Harvard Journal of Law and Gender* 53, 66–67.

73 Stark (2012) (n 8) 215.

74 Iain R Brennan et al, 'Service provider difficulties in operationalizing coercive control' (2016) 25(6) *Violence Against Women* 635.

75 Stark (2012) (n 8).

76 Barlow et al (n 69).

77 Vanessa Bettinson, 'Criminalising coercive control in domestic violence cases: should Scotland follow the path of England and Wales?' (2016) *Criminal Law Review* 165.

78 Margret E Bell et al, 'Battered women's perceptions of civil and criminal court helpfulness' (2011) 17 *Violence Against Women* 71.

79 Andy Myhill, 'Measuring coercive control: what can we learn from national population surveys?' (2015) 21(3) *Violence Against Women* 355; Connie J A Beck and Chitra Raghavan, 'Intimate partner abuse screening in custody mediation: the importance of assessing coercive control' (2010) 48 *Family Court Review* 555; R Emerson Dobash and Russell P Dobash, *When Men Murder Women* (Oxford University Press 2015).

80 Barlow et al (n 69) 174.

81 Andy Myhill and Kelly Johnson, 'Police use of discretion in response to domestic violence' (2015) 16 *Criminology and Criminal Justice* 3.

82 Andy Myhill and Katrin Hohl, 'The "golden thread": coercive control and risk assessment for domestic violence' (2016) 34(21) *Journal of Interpersonal Violence* 4477.



This is likely to raise challenges in practice, as criminal justice practitioners will be required to adjust how they understand domestic abuse in two significant ways. First, the offence's focus on a 'course of behaviour' will require a shift in approach from 'responding and taking stock of crime "incidents"' as isolated events towards looking to a series of interrelated events'.<sup>83</sup> Second, the criminalisation of non-violent behaviours will require nuanced understandings of when behaviour has become criminal.<sup>84</sup> These two requirements are interlinked; often, the 'full scope of coercive control as a form of abuse only becomes apparent when these behaviours are interwoven into a pattern over time and when obeying an abuser's demands is largely based on fear'.<sup>85</sup> This is particularly the case when the abuser's demands correspond with traditional gender roles.<sup>86</sup> As noted by Bishop, 'compliance with demands about dressing, shopping or cooking in a particular way to avoid repercussions may seem voluntary to an outsider with little or no understanding of the dynamics in the relationship'.<sup>87</sup> While gender roles may play a part in shaping the forms of abuse, perpetrators have been shown to adapt tactics 'through trial and error based on their relative benefits and costs and the perceived vulnerabilities of their partner', meaning the specific tactics may differ substantially from case to case.<sup>88</sup> Additional barriers to the identification of abuse may arise in the case of same-sex intimate relationships, where heterosexist assumptions about the egalitarian nature of such relationships may obscure other power dynamics and abusive behaviours.<sup>89</sup> Criminal justice practitioners will be required to navigate these complexities when engaging with victim-survivors' and perpetrators' narratives. Research suggests that perpetrators construct narratives which focus on individual isolated incidents,<sup>90</sup> while victim-survivors may have normalised their experiences of abuse to the extent that they do not consider it as justifying a criminal intervention.<sup>91</sup> Indeed, the complexities of family and relationship dynamics and the centrality of 'normalisation' to long-term patterns of abuse may make identifying and naming the abuse very difficult.

There will be work to be done here; a qualitative study conducted in Northern Ireland in 2016 revealed that while police responses to domestic abuse had improved significantly over the past two decades, officers were 'dismissive of incidents involving psychological violence'.<sup>92</sup> Studies in jurisdictions where coercive control is criminalised have shown that practitioners continue to prioritise isolated incidents of violence or property

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83 Sandra Walklate, Kate Fitz-Gibbon and Jude McCulloch, 'Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories' (2015) 18(1) *Criminology and Criminal Justice* 115.

84 Tolmie (n 53) 56.

85 Stark (2012) (n 8) 203.

86 Ibid.

87 Charlotte Bishop, 'Why it's so hard to prosecute cases of coercive or controlling behaviour' (*The Conversation*, 31 October 2016) <<https://theconversation.com/why-its-so-hard-to-prosecute-cases-of-coercive-or-controlling-behaviour-66108>>.

88 Stark (2012) (n 8) 207. See also Marianne Hester, 'The three planet model: towards an understanding of contradictions in approaches to women and children's safety in contexts of domestic abuse' (2011) 41(5) *British Journal of Social Work* 837.

89 Carrie Brown, 'Gender-role implications on same-sex intimate partner abuse' (2008) 23 *Journal of Family Violence* 457.

90 Liz Kelly and Nicole Westmarland, 'Naming and defining "domestic violence": lessons from research with violent men (2016) 112(1) *Feminist Review* 113.

91 Amanda L Robinson, Andy Myhill and Julia Wire, 'Practitioner (mis)understandings of coercive control in England and Wales' (2018) 18(1) *Criminology and Criminal Justice* 29.

92 Doyle and McWilliams (n 21) 91.

destruction.<sup>93</sup> While police might identify coercive control practices when they appear alongside other forms of physical violence, they have a tendency to dismiss non-physical coercive control alone as ‘weak’ or ‘unverifiable’ evidence,<sup>94</sup> ‘arguments between partners’<sup>95</sup> or simply ‘horseshit’.<sup>96</sup> Studies have also suggested that police officers can grow frustrated when repeatedly called to the same address, demonstrating ignorance about the power dynamics of coercive control<sup>97</sup> and its eroding impact on the options available to victim-survivors.<sup>98</sup> Such mindsets have implications for both the way risk is assessed, and the follow-up and support that is offered to victim-survivors in light of that assessment.<sup>99</sup>

Reaching the required evidential threshold for a prosecution may also prove particularly difficult in cases of non-physical abuse, reducing the likelihood of prosecutions being taken forward, and increasing the barriers to a successful prosecution in cases that make it to trial.<sup>100</sup> As noted above, the Northern Ireland Bill focuses on the actions of the perpetrator and removes the requirement to prove that the victim-survivor experienced specific harm.<sup>101</sup> However, Burman and Brooks-Hay opine that it is unlikely to have that effect in practice, with the likelihood being that evidence of some harm will be required.<sup>102</sup> Indeed, given its private, subtle and individualised nature, it is difficult to imagine many situations in which a prosecution would not involve victim-survivor testimony.<sup>103</sup> This will raise challenges: victim-survivors may become uncooperative, hostile or simply unreliable witnesses. This can arise for many different reasons, from fear of reprisal to a desire for reconciliation and resistance to criminal sanctions (discussed below).<sup>104</sup> Indeed, victim-survivors may not have a clear idea of their own narrative; in some cases this is only possible once they have accessed safety and skilled support.<sup>105</sup>

On the other hand, it is worth acknowledging a distinct risk that can arise from the complex nature of domestic abuse – that of over-criminalisation. This might manifest in two ways. The first is in relation to the identification of a ‘course of behaviour’ constituting domestic abuse. As Burman and Brooks-Hay noted in the Scottish context, without a specification of what time period might be reasonable to constitute the offence, two incidents over a period of years might theoretically allow for a prosecution.<sup>106</sup> Second, the offence’s broad inclusion of non-physical behaviours potentially increases the

93 E.g. Andy Myhill, ‘Renegotiating domestic violence: police attitudes and decisions concerning arrest’ (2019) *Policing and Society* 52; Amanda L Robinson, Gillian M Pinchevsky and Jennifer A Guthrie, ‘A small constellation: risk factors informing police perceptions of domestic abuse’ (2018) 28(2) *Policing and Society* 189; Nicole Westmarland and Liz Kelly, ‘Why extending measurements of success in domestic violence perpetrator programmes matters for social work’ (2012) 43 *British Journal of Social Work* 1.

