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**Evaluating the Substantive Representation of Women and  
Domestic Violence Legislation in England and Wales: a Critical  
Path Approach**

**Kitchen, A.**

A PhD thesis awarded by the University of Westminster.

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**EVALUATING THE SUBSTANTIVE REPRESENTATION OF WOMEN  
AND DOMESTIC VIOLENCE LEGISLATION IN ENGLAND AND WALES:  
A CRITICAL PATH APPROACH**

**ASHLEY KITCHEN**

**A thesis submitted in partial fulfilment of the  
requirements of the University of Westminster  
for the degree of Doctor of Philosophy**

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## **Abstract**

More women entering politics has led to questions regarding so-called ‘women’s issues’ and whether female representatives make a difference in reference to these issues. This thesis moves beyond the question of whether women represent women and instead, focuses on the representation process as a whole. This approach widens the scope beyond seeing women as a homogenous group, with uniform interests and unvarying political motivations. To do so, this thesis evaluates the substantive representation of women in England and Wales. Specifically, this thesis assesses four pieces of domestic violence legislation: The Crime and Security Act 2010, the Protection of Freedoms Act 2012, the Criminal Justice and Courts Act 2015, and the Serious Crime Act 2015. This thesis employs a critical path framework and uses this framework to research the impact of substantive representation regarding this specific category of legislation. In addition to utilizing this framework, the main aims of this thesis include: drawing conclusions on substantive representation and expanding present knowledge regarding both the political representation of women and domestic violence legislation in England and Wales. In order to accomplish these aims, this thesis considers the following research question: what does the substantive representation of women mean in England and Wales, regarding domestic violence legislation? The case study is driven by a substantive political problem, domestic violence, and uses longstanding conceptual ideas, such as political representation, in order to ask new questions. This thesis further adds to the conversation surrounding the substantive representation of women by creating a critical path, or logical pathway, used to evaluate what is ‘going on’ in regard to representation. This pathway aids in tracing occurrences across instances of time, legislation, sites, and actors. The pathway utilises many concepts within the field including critical junctures, critical acts, and critical actors, and assembles them in a logical way, by employing the framework of questions mentioned above. This thesis benefits from and demonstrates the changing nature of representation and how we as researchers evaluate and draw conclusions from it. Evaluating substantive representation is important because numbers do not equal an understanding of behaviour, and why representatives and legislators may attempt to represent one group of citizens rather than another.

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## **List of Acronyms**

|       |  |
|-------|--|
| ACPO  | Association of Chief Police Officers                       |
| CPS   | Crown Prosecution Service                                  |
| DCA   | Department of Constitutional Affairs                       |
| DEVAW | Declaration on Elimination of Violence against Women       |
| DUP   | Democratic Unionist Party                                  |
| DVPNs | Domestic violence protection notices                       |
| DVPOs | Domestic violence protection orders                        |
| EDM   | Early day motion   |
| EHRC  | Equality and Human Rights Commission                       |
| EOC   | Equal Opportunities Commission                             |
| GEO   | Government Equalities Office                               |
| IDVA  | Independent Domestic Violence Advocates                    |
| ISP   | Internet service provider                                  |
| MALE  | Men's Advice Line  |
| MPs   | Members of Parliament                                      |
| NAPO  | National Association of Probation Officers                 |
| NGOs  | Non-governmental organisations                             |
| NHS   | National Health Service                                    |
| NSPCC | National Society for the Prevention of Cruelty to Children |
| PAS   | Protection Against Stalking                                |
| PMQs  | Prime Minister's Questions                                 |
| PTSD  | Post-traumatic stress disorder                             |
| RNGS  | Research Network on Gender Politics and the State          |
| SDLP  | Social Democrat and Labour Party                           |
| SNP   | Scottish National Party                                    |
| SRW   | Substantive representation of women                        |
| UKIP  | United Kingdom Independence Party                          |
| UN    | United Nations   |
| WEU   | Women and Equality Unit                                    |
| WNC   | Women's National Commission                                |

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## **Statement of Authorship**

I declare that all the material contained in this thesis is my own work.

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Ashley Kitchen, 21 February 2018

## **Introduction: Evaluating the Substantive Representation of Women in England and Wales**

The main subject of inquiry for this thesis is the substantive representation of women (hereafter referred to as SRW) in terms of violence against women legislation. The project focuses on a single case study of England and Wales and the cases to be evaluated within the case study are pieces of key legislation passed by the national parliament. These cases are: The Crime and Security Act 2010, the Protection of Freedoms Act 2012, the Criminal Justice and Courts Act 2015, and the Serious Crime Act 2015. The main aims of this thesis are to implement a formalised critical path framework surrounding SRW, employ this framework to research the impact of SRW on domestic violence legislation in England and Wales, draw conclusions regarding SRW, and expand future knowledge on the political representation of women, as well as its effects on domestic violence legislation. To accomplish these aims, this thesis considers the following research question: what does SRW mean in England and Wales, regarding violence against women? In order to answer the research question, this thesis assesses the following questions that have been synthesised from various authors. These questions comprise: 1) When does SRW occur; 2) why is SRW attempted; 3) who acts in SRW; 4) how is SRW manifested; 5) where does the substantive representation occur; 6) in relation to which women is substantive representation expressed; and 7) what policies are passed or debated.

