

Editorial

Violence and Socio-Legal Interventions in Gender and Sexuality

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Violence, Miller has argued, 'is foundational to gender, and vice versa'¹, whilst Gersen and Suk noted in the US context following *Lawrence v Texas*² that 'violence and subordination are now the key concepts for illegal sex'³ with Fischel observing that 'sex laws are today more calibrated to routing subordination and violence than to preserving marriage and morality'⁴. In other words, as the legal landscape regulating gender and sexuality has shifted, so too have the justifications relating to law. However, power – and its regulation through criminal law – can be seen as a key concept worthy of further exploration for the varying ways that the criminal law constructs and contests its operation.

Brooks has noted that 'sexuality is a space in which bodies do suffer' and this 'suffering' comes from talking about sex 'in a real way'⁵. These scholars have in different ways recognised the complexity of violence and socio-legal interventions in gender and sexuality. This has presented challenges for the criminal law. Zylan has previously argued that 'law eschews complex social reality for categorical elegance; this makes sense for lawyers, but it does violence to lived social experience'⁶. This special issue seeks to explore some of the 'messiness' and complexity relating to contemporary understandings of violence and highlights the broad constructions of this concept.

Following the advent of familial reform for LGBTQ people and the encouraging of dyadic coupling and legal recognition⁷, it may be argued that the law has completed its focus on sexuality within a 'post-gay' era⁸. People from sexual minorities appear to benefit from the current legal arrangements which guarantee further reaching and more extensive rights than ever before, benefitting from the post-Equality Act legal landscape. However, following the 2016 UK referendum on EU membership, hate crime and violence rates have risen, arguably encouraged by a trend of nationalism and xenophobia that may regularly be conflated with homophobia and transphobia⁹. Clubs and commercial social spaces continue to be closed by city councils in a continued crackdown on sexualised environments, and sex workers face continued criminalisation and stigmatisation¹⁰. While legal rights continue to focus on familial development for LGBTQ groups, the criminal law may be failing to protect gender and sexual

¹ T. Miller, *Violence* (Routledge: London, 2020) 38.

² 539 US 558 (2003).

³ J. Gersen and J. Suk, 'The Sex Bureaucracy' (2016) 104 *California Law Review* 881, quoted in J.J. Fischel, *Screw Consent: A Better Politics of Sexual Justice* (University of California Press: Oakland, 2019) 79.

⁴ J.J. Fischel, *Screw Consent: A Better Politics of Sexual Justice* (University of California Press: Oakland, 2019) 79.

⁵ V. Brooks, *Fucking Law: The Search for Her Sexual Ethics* (Zero Books: Winchester, 2019) 22.

⁶ Y. Zylan, *States of Passion: Law, Identity, and the Social Construction of Desire* (Oxford University Press, Oxford, 2011) 61.

⁷ C. Ashford, A. Maine, and G. Zago, 'Normative Behaviour, Moral Boundaries, and the State' in C. Ashford and A. Maine (eds), *Research Handbook on Gender, Sexuality and Law* (Edward Elgar: Cheltenham, 2020); A. Maine, 'The Hierarchy of Marriage and Civil Partnerships: Diversifying Relationship Recognition' in F. Hamilton and G. Noto La Diega (eds) *Same-Sex Relationships, Law and Social Change* (Routledge: London, 2020) 209.

⁸ M. Morris, "'Gay Capital' in Gay Student Friendship Networks: An Intersectional Analysis of Class, Masculinity, and Decreased Homophobia' (2018) 35(9) *Journal of Social and Personal Relationships* 1183.

⁹ I. Channing and J. Ward, 'Homophobia, Brexit and Constitutional Change', (2017) 16(4) *Safer Communities* 166. See, also: L. Brooks and J. Murray, 'Spate of Attacks Across UK Sparks Fear Among LGBTQ+ Community' (2021) *The Guardian*, 29 August, <https://www.theguardian.com/uk-news/2021/aug/29/spate-of-attacks-across-uk-sparks-fear-among-lgbtq-community>

¹⁰ For example, the closing of the Managed Approach area in Holbeck, Leeds. 'Holbeck Legal Red Light Zone in Leeds to be Discontinued', BBC News, 15 June 2021, <https://www.bbc.co.uk/news/uk-england-leeds-57487062>

minorities against acts of violence. However, this must also be viewed alongside feminist successes in 'protecting' women with new criminal law offences, although this in turn brings debates about legal overreach, consent, and unintended consequences. This special edition seeks to highlight recent debates and research concerning violence, the criminal law, and sexuality.

In 'Sex Work, Hate Crime, and the Criminal Law', Teela Sanders, Jane Scoular, and Rosie Campbell provide a critical analysis of the UK's hate crime model and how it is applied to crime against sex workers. They explore how police forces are implementing policy surrounding sex work and the barriers often faced in policing, finally, through theoretical and critical analysis, they investigate the issues raised by treating crimes against sex workers as a species of hate crime through policing models and any potential change in the criminal law. They conclude on the challenges to expand the current law to include sex workers as a target group for increased protection, assessing that a fully funded policing approach may well be sufficient alongside law reform around decriminalisation of sex work.

In 'Perceptions of Violence and the Self-Regulation of Identity for LGBTQ People in the UK', Alexander Maine similarly focusses on hate crime provisions, but particularly focussing on the awareness of such provisions for LGBTQ people in the United Kingdom. These perceptions will be discussed by focussing on the awareness of hate crime legislation, the role of law in constraining homophobia alongside intersections of racism, and of the impact of civil law reform protecting LGBTQ rights. Empirical evidence is used to suggest that despite the advent of hate crime protections, increased relationship recognition rights, and greater representation, many LGBTQ people anticipate violence or harm because of their sexuality.

Vanessa Bettinson analyses non-fatal strangulation offences in 'A Comparative Analysis of Non-Fatal Strangulation Offences', which seeks to answer whether the proposed s. 75A Serious Crime Act 2015 works for victims of domestic violence and abuse. Bettinson outlines the relevance of NFS to the social problem of domestic violence and abuse and makes the argument that a new specific offence is justified. The article explores selected legal jurisdictional examples of NFS offences to draw out elements that have either assisted or hindered the prosecution of these cases. This comparative approach will allow for an analysis of the proposed s. 75A to determine what challenges it will present to the prosecutorial authorities.

Finally, Justin Ellis approaches the subject of Drag Queen Storytime in reference to the growing moral panic and hate crime related issues arising from the phenomenon. In 'A fairy tale gone wrong: social media, recursive hate and the politicisation of Drag Queen Storytime', Ellis analyses news media and public discourse on hateful conduct against DQS events in the United States and related conduct in the UK and Australia, along with critically analysing hate crime's function as a legal category. His findings emphasise the recursive nature of bias-motivated hateful conduct based on medico-legal and pseudo-scientific stigmatisation of same-sex attraction and gender fluidity, and the amplificatory capacity of social media networks to engender hateful conduct.