94 Barlow et al (n 69) 170.

95 *Ibid* 171.

96 Robinson et al (n 91) 38.

97 *Ibid* 37.

98 Tolmie (n 53) 57.

99 Robinson et al (n 91) 41.

100 Bishop (n 87).

101 NI Bill (n 59) section 3(1).

102 Burman and Brooks-Hay (n 18) 74.

103 Emma E Gorbies, ‘The Domestic Abuse (Scotland) Act 2018: the whole story’ (2018) 22 *Edinburgh Law Review* 406.

104 Cheryl Hanna, ‘No right to choose: mandated victim participation in domestic violence prosecutions’ (1996) 109 *Harvard Law Review* 1849.

105 Tolmie (n 53).

106 Burman and Brooks-Hay (n 18) 77.

likelihood of 'mutualisation', either through dual arrests of both parties or through resistance to a pattern of abuse being interpreted as abuse in its own right.<sup>107</sup> Victim-survivors of abuse may find themselves criminalised for, for example, seeking to deny their violent partner parental access to their shared children,<sup>108</sup> or using force in an attempt to stop or escape from violence.<sup>109</sup> Evidence from other jurisdictions suggests this false mutualisation has negatively impacted women in particular, with the number of arrests increasing at a rate unjustified by the extent of perpetration by women.<sup>110</sup> Such findings can be linked to gendered expectations, with women who are perceived to be stepping out of the passive norm facing harsher treatment. This has potential implications for Northern Ireland, where, as noted above, traditional gender roles remain prevalent.<sup>111</sup>

As a result of these challenges, scholars have stressed the need for additional guidance in conducting domestic abuse investigations, as well as extra funding to facilitate the implementation of new coercive control offences.<sup>112</sup> As Burman and Brooks-Hay note, improving responses through 'education, training and embedding best practice and domestic abuse expertise – is likely to be more effective than the creation of new offences alone'.<sup>113</sup> However, while training may assist, an awareness of an issue does not necessarily mean front-line professionals are adequately equipped to deal with them.<sup>114</sup> The subtlety and individualised nature of domestic abuse means its identification will require a complexity of analysis that it may not be realistic or fair to expect from first-responding police officers 'who are required to respond to and have a level of competence in dealing with a wide range of situations'.<sup>115</sup> Though knowledge and understanding may improve, its likely implementation will pose a considerable challenge in practice. Such a finding arguably invites reflections on whether additional and/or alternative measures might increase the possibilities of meaningfully responding to domestic abuse perpetration. These reflections become all the more important in light of the following section, which turns from the practical challenges of implementation to consider the impacts that a focus on criminalisation can have on victim-survivors of abuse.

### 3 Secondary victimisation and the harms of criminalisation

The introduction of a Domestic Abuse and Family Proceedings Bill forms part of the 'Protection and Justice' strand of the 2016 Strategy for 'Stopping Domestic and Sexual Violence and Abuse in Northern Ireland'.<sup>116</sup> This strand was identified as reflecting 'the need to protect the most vulnerable in society from violence and abuse, to protect and

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107 Tolmie (n 53) 61.

108 For calls to have 'parental alienation syndrome' included in definitions of domestic abuse, see 'The ManKind Initiative, submission to the Home Affairs Committee Inquiry into Domestic Abuse' (4 July 2018).

109 Susan L Miller and Michelle Meloy, 'Women's use of force: voices of women arrested for domestic violence' (2006) 12 *Violence Against Women* 89.

110 Alesha Durfee, 'Situational ambiguity and gendered patterns of arrest for intimate partner violence' (2012) 18 *Violence Against Women* 64.

111 See e.g. Angela Browne, *When Battered Women Kill* (Free Press 1987).

112 Brennan et al (n 74).

113 Burman and Brooks-Hay (n 18) 78.

114 Sue Peckover, 'Domestic abuse, safeguarding children and public health' (2014) 44 *British Journal of Social Work* 1770.

115 The PSNI does have domestic abuse officers, but these may not necessarily be the first point of contact.

116 DoHSSPS and DoJ (n 38).

seek justice for victims, address harmful behaviour, hold perpetrators to account and support victims and witnesses through their engagement with the justice system'.<sup>117</sup> In the following sub-sections, I query the extent to which the introduction of the Bill can respond to those needs. I first consider the secondary victimisation<sup>118</sup> and other harms that can result from a criminal justice response to domestic abuse. These can emerge in the context of the victim-survivors' engagement with the criminal justice system and in the context of the outcomes that flow from that engagement. I then turn to whether a focus on criminalisation (and as a result incarceration) can constitute an effective response to domestic abuse.

### HARMS OF ENGAGEMENT

The risk of secondary victimisation begins from the moment a victim-survivor or third party contacts the police.<sup>119</sup> In addition to risking an escalation of abuse,<sup>120</sup> legal interventions can expose victim-survivors as well as perpetrators to the oppressive force of law enforcement practitioners.<sup>121</sup> In Northern Ireland, many communities' relations with the PSNI have improved significantly over the last two decades.<sup>122</sup> However, marginalised individuals may have justified concerns about bringing the police into their homes and communities;<sup>123</sup> racism, homophobia, transphobia, classism, sectarianism and other forms of discrimination may taint police responses.<sup>124</sup> Police intervention also brings risks of social service intervention; parents who are being abused may therefore resist calling for help due to fears that they might lose access to their children.<sup>125</sup> Once their abuse has become subject to a criminal investigation, victim-survivors find themselves with little to no agency over how the case proceeds.<sup>126</sup> Depending on their ability to access support services, they may receive only limited information and support and may be faced with a lengthy wait before their abuser faces trial.<sup>127</sup>

If a case makes it to trial, a victim-survivor may face the prospect of testifying as a complainant witness. In addition to the evidential issues raised above, this raises diverse

117 Ibid 34.

118 Defined as negative social or societal reactions in consequence of the primary victimisation, see e.g. Leo Montada, 'Injustice in harm and loss' (1994) 7 *Social Justice Research* 5.