Substantive representation has been defined as ‘acting for’ the represented.<sup>1</sup> In this case study, the ‘represented’ are women. Conventionally in England and Wales, research on the political representation of women has centred on asking whether women in politics make a difference in terms of positive policy changes to so-called ‘women’s issues’ such as childcare, equal pay and welfare. Specifically since the 1980s, when voluntary party

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<sup>1</sup> Hanna Fenichel Pitkin, *The Concept of Representation* (Berkeley and Los Angeles: University of California Press, 1967), 209.

gender quotas were enacted in the United Kingdom, much of the research focus has been on the impact of those quotas and whether women have made a difference in the political arena, in terms of acting for these issues.<sup>2</sup> This type of research often carries the assumption that only women can represent women and increasingly, it is being acknowledged by scholars that this assumption does not necessarily present the whole picture regarding the political representation of women and can be quite limited. Because this type of examination is narrow, it is important to move outside this and to look beyond the simple question of whether having more women in formal political institutions will lead to better representation of ‘women’s issues.’

In order to produce a less narrow and more inclusive understanding of SRW, this thesis will explore a current public policy issue, violence against women, specifically domestic violence, in order to analyse the political representation of women in England and Wales. While the topic of ‘women’s issues’ is a contested matter within the literature, violence against women is seen as an important gendered issue and life experience of women that needs representation.<sup>3</sup> In the United Kingdom, from 1974 to 1994, only four national policy areas regarding violence against women, as conceptualised by S. Laurel Weldon, were addressed in the national legislature.<sup>4</sup> However, at least 25 percent of women are targets of domestic violence in the United Kingdom over their lifetime, showing the need for this type of research in order to bring attention to the issue.<sup>5</sup> Why do women continue to suffer from violence in such a universal capacity? Personally, throughout my academic career and studies, this has been a persistent question that has often driven my interest in the political aspect of this problem. While this thesis does not seek to answer the question regarding why women suffer from violence, it is a question that has helped motivate my interest in this research.

Since 1994, many organisations and legislators have pushed for more and also improved policies regarding violence against women, however a significant gap remains in terms of government responsiveness to this issue.<sup>6</sup> For example, violence against women as an issue

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<sup>2</sup> Mona Lena Krook and Judith Squires, “Gender Quotas in British Politics: Multiple Approaches and Methods in Feminist Research,” *British Politics* (2006): 48.

<sup>3</sup> Anne Phillips, *The Politics of Presence* (Oxford: Clarendon Press, 1995).

<sup>4</sup> S. Laurel Weldon, *Protest, Policy, and the Problem of Violence against Women: A Cross-National Comparison* (Pittsburgh: University of Pittsburgh Press, 2002), 31.

<sup>5</sup> Rhys Andrews and Karen Johnston Miller, “Representative Bureaucracy, Gender, and Policing: The Case of Domestic Violence Arrests in England,” *Public Administration* (2013): 998.

<sup>6</sup> Weldon, *Protest, Policy, and the Problem of Violence against Women*.

was found to be of primary importance by *all* actors in the United Kingdom in a study focusing on representative claims, yet the Westminster government has most recently been criticised in a report by the United Nations (UN) for their inconsistent approach on combating violence against women.<sup>7</sup> In the UN report, a spokesperson stated that “although the [United Kingdom] has made the issue a policy priority, the reality is that ‘isolated pockets of good practice’ are compromised by the ‘lack of a consistent and coherent human-rights based approach in the government’s response to violence against women and girls.’”<sup>8</sup> This shows that while the government has made the issue a policy priority, a gap remains between the priority and the approach to combat it. Violence against women further remains an important issue because few studies investigate the impact of political representation on violence against women legislation.<sup>9</sup>

## **Contribution to Knowledge**

This case study is driven by fundamental political problems regarding political representation and seeks to use old conceptual ideas in order to ask new questions regarding the concept of SRW. This thesis will benefit from and demonstrate the changing nature of representation and how we as researchers evaluate and draw conclusions from it. This changing nature of representation is defined in detail in the literature review in Chapter 1. This thesis synthesises suggested questions from a number of different authors, including Karen Celis, Sarah Childs, Johanna Kantola, Mona Lena Krook, Joni Lovenduski, Marila Guadagnini, and Suzanne Dovi, as a way to create a critical path framework to look at the sequence of how things happen within the representation process. This critical path framework is applied to a detailed case study and England and Wales in hopes of trying to add to the conversation regarding substantive representation and introduce a way to interrogate legislation or any policy process. Additionally, this thesis presents the term ‘critical actions,’ or actions or steps taken by critical actors, initiated by a critical juncture, which lead to critical acts, into the conversation surrounding SRW and second, bring together the concepts of this representation in order to effectively evaluate

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<sup>7</sup> Karen Celis et al., “Constituting Women’s Interests through Representative Claims,” *Politics and Gender* (2014): 165.

<sup>8</sup> “UK under Fire Over ‘Incoherent’ Approach to Domestic Violence,” last modified June 14, 2015, <http://www.theguardian.com/society/2015/jun/14/uk-domestic-violence-un-report-yarls-wood>.

<sup>9</sup> S. Laurel Weldon, “Beyond Bodies: Institutional Sources of Representation for Women in Democratic Policymaking,” *The Journal of Politics* (2002): 1163.

SRW. This will aid in providing a more consistent way to understand the representation process as a whole. This is important because it increases the researcher's ability to trace various aspects of representation across several instances of substantive representation. For example, when considering one issue across various time periods, this critical path can become increasingly important because of the above stated ability to trace this issue, and also bring together a nuanced evaluation of this representation.

Further, this changing nature of representation has allowed other ways for representation to be evaluated. For example, this thesis' critical path framework is developed as a way to systematically look at the sequence of how things happen within the representation process and also identify the activities within the representation process that are critical to its success. Importantly, this framework does not assume who acts on women's issues, or where SRW may occur. The framework confronts previous research and aids in examining several actors, sites, timing, actions, and motivations; not simply what women do, or do not do. The development of this framework contributes to the research and literature surrounding the political representation of women, as well as aiding in the transition from traditional questions to more inclusive questions regarding gender and representation. Furthermore, this framework aids in illuminating 'gendered blind spots' within the discipline by "expanding the range of comparison, as well as moving beyond exclusive attention to female legislative [behaviour], [and] presents an opportunity to explore how gendered identities and interests are articulated and advanced in politics."<sup>10</sup>

In addition to the above illumination, this critical path framework contributes to the methodological scholarship of SRW by enhancing our ability to do further research and expand the future study of representation. This framework increases the knowledge regarding SRW and allows a bigger picture of research to be presented. This is important because it allows the political and substantive representation of women to be explored from a distinctive angle. This thesis contributes to knowledge in the disciplinary and sub-disciplinary areas of political representation theory and analysis, policy formation, and the expansion of knowledge on the United Kingdom, in terms of moving past gender quota studies or focusing explicitly on female legislators and their actions. Moreover, I will expand the process of how research is conducted in regard to the political representation of

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<sup>10</sup> Mona Lena Krook, "Women's Representation in Parliament: A Qualitative Comparative Analysis," *Political Studies* (2010): 235.

women and possibly change the way researchers and readers consider and deliberate the topic of women and politics. It is also my expectation that this framework can be expanded to other cases in the future in a comparative way, but also by either validating or contradicting the existing research.

## **Chapter Outline**

The remainder of this thesis comprises of five chapters and a comprehensive conclusion. Chapter 1 situates the project within the wider scope of literature and brings attention to gaps which exist. Specifically, the literature review focuses on the various concepts of importance to this thesis including theories related to political representation: critical mass, critical acts, and critical actors. In addition to the section on political representation, the concept of network/grassroots feminism is presented. This literature review aids in ‘setting the scene’ for the thesis as a whole, by presenting the narrative that surrounds these concepts. Chapter 1 also presents the rationale for using domestic violence as a policy area to be evaluated and offers feminist theories on violence against women and how these experiences manifest itself in various settings. In addition to ‘setting the scene,’ the literature review serves as a theoretical background for the case study presented in Chapter 3 and Chapter 4.

Chapter 2 presents the case study method and what it means to conduct a case study in the social sciences. In addition, the chapter offers various concepts regarding feminist research and methodologies, and how to employ these concepts within the wider case study frame. Chapter 2 also offers a comprehensive definition of violence against women and the definition of domestic violence within the English and Welsh context. Further, the critical path framework that I have conceptualised has been presented in detail, following the questions which encompass the study of substantive representation. Similar to the way that the literature review in Chapter 1 aids in presenting the contextual background of what has been written on the topic, this chapter establishes the environment under which the case study takes place and is the pillar of this thesis’ methodological approach.

Following the introduction of the literature review and the methodological approach, Chapter 3 introduces the first two cases of the case study. These cases are the Crime and Security Act 2010 and the Protection of Freedoms Act 2012. The critical path framework

presented in Chapter 2 is employed in this chapter. For both cases, the legislation is introduced followed by an evaluation of the critical path framework, including assessment of the critical juncture, critical actions, and the critical act. Briefly, the Crime and Security Act 2010 introduced Domestic Violence Protection Notices and sought to close the gap that existed within the law regarding domestic violence in England and Wales. The Protection of Freedoms Act 2012 updated the Protection from Harassment Act 1997 to make stalking a specific criminal offence, also in attempts to close a gap within the law. The findings from these two cases will be presented in the chapter.

Chapter 4 introduces the final two cases of this case study: The Criminal Justice and Courts Act 2015 and the Serious Crime Act 2015. As presented in Chapter 3, the critical path framework will be utilised in this chapter. These two cases include an evaluation of the critical juncture, critical actions, and the critical act. The Criminal Justice and Courts Act 2015 criminalised so-called revenge pornography and the Serious Crime Act 2015 criminalised coercive and controlling behaviour in a domestic violence context. Both of these pieces of legislation sought to close gaps within the existing domestic violence legislation in England and Wales. The findings from these two cases will be presented in the chapter.

Following the presentation and evaluation of the case study in Chapter 3 and Chapter 4, Chapter 5 will assess the methods and the questions within the critical path framework, and address the contributions that this thesis has made to the field. Finally, the conclusion will summarise the thesis as a whole and what the findings from the case study mean for future research on the topic of substantive representation.

## **Chapter 1: Literature Review, Rationale, and Identifying Gaps**

This chapter will present the relevant literature regarding the main subject of this thesis: SRW, as well as a brief review of feminist theories regarding the issue of violence against women as a way to show how this is an important and collective issue which remains a rhetorically central policy area in England and Wales and around the world more generally. By presenting the relevant literature regarding the political representation of women, this review and analysis will situate the theoretical framework for this project and express how it underpins my positioning on this topic. Presenting feminist theories on violence against women is important because it is through feminism, the women's movement, and gender scholars that this issue has entered the general political discourse in the English and Welsh context. Furthermore, distinguishing feminist theories on violence against women from everyday views on violence against women can help to determine whether the representation that is attempted within the case study in Chapter 3 and Chapter 4 is underpinned by feminist views on violence against women or more traditional everyday views, such as men protecting 'vulnerable' women against violence.

The literature review is not intended to be an exhaustive account of the literature; rather, its purpose is to show the general context in which this thesis is situated. The literature review begins from the premise of political representation and transitions to a presentation of network feminism. The section on political representation specifically focuses on various theories adapted by gender scholars and applied to gender politics such as the theories of critical mass, critical acts, and critical actors. Following this literature review, the gaps within the literature are presented alongside a reiteration of this thesis' contribution to knowledge regarding filling these identified gaps presented in the introduction. This chapter will present the literature surrounding the above concepts as a way to frame the theoretical underpinnings of this thesis.