119 Many indicators of domestic abuse, including exposure to violence and trauma, substance abuse and toxic masculinities are also 'conspicuously present' in police culture, and for some there may therefore be particularly personal risks associated with contacting the police. See e.g. Philip Stinson Sr and John Liederbach, 'Fox in the henhouse: a study of police officers arrested for crimes associated with domestic and/or family violence' (2012) 24(5) *Criminal Justice Policy Review* 601.

120 Richard Felson et al, 'Reasons for reporting and not reporting domestic violence to the police' (2002) 40(3) *Criminology* 617.

121 Meda Chesney-Lind, 'Criminalizing victimization: the unintended consequences of pro-arrest policies for girls and women' (2002) 2(1) *Criminology and Public Policy* 81.

122 Jessica Leigh Doyle and Monica McWilliams, 'What difference does peace make? Intimate partner violence and violent conflict in Northern Ireland' (2020) 26(2) *Violence Against Women* 139.

123 Taylor (n 28).

124 See e.g. Heike Goudriaan, Karin Wittebrood and Paul Nieuwebeerta, 'Neighbourhood characteristics and reporting crime' (2006) 46(4) *British Journal of Criminology* 719; Michele Decker et al, 'You do not think of me as a human being' (2019) *Journal of Urban Health* 772; Leigh Goodmark, 'Transgender people, intimate partner abuse, and the legal system' (2013) 48 *Harvard Civil Rights – Civil Liberties Law Review* 51.

125 Donna Coker et al, *Responses from the Field: Sexual Assault, Domestic Violence and Policing* (American Civil Liberties Union 2015).

126 Gillian Hunter, Jessica Jacobson and Amy Kirby, *Out of the Shadows: Victims' and Witnesses' Experiences of Attending the Crown Court London* (Victim Support 2013).

127 Ibid.

challenges for victim-survivors, ranging from increased risks of reprisal, to unwanted intrusions into their personal lives and relationships.<sup>128</sup> It is uncontroversial to observe that protecting the dignity of complainant witnesses while maintaining the rights of the defence is an ongoing challenge for adversarial criminal justice systems.<sup>129</sup> In Northern Ireland, the recent Gillen Review on the law and procedures in serious sexual offences highlighted a range of challenges associated with participating as a complainant witness, including being exposed to the public in court, testifying in front of the defendant and being subjected to humiliating cross-examination.<sup>130</sup> While concerned with a different category of offence, similarities around the intimate and interpersonal nature of the offending mean these further risks of secondary victimisation likely face complainants in domestic abuse cases too.<sup>131</sup>

In this context, it is notable that the Bill contains several changes to law and procedure that seek to mitigate some of these challenges. These include a prohibition on the accused cross-examining victim-survivors in person, a move designed to 'reduce the possibility of an accused person using the processes of the justice system to further exert control and influence over their partner/connected person and will help to minimise the trauma for them while ensuring the proper administration of justice is achieved'.<sup>132</sup> The Bill also extends the presumption of eligibility for special measures on grounds of fear or distress to complainants in cases involving domestic abuse.<sup>133</sup> This entitles them to the use of live links or screens at court, unless they have informed the court that they do not wish to be eligible for such assistance.<sup>134</sup> A special measures direction may also provide for the exclusion of persons from court (excepting the accused, their legal representative and interpreters) when the complainants are giving evidence.<sup>135</sup> These proposed reforms mirror steps that have previously been taken to improve the experience of other vulnerable witnesses such as sexual complainants and child witnesses. However, while special measures can be appreciated by recipients, research suggests that they often fail to improve complainants' overall experiences of the criminal justice system.<sup>136</sup>

One reason for this failure is that the introduction of special measures cannot protect complainants from the tactics employed by defence lawyers, who in pursuit of defending their client may reject the victim-survivor's version of events, challenge their credibility and imply that the victim-survivor agreed to or welcomed the behaviour.<sup>137</sup> As argued by Burton et al, the adversarial trial's focus on 'winning' the case encourages traumatic

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128 Hanna (n 104).

129 See e.g. Uli Orth, 'Secondary victimization of crime victims by criminal proceedings' (2002) 15(4) *Social Justice Research* 313; Jonathan Doak, *Victims' Rights, Human Rights and Criminal Justice* (Hart Publishing 2008).

130 Sir John Gillen, *Report into the Law and Procedures in Serious Sexual Offences in Northern Ireland* (DoJ 2019) <[www.justice-ni.gov.uk/publications/gillen-review-report-law-and-procedures-serious-sexual-offences-ni](http://www.justice-ni.gov.uk/publications/gillen-review-report-law-and-procedures-serious-sexual-offences-ni)>.

131 On the parallels between the issues arising around the criminalisation of coercive control and criminal justice responses to sexual violence, see Tolmie (n 53) 58–59.

132 Explanatory and Financial Memorandum (n 58) 5.

133 NI Bill (n 59) section 22.

134 See Criminal Evidence (Northern Ireland) Order 1999, part II.

135 NI Bill (n 59) section 22(3).

136 See e.g. Olivia Smith, 'The practicalities of English and Welsh rape trials: observations and avenues for improvement' (2017) *Criminology and Criminal Justice* 1; Louise Ellison, *The Adversarial Process and the Vulnerable Witness* (Oxford University Press 2001); Rabiya Majeed-Ariss et al, "'Could do better': report on the use of special measures in sexual offences cases' (2019) *Criminology and Criminal Justice*.

137 Hanna (n 6).

questioning regardless of the existence or not of special measures.<sup>138</sup> Tuerkheimer has argued that the criminalisation of domestic abuse will encourage victim-survivors to recount the 'full range of their experiences', making the experience of giving testimony validating of their lived experience.<sup>139</sup> The new offence may also enable the broader context of the relationship between the perpetrator and victim-survivor to become evidentially relevant during trials, meaning judges and juries will receive a fuller account of the perpetrators' behaviour. Yet, an associated consequence may be that victim-survivors find the 'full range of their experiences' subjected to cross-examination,<sup>140</sup> a potentially deeply humiliating experience.<sup>141</sup>

#### HARMS OF OUTCOME AND THE INEFFECTIVENESS OF INCARCERATION

Following the conclusion of what may have been a traumatising experience, victim-survivors face the possibility of a harmful outcome. This is a risk regardless of the victim-survivors' attitude towards the criminal justice process. On the one hand, those who seek a conviction may see their abuser acquitted; Northern Irish statistics indicate that the outcome rate for domestic abuse crimes has been falling, from 46.6 per cent in 2010/2011 to 26.7 per cent in 2018/2019.<sup>142</sup> A prosecutor may also accept a plea bargain, potentially invalidating a victim-survivor's understanding of their own experience.<sup>143</sup> On the other hand, some victim-survivors may see the conviction and incarceration of their abuser as an intrusion rather than a welcome intervention.<sup>144</sup> Their preference may be for the abuse to stop but for the perpetrator to remain in their lives, for a variety of personal, social, practical and/or economic reasons.<sup>145</sup>