## Political Representation

The issue of representation, specifically political representation, dates back centuries. However, political theorist Hanna Fenichel Pitkin is considered the starting point for modern-day discussions on political representation, especially by feminist and gender scholars. In 1967, Pitkin published *The Concept of Representation* where she posited four theories regarding political representation: 1) formalistic, 2) descriptive, 3) symbolic, and 4) substantive.<sup>11</sup> These four theories are important to understand in order to appreciate the path that the theory of political representation has taken over the past decades.

Two representation views fall under the category of ‘formalistic’: authorization and accountability. They both share common characteristics such as the focus on authority, where “a representative is someone who has been authorized to act.”<sup>12</sup> In this sense, the representative is highly favoured and “defines representing in terms of a transaction that takes place at the outset, before the actual representing begins. To the extent that he has been authorized, within the limits of his authority, anything that a man does is representing.”<sup>13</sup> The formalistic views are shared by political theorists such as Max Weber, Eric Voegelin, and Joseph Tussman. For Pitkin however, the formalistic views do not present the entire picture of representation, and do not acknowledge ‘the activity of representing.’<sup>14</sup> The formalistic category highlights political culture, and its links to political representation and representatives. Generally speaking, political culture can be described where “[e]very political system is embedded in a particular pattern of orientations to political actions.”<sup>15</sup> As stated by Shirley Zimmerman, this political culture “refers to the values and attitudes that people hold toward government and toward each other.”<sup>16</sup> The United Kingdom has been categorised as having a traditionalistic political culture where “a substantially hierarchical society [was] part of the natural order, authorizing those at the top of the social structure to take a special and dominant role in government.”<sup>17</sup> This observation can be extended into a broader understanding of how today’s members of parliament (MPs) and peers, mostly men, take upon themselves the

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<sup>11</sup> Pitkin, *The Concept of Representation*.

<sup>12</sup> Pitkin, *The Concept of Representation*, 38.

<sup>13</sup> Pitkin, *The Concept of Representation*, 39.

<sup>14</sup> Pitkin, *The Concept of Representation*, 59.

<sup>15</sup> Gabriel Almond, “Comparative Political Systems,” *The Journal of Politics* (1955): 396.

<sup>16</sup> Shirley L. Zimmerman, “Political Culture: Definitions and Variations in the 50 States” in *Family Policies and Family Well-Being: The Role of Political Culture*, ed. Shirley Zimmerman (Thousand Oaks: SAGE Publications, Inc., 1992), 36.

<sup>17</sup> Zimmerman, “Political Culture: Definitions and Variations in the 50 States,” 36.

task of protecting ‘vulnerable’ women from violence. Lastly, “[g]ood government in this political culture involves the maintenance and encouragement of traditional patterns and, if necessary, their adjustment to changing conditions with the least possible upset.”<sup>18</sup> This described ‘natural order’ and maintenance of ‘good government’ shows how society can view some as natural leaders and representatives, such as men. This lasting political culture is one reason why female representatives are necessary not only in bringing about various policy aims, but also a tool in which the state could help promote more women as representatives in order to change the traditionalistic political culture present within the United Kingdom.

Political culture can correspond with the idea of a lasting ‘cultural memory.’ In the general sense, Kevin Laland and Luke Rendell explain: “Culture depends on the passing-on of learned knowledge between individuals, through teaching and copying.”<sup>19</sup> This concept is important because it shows the ways in which ideas and memories are transmitted throughout time. These ideas, such as those detailed above in regard to men as the natural representatives within government, have been able to transmit through time and linger in the cultural memory of those in the United Kingdom. This is not to say that *all* individuals have learned these memories, however it is important to be aware of the lasting impacts of the past, especially in regard to gender relations. This learned knowledge is not necessarily intentional, but can be embedded in and reinforced through various social interactions. This is perhaps why it has taken so many decades for women to become formal political actors and representatives and also perhaps regarding discourses about domestic violence and violence against women more generally.

While women were not able to stand as MPs until 1918, before suffrage was won, various reforms to local government allowed more women to enter the ranks, such as under the Municipal Corporations (Franchise) Act 1869, which allowed women to vote for municipal councils and stand as 15ouncillors, and the Education Act of 1870, which allowed women to stand to be members of school boards.<sup>20</sup> For Krista Cowman, this reflects that “[w]omen’s place in national politics has been a recurrent theme in British history, both within Parliament and beyond it in the realm of print and debate, where opinion is formed. Discussions of women’s relationship to politics are as old as discussions of politics

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<sup>18</sup> Zimmerman, “Political Culture: Definitions and Variations in the 50 States,” 51.

<sup>19</sup> Kevin Neville Laland and Luke Edward Rendell, “Cultural Memory,” *Current Biology* (2013): R737.