The Bill allows for a maximum 12 months' imprisonment on summary conviction, and up to 14 years' imprisonment when tried on indictment. The Explanatory and Financial Memorandum states that the nature of the penalties is intended to reflect the cumulative nature of the offence over time, that it may cover both physical and psychological abuse and also the intimate and trusting nature of the relationships involved.<sup>146</sup> It has been argued that, in addition to providing more time and space to implement safety measures, extended periods of incarceration will satisfy those victim-survivors who desire retributive justice.<sup>147</sup> Research has suggested that some victim-survivors can feel let down by responses that focus on individual incidents; convictions for broader patterns of coercive control may address this dissatisfaction.<sup>148</sup> It has also been argued that attaching severe sentences to coercive control will send a message to the

138 Mandy Burton, Roger Evans and Andrew Sanders, 'Vulnerable and intimidated witnesses and the adversarial process in England and Wales' (2007) 11(1) *International Journal of Evidence and Proof* 1.

139 Deborah Tuerkheimer, 'Recognising and remedying the harm of battering: a call to criminalise domestic violence' (2004) 94(4) *Journal of Criminal Law and Criminology* 959.

140 Hanna (n 6).

141 Ellison (n 136).

142 PSNI (n 39).

143 Tolmie (n 53) 4.

144 M Joan McDermott and James Garofalo, 'When advocacy for domestic violence victims backfires' (2004) 10 *Violence Against Women* 1245; Edna Erez and Joanne Belknap, 'In their own words: battered women's assessment of the criminal processing system's responses' (1998) 13 *Violence and Victims* 251.

145 Goodmark (n 72) 85–86.

146 Explanatory and Financial Memorandum (n 58) 11.

147 Leigh Goodmark, "'Law and justice are not always the same": creating community-based justice forums for people subjected to intimate partner abuse' (2015) 42 *Florida State University Law Review* 707.

148 Beth E Richie, 'Who benefits and who loses in the criminalization of IPV?', draft discussion paper prepared for the National Science Foundation/National Institute of Justice Workshop on Developing Effective Primary, Secondary and Tertiary Interventions, 14–16 May 2014, Arlington VA.

perpetrator that they must change their whole behaviour, rather than avoid crossing 'a line into criminality' through acts or threats of violence.<sup>149</sup>

While the Bill undoubtedly enables a clear message of condemnation to be delivered through the imposition of substantial sentences, it is worth noting that in practice prison in general consistently fails to either deter or rehabilitate offenders.<sup>150</sup> Created as a means of inflicting punitive harm through social isolation, austere conditions and in some incidences physical violence,<sup>151</sup> prison sentences do little to encourage community reintegration.<sup>152</sup> Rather, they have long been critiqued for reducing the future prospects for ex-prisoners, inflicting and triggering experiences of trauma, and creating the conditions for more violence and offending following release.<sup>153</sup> As such, the new offence, aggravating factors and harsh sentences are unlikely to succeed in delivering justice to victim-survivors or making communities safer. Indeed, it is notable that overall levels of domestic abuse rarely decrease following the introduction of criminal justice interventions.<sup>154</sup> As argued by Davis, criminalising domestic abuse will not put an end to domestic abuse any more than imprisonment has put an end to crime in general.<sup>155</sup> Some have argued that this may have more to do with implementation than a deeper failing of criminalisation.<sup>156</sup> However, the findings correspond with more general research about the ineffectiveness of criminal sanctions as a means of deterring harmful behaviour.<sup>157</sup>

One of the reasons for this may be that, while criminalisation can make politicians feel like they have done something to address the issue,<sup>158</sup> it cannot address the underlying intractable social, cultural and institutional problems.<sup>159</sup> Of course, it may not be intended to – as acknowledged by Naomi Long in the Northern Irish context, the proposed Bill is 'not a panacea'. Nonetheless, criminalisation can become problematic when it emerges as a dominant response, as this 'carceral creep'<sup>160</sup> may divert energy and resources from policies and initiatives that seek to address those underlying societal problems.<sup>161</sup> In the final section, I consider what considerations might inform a broader, more holistic response to domestic abuse, one that does not entirely reject criminal law, but which also looks beyond the courtroom for solutions.

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149 Goodmark (n 72) 66–67.

150 J M Moore and Rebecca Roberts, 'What lies beyond criminal justice? Developing transformative solutions' (2016) *Justice, Power and Resistance* 115; Paul H Robinson and John M Darley, 'Does criminal law deter? A behavioural science investigation' (2004) 24 *Oxford Journal of Legal Studies* 173.

151 Phil Scraton and Jude McCulloch (eds), *The Violence of Incarceration* (Routledge 2008); Phil Scraton, 'Prisons and imprisonment in Northern Ireland' in Anne-Marie and McAlinden, *Criminal Justice in Transition: The Northern Ireland Context* (Bloomsbury Publishing 2015) 185.

152 Anne-Marie McAlinden, *The Shaming of Sexual Offenders* (Bloomsbury Publishing 2008).

153 Michele Foucault, *Discipline and Punish* (Penguin Books 1975); David Garland, *Punishment and Modern Society* (Oxford University Press 1990); William R Kelly, *Criminal Justice at the Crossroads* (Columbia University Press 2015).

154 Stark (2007) (n 14).

155 Angela Davis, 'Opening keynote address: "The color of violence against women": Color of Violence Against Women Conference' (2000) 3(3) *Colorlines*.

156 Eve Buzawa, *Response to Domestic Violence in a Pro-Active Court Setting*, Final Report (US Department of Justice 1999).

157 Robinson and Darley (n 150).

158 Leigh Goodmark, 'Reframing domestic violence law and policy: an anti-essentialist proposal' (2009) 31 *Washington University Journal of Law and Policy* 55.

159 Burman and Brooks-Hay (n 18) 77.

160 Mimi E Kim, 'The carceral creep: gender-based violence, race and the expansion of the punitive state, 1973–1983' (2019) 67 *Social Problems* 251.