<sup>20</sup> Krista Cowman, *Women in British Politics, c. 1689-1979* (Basingstoke: Palgrave Macmillan, 2010), 51.

itself.”<sup>21</sup> This however, did not necessarily equal, substantive changes to the system. For example, “[w]ith the exception of queens, women never achieved equal access to the key sites of political power.”<sup>22</sup> This is evidenced by the fact that in 1918, one woman, Countess Markievicz, was elected to parliament (out of 707 seats), but did not take her place, as she was a member of the Sinn Fein party.<sup>23</sup>

After women won the right to vote and stand as MPs in the Westminster parliament, the major parties began to open up membership to women. Moreover, women were seen as important constituents to represent for the first time, as they now represented a large number of voters. As stated by Martin Pugh:

By 1935, the [Conservative] party seemed to have settled on its approach to women; it was hardly necessary to refer to them specifically, provided that the cost of living, housing, pensions and education showed improvements. Conservatives showed themselves responsive, within certain well-defined limits, to what they perceived to be women’s interests.<sup>24</sup>

Still, women were considered in terms of their status as mothers and wives, and less as autonomous beings. The Labour party also included similar stances, declaring the party the ‘Women’s Party’ and focusing on domestic life as a major concern for women.<sup>25</sup> As Pamela Graves details specifically about women in the Labour party: “When they argued for their reform programme, they used the language of class and directed their appeals and their criticism at hostile governments or greedy capitalists rather than at the men of their party. ... The more integrated they became, the less visible they were.”<sup>26</sup> As Joni Lovenduski states, “[t]he British political culture, entwined as it is with an unwritten constitution, encourages acceptance of a considerable degree of government secrecy, which compounds a tradition of covert rules of elite entry.”<sup>27</sup> Not only is entry *into* the system complex, so too is the fight for change, especially in regard to women. The system itself reinforces this complexity. For example, “[t]here is no single document that sets out

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<sup>21</sup> Cowman, *Women in British Politics*, 2.

<sup>22</sup> Cowman, *Women in British Politics*, 29.

<sup>23</sup> Martin Pugh, *Women and the Women’s Movement in Britain* (London: Macmillan Press, 2000), 157.

<sup>24</sup> Pugh, *Women and the Women’s Movement in Britain*, 128.

<sup>25</sup> Pugh, *Women and the Women’s Movement in Britain*, 132.

<sup>26</sup> Pamela Graves, *Labour Women: Women in British Working Class Politics, 1918-1939* (Cambridge: Cambridge University Press, 1994), 182.

<sup>27</sup> Joni Lovenduski, *Women and European Politics: Contemporary Feminism and Public Policy* (Amherst: University of Massachusetts Press, 1986), 213.

the operation of the system and the rights and duties of its citizens and leaders. In fact, it is uncodified; its provisions are written down but in a number of places, variously based on royal prerogative, statute, common law, conventions, and authoritative opinion.”<sup>28</sup>

The differences between the theories emerge when Pitkin divides them by the distinction of ‘standing for’ representation and ‘acting for’ representation.<sup>29</sup> For Pitkin, descriptive and symbolic representation are both ‘standing for’ while substantive representation is viewed as ‘acting for.’ The representative under the descriptive view, “does not act for others; he [or she] ‘stands for’ them, by virtue of a correspondence or connection between them, a resemblance or reflection... What seems important is less what the legislature does than how it is composed.”<sup>30</sup> The symbolic view is similar in this sense, where it is about the presence of the representatives and less about what the representatives do.<sup>31</sup> As Pitkin advances, “[a] symbol is considered to have a meaning beyond itself, not because of its actual resemblance to the referent, not because of any real connection, but just because it is so considered.”<sup>32</sup> For example, the rise of Margaret Thatcher to the position of Prime Minister presented an interesting dichotomy in terms of women and politics. On one hand, this rise helped to show how far women had come, however on the other hand:

Thatcher herself was a beneficiary of the gains and reforms achieved by earlier generations of women. She enjoyed the vote and access to higher education... Yet she steadfastly refused to acknowledge any debt or wider responsibility. ... Women, in her view, should stop complaining and capitalise on the opportunities open to them already.<sup>33</sup>

While it can be said with confidence that Thatcher was not a feminist, she could be considered a symbolic representation for many women and girls growing up in the era of ‘Thatcherism.’ This symbolism helped to encourage the idea that women could ‘do’ politics and be considered powerful outside of motherhood and domesticity.<sup>34</sup> Although

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<sup>28</sup> Joni Lovenduski, “The UK: Reforming the House of Lords,” in *Gendering the State in the Age of Globalization: Women's Movements and State Feminism in Postindustrial Democracies*, ed. Melissa Haussman and Birgit Sauer (Plymouth: Rowman & Littlefield Publishers, 2007), 263.

<sup>29</sup> Karen Celis and Sarah Childs, “Introduction: The Descriptive and Substantive Representation of Women: New Directions,” *Parliamentary Affairs* (2008): 419.

<sup>30</sup> Pitkin, *The Concept of Representation*, 61.

<sup>31</sup> Susan Franceschet, Mona Lena Krook, and Jennifer M. Piscopo, *The Impact of Gender Quotas* (New York: Oxford University Press, 2012), 9; Krook, “Women’s Representation in Parliament,” 236.

<sup>32</sup> Pitkin, *The Concept of Representation*, 100.

<sup>33</sup> Pugh, *Women and the Women’s Movement in Britain*, 335.

<sup>34</sup> Pugh, *Women and the Women’s Movement in Britain*, 336.

descriptive and symbolic representation expands the concept of representation beyond the formalistic views, none of the three views demonstrate acting for the represented, according to Pitkin.<sup>35</sup>

The fourth and final theory of representation advanced by Pitkin is substantive representation where “representing here means acting in the interest of the represented, in a manner responsive to them.”<sup>36</sup> Substantive representation draws on the connections between representatives and the represented, where this type of representation is about acts and acting for the represented, as opposed to intentions, or simply ‘standing for’ the represented.<sup>37</sup> Some scholars such as Leslie A. Schwindt-Bayer and William Mishler see Pitkin’s theories on representation as somewhat merged, rather than isolated where:

Pitkin conceives of representation as a complex structure whose multiple dimensions are closely integrated. ...the integrated model provides strong evidence, consistent with theory, that formal representative structures and processes exert powerful influences on the extent of women’s descriptive representation policy responsiveness (substantive), and symbolic representation.<sup>38</sup>

Because descriptive representation does not focus on the outcomes of an institution, Pitkin identifies substantive representation as the ‘one true type’ of representation where “[t]he representatives must be responsive to the represented and not the other way around. ...this implies that the wishes of the represented and the actions of the representative will converge.”<sup>39</sup>

Never before had political representation been theorised and categorised in this way, and because of this, Pitkin’s work is considered to be most influential when writing on political representation today.<sup>40</sup> In addition to naming and referencing Pitkin, a large number of scholars have adapted and interpreted her work in various ways, from examining

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<sup>35</sup> Pitkin, *The Concept of Representation*, 111.