161 Goodmark (n 72) 69, 86.

#### 4 A more holistic response? Looking beyond criminalisation

The challenges associated with implementation and risks to victim-survivors who engage with the criminal justice system raise the question of whether increasing the breadth of criminalisation is likely to be an effective response to domestic abuse in practice. As Harris has asked: ‘if reliance on the criminal justice system to address violence against women and sexual minorities has reached the end of its usefulness, to where should advocates turn next?’<sup>162</sup> We might turn to the work of anti-carceral feminists, who have increasingly sought to explore alternative means through which to pursue perpetrator accountability, victim support and safety, and preventative work.<sup>163</sup> Indeed, a growing awareness of the harms of incarceration and the value of anti-carceral perspectives has emerged in Northern Ireland’s feminist movements, prompted in part by international awareness of police brutality and the resulting Black Lives Matter movement in the USA.<sup>164</sup> This has been evidenced by the creation of a Northern Ireland chapter of the Abolitionist Futures collective, which brings together pro-choice, feminist and union activists and has previously hosted events exploring feminist abolition and the harms of criminalisation.<sup>165</sup>

A turn to anti-carceral approaches would prioritise community-led responses to violence, empowering neighbourhoods, workplaces, religious groups, friends and families to develop values and practices that resist violence and encourage safety, support and accountability. While offering alternatives to criminal sanctions, such approaches are certainly not without accountability. However, rather than pursuing retribution, an anti-carceral approach instead explores the possibilities of a transformative justice. Grounded in the values of collective and self-determined community strategies for justice, transformative justice responds to interpersonal violence in a way that prioritises the needs of the victim, while also providing restorative justice possibilities for perpetrators and communities.<sup>166</sup>

Restorative justice practices are well known in Northern Ireland, where they have flourished at both a community and state level.<sup>167</sup> The presence of community-based projects is particularly notable; developed as an alternative to paramilitary interventions (discussed below) these have become embedded approaches to conflict resolution in Northern Ireland. Designed to promote inclusive dialogue; direct participation; acceptance of responsibility; reparation; rebuilding of relationships among victims, offenders and communities; reintegration; and empowerment,<sup>168</sup> their particular benefits in Northern Ireland’s post-conflict context have been explored elsewhere. However, their applicability to domestic abuse and other gendered harms has been contested by

162 Angela P Harris, ‘Heteropatriarchy kills: challenging gender violence in a prison nation’ (2011) 38 Washington University Journal of Law and Policy 13.

163 INCITE! Women of Color against Violence and Critical Resistance, ‘Statement on gender violence and the prison industrial complex’ (2001) <<https://incite-national.org/incite-critical-resistance-statement/>>.

164 Women’s Policy Group NI, *COVID-19 Feminist Recovery Plan* (July 2020) 90–91.

165 McNaul (n 31).

166 See e.g. Mimi Kim, ‘Anti-carceral feminism: the contradictions of progress and the possibilities of counter-hegemonic struggle’ (2019) *Affilia: Journal of Women and Social Work* (advance online publication) <<https://journals.sagepub.com/doi/10.1177/0886109919878276>>.

167 Anna Eriksson, ‘Restorative justice in the Northern Ireland transition’ in Anne-Marie McAlinden and Clare Dwyer, *Criminal Justice in Transition: The Northern Ireland Context* (Bloomsbury 2015); Kieran McEvoy and Anna Eriksson, ‘Restorative justice in transition: ownership, leadership and “bottom-up” human rights’ in Dennis Sullivan and Larry Tiffit (eds), *The Handbook of Restorative Justice: Global Perspectives* (Routledge 2005).

168 John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press 1989).



Northern Ireland feminist groups, who have expressed concerns over the power disparities that exist between participants, and the risks that victim-survivors will be pressured by their abusers to undergo restorative justice practices.<sup>169</sup>

Such fears are not new or unusual. The appropriateness of restorative justice in the context of domestic abuse has been a topic of extensive debate; scholars have highlighted both the possibilities of greater victim agency, validation and vindication, and the risks of manipulation, pressure and empty symbolic implications.<sup>170</sup> Nevertheless, it is worth noting the tentative steps that have been taken towards extending a range of restorative justice responses to domestic and sexual violence in diverse jurisdictions, including in the UK.<sup>171</sup> While empirical evidence into their effectiveness and practice is limited, recent studies have suggested that they can lead to reduced recidivism,<sup>172</sup> offer a more victim-centric process, and in some cases even push normative change.<sup>173</sup> This emerging evidence supports arguments that alternative accountability measures might have a role to play in moving away from retributive responses to domestic abuse.<sup>174</sup> However, such measures would require careful consideration and planning to ensure that sufficient safeguards and victim-support services are in place.<sup>175</sup>

Thus, it is arguably all the more important that a holistic response to domestic abuse includes both appropriate *responses* to instances of violence and *preventative* work which seeks to tackle misogyny, racism, homophobia and other cultures of violence.<sup>176</sup> Anti-carceral feminists have long argued that interpersonal forms of violence are not separable from the multiple structural forms of violence and oppression that characterise society.<sup>177</sup> A sole focus on criminalisation obscures this reality, decontextualising individual acts of violence from the power structures and socio-economic challenges that shape a society.<sup>178</sup> Anti-violence activists and scholars can sometimes be critical of those who analyse perpetration through frameworks other than the premise of individual choice, decrying such attempts as some form of 'justification'.<sup>179</sup> Yet, to do so arguably shuts down and restricts the possibility of effective responses to domestic abuse beyond

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169 See e.g. Women's Policy Group (n 164) 90–91.

170 Kathleen Daly and Julie Stubbs, 'Feminist engagement with restorative justice' (2006) 10(1) *Theoretical Criminology* 9; Heather Strang and John Braithwaite, *Restorative Justice and Family Violence* (Cambridge University Press 2002).

171 Nicole Westmarland, Kelly Johnson and Clare McGlynn, 'Under the radar: the widespread use of "out of court resolutions" in policing domestic violence and abuse in the United Kingdom' (2018) 58 *British Journal of Criminology* 1; Kim (n 36).

172 Linda G Mills et al, 'A randomized controlled trial of restorative justice-informed treatment for domestic violence crimes' (2019) 3 *Nature Human Behaviour* 1284.

173 Polavarapu (n 5).

174 Roni A Elias, 'Restorative justice in domestic violence cases' (2015) 9 *DePaul Journal for Social Justice* 67.

175 On the need for evidence-based refinement of restorative justice, see e.g. Jonathan Doak, 'Honing the stone: refining restorative justice as a vehicle for emotional redress' (2011) 14(4) *Contemporary Justice Review* 439; Julie Stubbs, 'Beyond apology? Domestic violence and critical questions for restorative justice' (2007) 7 *Criminology and Criminal Justice* 169; Donna Coker, 'Restorative justice, Navajo peacemaking and domestic violence' (2006) 10(1) *Theoretical Criminology* 67.

176 Dixon and Piepzna-Samarasinha (n 36).

177 Critical Resistance and INCITE!, 'Critical resistance—INCITE! statement on gender violence and the prison-industrial complex' (2003) 30 *Social Justice* 141.

178 Donna Coker, 'Transformative justice: anti-subordination processes in cases of domestic violence' in Strang and Braithwaite (n 170).

179 See e.g. Ruth Jones, 'Guardianship for coercively controlled battered women: breaking the control of the abuser' (2000) 88 *Georgetown Law Journal* 634.

punishment.<sup>180</sup> What, then, might it mean to construct a holistic response which contextualises domestic abuse in Northern Ireland? Arguably, there are three main intersecting contexts to consider: social norms and their role in creating stigma and oppression; a history of violence and trauma; and economic challenges. These are each discussed in turn.