<sup>36</sup> Pitkin, *The Concept of Representation*, 209.

<sup>37</sup> Leslie A. Schwindt-Bayer and William Mishler, “An Integrated Model of Women’s Representation,” *The Journal of Politics* (2005): 407; Karen Celis, “Substantive Representation of Women (and improving it): What it is and should be about?,” *Comparative European Politics* (2009).

<sup>38</sup> Schwindt-Bayer and Mishler, “An Integrated Model of Women’s Representation,” 423-424.

<sup>39</sup> Karen Celis et al., “Rethinking Women’s Substantive Representation,” *Representation* (2008): 100; Pitkin, *The Concept of Representation*, 163-165.

<sup>40</sup> For example: Celis et al., “Rethinking Women’s Substantive Representation”; Celis, “Substantive Representation of Women (and improving it)”; Sarah Childs and Mona Lena Krook, “Analysing Women’s Substantive Representation: From Critical Mass to Critical Actors,” *Government and Opposition* (2009); Franceschet et al., *The Impact of Gender Quotas*.

descriptive representation and case studies, to investigating symbolic representation. For example, Celis et al. state that “scholars ask whether an increase in the number of female representatives (women’s descriptive representation) results in an increase in attention to women’s policy concerns (women’s substantive representation).”<sup>41</sup> Since Pitkin, these theories have been adapted by feminist theorists, and applied to gender politics. Feminist theorists typically agree with Pitkin’s issues with formalistic representation, but express criticism over her other three conceptions of representation.<sup>42</sup> For example, speaking on descriptive representation, Childs states that “[c]omposition of political I matters...there is some kind of relationship between representatives’ behaviour and their gender.”<sup>43</sup> On substantive representation, Childs states that “Pitkin’s definition is unable to evaluate the activity of representation as it occurs; it struggles to take account of gender—many feminists link women’s descriptive and substantive representation.”<sup>44</sup> Because Pitkin’s four theories on representation do not include gender in the definitions or evaluations, feminist theorists have had to adjust Pitkin’s theories to incorporate gender into the conversation. Therefore, in terms of SRW, the literature has focused on three things: “the proportion of women elected, such as the achievement of a critical mass; individual factors that may affect the propensity of women to act for women, such as party membership and feminist attitudes; and institutional and contextual variables, such as party discipline, leftist parties in government, and civil society support.”<sup>45</sup> The following sections will show how the literature on the political representation of women has progressed over time, to where the literature stands today on SRW.

### ***Critical Mass***

After the development of Pitkin’s four theories of representation, the theory of ‘critical mass’ and its connection to the political representation of women became prominent as a theory for how numeric representation could improve SRW within the field of gender politics.<sup>46</sup> The theory of critical mass argues that as more women enter the political sphere,

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<sup>41</sup> Celis et al., “Rethinking Women’s Substantive Representation,” 99.

<sup>42</sup> Sarah Childs, “Representation,” in *The Impact of Feminism on Concepts and Debates*, ed. V. Bryson and G. Blakeley (Manchester: Manchester University Press, 2007).

<sup>43</sup> Childs, “Representation.”

<sup>44</sup> Childs, “Representation.”

<sup>45</sup> Franceschet et al., *The Impact of Gender Quotas*, 8.

<sup>46</sup> Sarah Childs and Mona Lena Krook, “Critical Mass Theory and Women’s Political Representation,” *Political Studies* (2008).

more female-friendly policies will be passed and therefore these policies will be beneficial to all women.<sup>47</sup> In the 1970s and 1980s, scholars such as Rosabeth Moss Kanter and Drude Dahlerup examined how women ‘act for’ other women in the corporate and political fields.<sup>48</sup> However, there remains little consensus on what actually constitutes a critical mass. For example, Kanter created the skewed group and the tilted group, where the skewed group comprised a maximum of 15 percent (in this case, women, who were seen as tokens), and the tilted group constituted between 15 percent and 40 percent.<sup>49</sup> On the other hand, Dahlerup conceptualised that 30 percent was the minimum for a critical mass, and is most often followed by scholars researching the effects of critical mass.<sup>50</sup>

Following this research, scholars began to “draw on the concept to explain a range of different outcomes, most obviously instances where increased numbers of women result in greater attention to women’s issues, but also cases where increased numbers of women result in little or no change, on the grounds that women may not yet constitute a ‘critical mass’.”<sup>51</sup> For example, Childs found that newly elected Labour women’s presence in the United Kingdom had a slightly positive effect on the political representation of women where “the findings support the contention that women representatives identify the articulation of women’s concerns as part of their representative function.”<sup>52</sup> This result is not universal, however. In another article by Childs, many MPs were hesitant to state that

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<sup>47</sup> Childs and Krook, “Critical Mass Theory and Women’s Political Representation,” 725.