### CONTEXTUALISING DOMESTIC ABUSE

First, domestic abuse must be situated within conservative religious and social norms which frame domestic abuse as a private, family issue and stigmatise divorce and single parenthood.<sup>181</sup> Northern Ireland continues to be characterised by the ‘twin engines of Protestant and Catholic conservative Christian patriarchy’, which create ‘normative models of sexuality and gender’ based around ‘ideals of motherhood, domesticity and chastity’.<sup>182</sup> These patriarchal norms have intersected with a history of colonial, sectarian and ethnonational violence, contributing to an environment in which gender inequalities and toxic hegemonic masculinities have flourished,<sup>183</sup> and gendered and sexual violence has been both prevalent and hidden.<sup>184</sup> These realities are reflective of other cross-cultural empirical studies which suggest a connection between rigid social norms and higher levels of domestic abuse.<sup>185</sup> Nor are they exclusive to the majority Christian population. A study by the Northern Ireland Council for Ethnic Minorities (NICEM) in 2013 drew attention to diverse religious and cultural beliefs that viewed domestic violence as permissible, as well as community pressure on victim-survivors to remain in the family home.<sup>186</sup> These cultural sensitivities are not always understood in Northern Ireland. Indeed, as observed by NICEM, the prevalence of institutional and structural racism within public bodies and other relevant organisations has led to victims being treated without adequate care and cultural sensitivity when they do reach out for help, discouraging other victims from doing so.<sup>187</sup>

In addition to fostering shame and stigma around gender-based violence, the dominance of conservative Christian patriarchy has also contributed to pervasive homophobia and transphobia in Northern Ireland.<sup>188</sup> Members of the gay and lesbian community have drawn links between cultural homophobia in Northern Ireland,

180 Weissman (n 25) 1500.

181 Doyle and McWilliams (n 21) 66–68.

182 Fidelma Ashe, ‘The pedagogical challenges of teaching sexual politics in the context of ethnic division’ (2009) 2(2) *Enhancing Learning in the Social Sciences* 1. See also Graham Ellison, ‘Criminalizing the payment for sex in Northern Ireland: sketching the contours of a moral panic’ (2017) 57(1) *British Journal of Criminology* 194.

183 Ken Harland and Sam McCready, ‘Rough justice: considerations on the role of violence, masculinity and the alienation of young men in communities and peacebuilding processes in Northern Ireland’ (2014) 14(3) *Youth Justice* 269.

184 McIntyre (n 21); Ashe (n 21).

185 Rachael Jewkes, ‘Intimate partner violence: causes and prevention’ (2002) *The Lancet* 1423.

186 Monica McWilliams and Priyamvada Nellum Rose Yarnell, ‘The protection and rights of black and minority ethnic women experiencing domestic violence in Northern Ireland’ prepared for submission to CEDAW (NICEM Report June 2013) 8–10.

187 *Ibid* 3–16.

188 Bernadette Hayes and John Nagle, ‘Ethnonationalism and attitudes towards gay and lesbian rights in Northern Ireland’ (2016) 22(1) *Nations and Nationalism* 20; Marian Duggan, ‘Heteronormativity and the inverted relationship between socio-political and legislative approaches to lesbian, gay and bisexual hate crime’ in Jennifer Schweppe, Amanda Haynes and Seamus Taylor (eds), *Critical Perspectives on Hate Crime: Contributions from the Island of Ireland* (Palgrave Macmillan 2017).

internalised shame, and the perpetration of domestic abuse in intimate relationships.<sup>189</sup> Some have attributed their partner's violence to their discomfort with their own sexual identity, while others have expressed a belief that they were deserving of violence due to their sexual orientation.<sup>190</sup> Homophobia and transphobia have also been highlighted as barriers to accessing support.<sup>191</sup> Distrust of the police, fear of 'coming out' and an unwillingness to approach organisations designed with heterosexual victim-survivors in mind can all create the sense of being trapped in an abusive relationship.<sup>192</sup> Limited resources are available in comparison to those available for heterosexual victim-survivors,<sup>193</sup> and some members of the community have expressed a belief that LGBTQ+ support organisations either viewed domestic abuse as a specifically patriarchal heterosexual issue, or were reluctant to address violence perpetrated within the community in case it detracted from a 'united front against heterosexism and sexual identity prejudice'.<sup>194</sup>

Contextualising domestic abuse within these social dynamics highlights the stigma, lack of family/community understanding and limited appropriate support that face victim-survivors who wish to leave abusive situations, particularly when they experience intersecting forms of oppression.<sup>195</sup> Given that many victim-survivors will not contact the police, and some may not frame their experience as criminal abuse, it is arguable that holistic responses which emphasise whole-system support are needed.<sup>196</sup> A positive step might therefore be to ensure adequate resources are available to enable specialist organisations to offer that support. As was observed in the Bill's second debate: 'specialists ... very often, are left to scratch around annually for charitable donations and the crumbs off the Executive's table'. Years of austerity have impacted vital support services, yet the adequate funding of specialist organisations could do much to help victim-survivors navigate their way to safety and support. Further support could be offered through the establishment of an Independent Domestic Violence Advisors (IDVA) programme. IDVAs have existed in England and Wales for some time and were recommended in Northern Ireland nearly a decade ago.<sup>197</sup> Their introduction could provide an important primary point of contact for victim-survivors seeking to discuss

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189 Marian Duggan, *Queering Conflict: Examining Lesbian and Gay Experiences of Homophobia in Northern Ireland* (Ashgate 2012) 120–121.

190 Ibid 121. This reflects findings in studies conducted elsewhere e.g. Tamar Goldenberg et al, "'Struggling to be the alpha": sources of tension and intimate partner violence in same-sex relationships between men' (2016) 18(8) *Culture, Health and Sexuality* 875; Kimberly Balsam and Dawn Szymanski, 'Relationship quality and domestic violence in women's same-sex relationships: the role of minority stress' (2005) 29(3) *Psychology of Women Quarterly* 258.

191 While there is limited specific research on domestic abuse amongst trans individuals in Northern Ireland, the Institute for Conflict Research found a general reluctance to approach statutory agencies, including the police, in its study *'The Luck of the Draw': A Report on the Experiences of Trans Individuals Reporting Hate Incidents in Northern Ireland* (May 2010). For a more general discussion of trans experiences, see Goodmark (n 124).

192 Duggan (n 189) 121. See also Catherine Finneran and Rob Stephenson, 'Gay and bisexual men's perception of police helpfulness in response to male-male intimate partner violence' (2013) 14(4) *Western Journal of Emergency Medicine* 354.

193 Although see the important work done by the Rainbow Project and Cara Friend NI.

194 Duggan (n 189) 121.

195 On the impact of intersecting identities on vulnerability to harm, see Kimberley Crenshaw, 'Mapping the margins: intersectionality, identity politics, and violence against women of colour' (1991) 43(6) *Stanford Law Review* 1241.