<sup>48</sup> Rosabeth Moss Kanter, *Men and Women of the Corporation* (New York: Basic Books, 1977); Rosabeth Moss Kanter, “Some Effects of Proportions on Group Life: Skewed Sex Ratios and Responses to Token Women,” *The American Journal of Sociology* (1977); Drude Dahlerup, “From a Small to a Large Minority: Women in Scandinavian Politics,” *Scandinavian Political Studies* (1988).

<sup>49</sup> Sandra Grey, “Numbers and Beyond: The Relevance of Critical Mass in Gender Research,” *Politics & Gender* (2006): 494.

<sup>50</sup> Grey, “Numbers and Beyond,” 494; Sandra Grey, “Does Size Matter? Critical Mass and New Zealand’s Women MPs,” *Parliamentary Affairs* (2002); Sarah Childs, *New Labour’s Women MPs: Women Representing Women* (Abingdon: Routledge, 2004); Donley T. Studlar and Ian McAllister, “Does a Critical Mass Exist? A Comparative Analysis of Women’s Legislative Representation Since 1950,” *European Journal of Political Research* (2002).

<sup>51</sup> Childs and Krook, “Critical Mass Theory and Women’s Political Representation,” 732; Sue Thomas, “The Impact of Women on State Legislative Policy-Making,” *Journal of Politics* (1991); Sue Thomas, *How Women Legislate* (New York: Oxford University Press, 1994); Catherine Bochel and Jacqui Briggs, “Do Women Make a Difference?,” *Politics* (2000); Grey, “Does Size Matter?”; Kathleen A. Bratton, “Critical Mass Theory Revisited: The Behavior and Success of Token Women in State Legislatures,” *Politics & Gender* (2005).

<sup>52</sup> Sarah Childs, “In Their Own Words: New Labour Women and SRW,” *British Journal of Politics and International Relations* (2001): 173, 187; see also: Joni Lovenduski and Pippa Norris, “Westminster Women: The Politics of Presence,” *Political Studies* (2003); Sarah Childs and Julie Withey, “Women Representatives Acting for Women: Sex and the Signing of Early Day Motions in the 1997 British Parliament,” *Political Studies* (2004); Childs, *New Labour’s Women MPs*; Paul Chaney, “Critical Mass, Deliberation and SRW: Evidence from the UK’s Devolution Programme,” *Political Studies* (2006).

SRW was based on the presence of women politicians.<sup>53</sup> As stated by Childs, “this suggests both that they accept that women have different experiences and that these will be included when women are present. At the same time, however, MPs and [p]eers appear reluctant to accept the assumption that women representatives act for women, even though their statements imply that women’s presence will make a difference.”<sup>54</sup>

As the critical mass theory has become more prominent throughout the decades, one of the main problems that have emerged is the way that researchers have assumed that increasing the number of women legislators will automatically lead to more sex-based equality.<sup>55</sup> An increasing amount of research concludes that there is no automatic link between the number of women in politics and the policy outcomes of a particular country.<sup>56</sup> In addition, critical mass research tends to view women as a homogeneous group, where members of the group (women) agree on all issues, simply because they are women, and as Childs explains, critical mass, “assumes that the percentage of women in a particular political institution is the key to understanding women’s representatives’ behaviour and effects...it fails to consider why women might seek to act for women in the first place.”<sup>57</sup> These findings have led to a new way to examine the political representation of women, or at the very least have altered the way in which critical mass is conceptualised, where “[t]here is a failure to adequately theorize the relationship between women’s descriptive and substantive representation; why should (on what basis will) women representatives act for women?”<sup>58</sup> The problem with critical mass is not that more women should be representatives, as an equality issue; it is the slippery slope that could form if researchers assume that all women care about the same issues, and have the same opinions as all other women, and that the same is true of all men.

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<sup>53</sup> Sarah Childs, “Concepts of Representation and the Passage of the Sex Discrimination (Election Candidates) Bill,” *The Journal of Legislative Studies* (2002): 90.

<sup>54</sup> Childs, “Concepts of Representation and the Passage of the Sex Discrimination (Election Candidates) Bill,” 104.

<sup>55</sup> Childs and Krook, “Critical Mass Theory and Women’s Political Representation,” 126; Celis and Childs, “Introduction: The Descriptive and Substantive Representation of Women: New Directions.”

<sup>56</sup> Thomas, “The Impact of Women on State Legislative Policy-Making”; see also: Grey, “Numbers and Beyond”; Studlar and McAllister, “Does a Critical Mass Exist?”; Lovenduski and Norris, “Westminster Women”; Bratton, “Critical Mass Theory Revisited”; Grey, “Numbers and Beyond”; Childs and Krook, “Analysing Women’s Substantive Representation.”

<sup>57</sup> Sarah Childs, “The Complicated Relationship between Sex, Gender and SRW,” *European Journal of Women’s Studies* (2006): 7-8.

<sup>58</sup> Childs, “The Complicated Relationship between Sex, Gender and SRW,” 16.



### ***Critical Acts***

Following the rise of critical mass, scholars have shifted from simply researching the descriptive representation of women, and instead begun examining what became known as ‘critical acts,’ because few legislatures met the threshold for critical mass.<sup>59</sup> As the name implies, critical acts rely on the minority (in this case, women) to organise themselves together and form alliances to act on behalf of women in the group.<sup>60</sup> In this sense, representation is about what is done rather than who does it.<sup>61</sup> Critical acts have included gender quotas for women and new policies and legislation that have attempted to focus on women as a broad category.<sup>62</sup> Specifically in the United Kingdom, positive action such as quotas has been seen as effective in increasing the political participation of women in parliament.<sup>63</sup> As an examination of the political representation of women, the theory of critical acts has increasingly been combined with the theory of ‘critical actors,’ or those who perform critical acts.<sup>64</sup> This thesis however, does not intend to dismiss and replace critical acts with those of critical actors. Instead, my research seeks to use *both* critical acts and critical actors as a way to provide a ‘thickened’ examination of SRW in England and Wales. How these critical acts will be determined and examined is presented within the methods section of Chapter 2.