196 Barlow et al (n 69) 176.

197 CJINI (n 54).

suitable options and safety plans.<sup>198</sup> I noted above the role that appropriate training would play in the implementation of the new offence. It is worth noting the potential for training to also help service providers (outside the criminal justice framework) identify the dynamics of domestic abuse and to connect these dynamics to the broader structural inequalities of sexism, homophobia and racism. As argued by Brennan et al, a deeper understanding of the role power plays in abusive relationships could form a grounding for developing more nuanced strategies amongst service providers that seek to empower victim-survivors and increase their capacity and agency.<sup>199</sup>

While stigmatising social norms in Northern Ireland have been shaped in part by conservative religious beliefs, it is important to acknowledge the role that faith organisations can play in countering interpersonal violence.<sup>200</sup> Research has shown that giving religious leaders appropriate training can facilitate immediate and long-term positive change, including through the expanding of religious leaders' activities to encompass measures that positively address domestic abuse in their congregations.<sup>201</sup> Educators (and other youth leaders where appropriate) can also play an important role in combatting harmful norms. For example, they might be trained to deliver specific domestic abuse prevention<sup>202</sup> and age-appropriate sexual health and sexuality education at all levels of education<sup>203</sup> and to bring an intersectional gender equality lens to education more broadly.<sup>204</sup> Such measures move beyond direct assistance to victim-survivors to consider the possibilities of transformative justice and a less violent future.

Second, the political violence in Northern Ireland's recent history has also impacted on domestic abuse.<sup>205</sup> Despite the cessation of hostilities, a 'culture of violence' has lingered.<sup>206</sup> Paramilitaries continue to create harmful power dynamics within homes and communities, allowing perpetrators to exert influence and avoid accountability.<sup>207</sup> In this regard, the Northern Ireland Executive's work to tackle paramilitarism, criminality and organised crime has potential knock-on benefits, highlighting the 'important influence' Northern Ireland's history and particular context continues to have 'on contemporary criminal justice and the current legal order'.<sup>208</sup> However, to be fully effective, the other side of a paramilitary presence, i.e. as an alternative form of policing, will require ongoing

198 Northern Ireland Policing Board, *Domestic Abuse Review* (December 2019) 14.

199 Brennan et al (n 74) 643.

200 John Michael McAllister and Amelia Roberts-Lewis, 'Social worker's role in helping the church address intimate partner violence' (2010) 37(2) *Social Work and Christianity* 161.

201 Rene Drumm et al, 'Clergy training for effective response to intimate partner violence disclosure: immediate and long-term benefits' (2018) 37(1) *Journal of Religion and Spirituality in Social Work: Social Thought* 77.

202 For examples, see e.g. Claire Fox et al, 'Evaluating the effectiveness of domestic abuse prevention education' (2016) 21 *Legal and Criminological Psychology* 212.

203 For models, see e.g. Joanna Heart et al, 'The Revised International Technical Guidance on Sexuality Education – a powerful tool at an important crossroads for sexuality education' (2018) 15 *Reproductive Health* 185.

204 Maria Esteves, 'Gender equality in education: a challenge for policy makers' (2018) 4(2) *PEOPLE: International Journal of Social Sciences* 893.

205 Monica McWilliams and Joan McKiernan, *Bringing it out into the Open: Domestic Violence in Northern Ireland* (HMSO 1993).

206 Chrissie Steenkamp, 'The legacy of war: conceptualising a "culture of violence" to explain violence after peace accords' (2005) 94 *Round Table* 253.

207 Doyle and McWilliams (n 122).

208 McAlinden and Dwyer (n 22) 369.

attention.<sup>209</sup> While restorative justice mechanisms have been implemented to supplant these forms of policing, more work will be needed to ensure legitimate forms of 'justice' fully do so. As Eriksson argues, steps will be required to reduce 'social, cultural, historical and political distance' within communities, between communities, and between communities and mechanisms of the state,<sup>210</sup> supporting the need for holistic responses to violence.

While most people who suffer trauma do not perpetrate violence,<sup>211</sup> the cessation of public violence has also been hypothesised as resulting in a rise in violence in the home due to 'hyper-masculinized and traumatised' males seeking new outlets for aggression.<sup>212</sup> Research in Northern Ireland has shown disproportionately high rates of trauma exposure and post-traumatic stress disorder in both the general public and offender samples, demonstrating another enduring legacy of a history of conflict.<sup>213</sup> Recent studies have revealed connections between conflict-related trauma exposure and increased odds of general and violent reoffending in a sample of offenders.<sup>214</sup> Domestic abuse offenders have a higher prevalence of trauma than the general population, with exposure to conflict-related trauma appearing particularly high.<sup>215</sup> Relatedly, substance abuse has been found to significantly increase the odds of violent perpetration and the use of a weapon,<sup>216</sup> possibly accounting for part of the pathway from trauma to domestic violence.<sup>217</sup> This has been reflected in other case studies outside Northern Ireland, which have noted the connections between alcohol abuse and increased severity of perpetration in the context of domestic abuse.<sup>218</sup> The connections between trauma, substance abuse and violence suggest that the development of trauma-informed elements to rehabilitative interventions, used in conjunction with treatment for substance abuse, may play an important role in combatting domestic violence. The connections between domestic violence and childhood trauma, and the exacerbating role conflict-related trauma can have on individuals who have experienced childhood trauma, also highlights the potential long-term benefits of adopting trauma-informed interventions into family-malfunctioning.<sup>219</sup>

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209 Anne-Marie McAlinden, 'Public and official responses to sexual and violent crime in Northern Ireland' in Anne-Marie McAlinden and Clare Dwyer, *Criminal Justice in Transition: The Northern Ireland Context* (Bloomsbury 2015).

210 Eriksson (n 167).

211 See e.g. Andrea Roberts et al, 'Witness of intimate partner violence in childhood and perpetration of intimate partner violence in adulthood' (2010) 21(6) *Epidemiology* 809.

212 Samantha Bradley, 'Domestic and family violence in post-conflict communities: international human rights law and the state's obligation to protect women and children' (2018) 20(2) *Health and Human Rights* 123.

213 Madeleine Dalsklev et al, 'Childhood trauma as a predictor of reoffending in a Northern Irish probation sample' (2019) *Child Abuse and Neglect* 97; Brendan Bunting et al, 'Trauma associated with civil conflict and posttraumatic stress disorder: evidence from the Northern Ireland study of health and stress' (2013) 26(1) *Journal of Traumatic Stress* 134.

214 Dalsklev et al (n 213).

215 Aine Travers et al, 'Trauma exposure and domestic violence offending severity in a probation sample from post-conflict Northern Ireland' (2020) *Journal of Interpersonal Violence* 1.

216 *Ibid.*

217 See also Jocelyn Kelly et al, 'From the battlefield to the bedroom: a multilevel analysis of the links between political conflict and intimate partner violence in Liberia' (2018) 3(2) *British Medical Journal Global Health*, Article e000668.

218 See e.g. William Fals-Stewart, James Golden and Julie Schumacher, 'Intimate partner violence and substance use: a longitudinal day-to-day examination' (2003) 28(9) *Addictive Behaviors* 1555; Heather Foran and K Daniel O'Leary, 'Alcohol and intimate partner violence: a meta-analytic review' (2008) 28(7) *Clinical Psychology Review* 1222.

219 Travers et al (n 215) 17.

Third, these Northern Irish particularities intersect with and are exacerbated by broader socio-economic inequalities that have only grown more pronounced in the wake of the UK's policies of austerity. A strong relationship has been identified between economic strain and domestic abuse, particularly against women by their male partners.<sup>220</sup> For those being subjected to abuse in their home, a lack of access to safe and affordable housing, funding cuts to support agencies and inadequate health and social services all contribute to a situation in which remaining at home may be the lesser evil.<sup>221</sup> NICEM's research has also drawn attention to the UK's 'no recourse to public funds'<sup>222</sup> rule and the deep-rooted dysfunctions of the social security system, both of which place minority women in particular in a position of economic dependency and enhanced vulnerability.<sup>223</sup> A holistic response to domestic abuse would require engagement with the ongoing impacts of austerity and welfare reform on communities, particularly those with intersecting vulnerabilities. Resources that are being directed into the criminal legal system might better be spent providing economic and housing support for victim-survivors. On a smaller and more immediate scale, policies that enable emergency housing or secure tenancies for victims of domestic abuse might be explored. Similarly, while a small step, the introduction of an employment rights provision, enabling victim-survivors to take 10 days' domestic abuse paid leave, might facilitate some in seeking safety and support. There are examples of such a provision to be found elsewhere, including New Zealand,<sup>224</sup> the Philippines,<sup>225</sup> and at a provincial level in Manitoba<sup>226</sup> and Ontario<sup>227</sup> in Canada.

This section has sought to highlight some of the intersecting forms of oppression, stigma, violence and trauma that form the backdrop to interpersonal violence in Northern Ireland. If these interconnections are accepted, then it follows that a more meaningful and holistic response to violence within families and relationships would also consider these structural harms. This would include the prioritisation of what have been termed 'primary prevention-strategies' which address underlying causes of violence, for example by centring education, health and addiction care, employment assistance, welfare reform, housing, post-conflict demilitarisation of former paramilitary groups and other measures that could stabilise communities.<sup>228</sup> It would also centre 'secondary approaches' that focus on intervening with groups identified at risk, such as through increased funding for specialist services and victim support. 'Tertiary approaches' involving legal and community-led interventions in instances of abuse would also be part of this picture, but a more holistic response would move away from a 'waste management' strategy that

220 Greer Litton Fox and Michael L. Benson, 'Household and neighborhood contexts of intimate partner violence' (2006) 121 *Public Health Reports* 419; Donna Coker and Ahjané Macquoid, 'Why opposing hyper-incarceration should be central to the work of the anti-domestic violence movement' (2015) 5 *University of Miami Race and Social Justice Law Review* 585.

221 McNaull (n 31); Sian Norris, 'Women fleeing abuse are being "re-traumatised" by the housing system' (*New Statesman*, 9 September 2019).

222 Certain types of UK visa have the condition 'no recourse to public funds' attached, meaning holders cannot claim most forms of state benefits.

223 McWilliams and Yarnell (n 186).

224 Domestic Violence – Victims' Protection Act 2019, section 72C.

225 Anti-Violence Against Women and their Children Act of 2004, Republic Act 9262, section 43.

226 Employment Standards Code Amendment Act 2016 (Leave for Victims of Domestic Violence, Leave for Serious Injury or Illness and Extension of Compassionate Care Leave), section 59.11.

227 Employment Standards Act 2000, section 49.7.

228 On primary, secondary and tertiary strategies for gender-based violence, see e.g. D Richard Laws, 'Sexual offending as a public health problem' (2000) 5(1) *Journal of Sexual Aggression* 30; Wendy Larcombe, 'Limits of the criminal law for preventing sexual violence' in Nicola Henry and Anastasia Powell, *Preventing Sexual Violence* (Palgrave Macmillan 2014).

prioritises the punishment of offenders.<sup>229</sup> While the intersecting challenges outlined above can seem daunting in their intractability, small steps in the spaces available might do much to prevent abuse and support victim-survivors.

### **Conclusion**

Domestic abuse is a significant issue facing Northern Irish society. The proposed Bill may have some positive impacts on this issue, by recognising the 'moral distinctiveness' of domestic abuse as a form of violence,<sup>230</sup> facilitating greater accountability for perpetrators of coercive control, enabling earlier and more appropriate police interventions, and sending a message to victim-survivors and society that non-physical behaviour can constitute criminal abuse. However, as this article has argued, three critiques have emerged in reformist and anti-carceral feminist scholarship which are directly relevant to an analysis of the Bill's ability to meaningfully address domestic abuse. First, the legislation is likely to pose significant challenges in implementation, relating to the difficulties associated with identifying, investigating and evidencing abuse. Second, the Bill may have unintended negative consequences for victim-survivors, due to the risk of harms often associated with engagement with the criminal justice system. Third, evidence suggests that increased criminalisation and harsher sentences are unlikely to lead to less perpetration or safer communities. As a result, it is questionable whether criminalisation constitutes the 'leap forward' in addressing domestic abuse that has been claimed.

Indeed, while criminalisation may play a role in combatting abuse, and while legislative reform may be politically popular, its prioritisation risks directing energy and resources that might be put towards other preventative or supportive measures. One does not have to commit to an abolitionist perspective to see the value in considering how a more holistic response might be developed to address domestic abuse. As explored in this article, such a response might continue to incorporate forms of criminal accountability. However, it would also encompass a broader array of preventative and responsive measures, ranging from increasing funding for specialist support services to considering how educators and religious leaders might combat social stigma and shame.

Such a response would see domestic abuse as a contextualised phenomenon, rather than a decontextualised act by a single perpetrator. Interpersonal violence within families and relationships cannot and should not be separated from structural forms of oppression. In the Northern Irish context, the phenomenon of domestic abuse must be understood in light of the influences of conservative Christian patriarchy, the impact of a history of sectarian violence and trauma, and the continued prevalence of institutional racism and homophobia. Unfortunately, the pervasiveness of conservative social norms within the Northern Ireland Assembly itself means it can be difficult to imagine top-down measures being implemented to address these broader structural and societal challenges. While this article has highlighted potential avenues for a more holistic range of responses to address domestic abuse, it may well be that the community-level transformative strategies proposed by anti-carceral feminists present the best opportunity for working towards a less violent future in Northern Ireland.

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229 Goodmark (n 72) 86.

230 Tadros (n 71).