### ***Critical Actors***

The concept of critical actors has become widely used in exploring women in politics. The concept of critical actors focuses on who rather than what—critical acts. Childs and Mona Lena Krook define critical actors as “legislators who initiate policy proposals on their own and/or embolden others to take steps to promote policies for women, regardless of the numbers of female representatives. Importantly, they do not need to be women: in some situations, men may play a crucial role in advancing women’s policy concerns.”<sup>65</sup> In

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<sup>59</sup> Grey, “Numbers and Beyond.”

<sup>60</sup> Celis and Childs, “Introduction: The Descriptive and Substantive Representation of Women: New Directions,” 420.

<sup>61</sup> Celis and Childs, “Introduction: The Descriptive and Substantive Representation of Women: New Directions.”

<sup>62</sup> Childs and Krook, “Analysing Women’s Substantive Representation,” 138.

<sup>63</sup> Meg Russell, “Women’s Representation in UK Politics: What Can Be Done Within the Law?,” *UCL Constitution Unit* (2000): 4.

<sup>64</sup> Marian Sawyer, “What Makes SRW Possible in a Westminster Parliament? The Story of RU486 in Australia,” *International Political Science Review* (2012): 321.

<sup>65</sup> Childs and Krook, “Analysing Women’s Substantive Representation,” 138.

contrast to critical mass, the critical actors approach focuses not on what women do, but what specific actors do, moving away from essentialist depictions of women in politics.<sup>66</sup> For example, Mateo Diaz found that “as more and more women enter parliament, more men start to take up issues formerly considered to be ‘women’s’, such as gender equality.”<sup>67</sup> This is an important finding as it helps make the case for descriptive representation and equality, but also substantive representation where men can also represent women. To this, Mateo Diaz articulates:

Different degrees of masculinity and femininity can be found in both men and women, which implies that male representatives could have more feminist values than their female counterparts. This is problematic when it comes to linking descriptive and substantive representation, in the sense that both women with feminist values and women without them will be categorised together, while men with feminist will be excluded.<sup>68</sup>

Because of this problematic link detailed by Mateo Diaz, it is important that researchers expand their definition of critical actors and include men as potential actors, as has been articulated above. This link can also be extended to include differences between liberal and conservative women. For example, “conservative women have additionally to negotiate the conservatism (ideology and practices) that is specific to their parties, party systems, and wider political contexts.”<sup>69</sup> This may be why we see actors from both sides of the aisle demonstrating action on the issue of violence against women, whether it be because legislators want to ‘protect’ women (a group they see as vulnerable), or because they view liberation from violence as a way to create more gender equality overall. This is expanded to differences between anti-feminist claims, feminist claims, and gendered claims: “[Gendered claims] might well be underpinned by a commitment to women’s traditional roles and experiences, not least as mothers, care givers, and victims of violence.”<sup>70</sup> Therefore, the issue of domestic violence within the context of this case study is interesting

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<sup>66</sup> Childs and Krook, “Analysing Women’s Substantive Representation,” 126.

<sup>67</sup> Mateo Diaz, *Representing Women?*, 183.

<sup>68</sup> Mateo Diaz, *Representing Women?*, 186.

<sup>69</sup> Karen Celis and Sarah Childs, *Gender, Conservatism and Political Representation* (Colchester: ECPR Press, 2014), 7.

<sup>70</sup> Celis and Childs, *Gender, Conservatism and Political Representation*, 11.

because it may illuminate various reasons for why actors may claim to act on behalf of victim-survivors in this regard. Is it because of protection, liberation, or other reasons?

Increasingly, research surrounding the political representation of women has focused on formal political institutions rather than the political process, which was popular in the 1970s and 1980s.<sup>71</sup> Because of this shift in research approaches, the theory of critical actors has become the model of choice in terms of exploring women and politics today. This new approach “should examine the extent to which, and the conditions under which, women’s policy agencies [WPAs] (operating within parliaments, governments and ministries), women’s movement actors, operating as part of civil society and as integrated parts of political parties, as well as representatives” function.<sup>72</sup> As researchers however, we must be careful not to create a ‘pedestal effect’ when men are determined to be critical actors in some instances. This means there can be a “level of praise and escalating status men receive in feminist spaces that far outstrips what a man has actually accomplished or contributed.”<sup>73</sup> While parliament is by no means a feminist space, this idea of the pedestal effect must be kept in perspective when evaluating critical actors. In the United Kingdom, critical actors could be assumed to be men, because women only comprise around 20 percent of the parliament. While this is not to say that men cannot be critical actors, these ideas must be kept in view.

One of the main issues in terms of gender and politics was, and continues to be, the relationship between who holds office and what types of policy outcomes are produced.<sup>74</sup> To sum up, Simon Tormey notes that “[s]ome people will speak and act on behalf of a group, political cause or identity and thus represent it; others will recognize themselves as being the object of this discourse and be represented by it. Some will hold power as representatives; other people will be represented.”<sup>75</sup>

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<sup>71</sup> Krook and Squires, “Gender Quotas in British Politics,” 46-47.

<sup>72</sup> Celis and Childs, “Introduction: The Descriptive and Substantive Representation of Women: New Directions,” 421.

<sup>73</sup> Messner et al., *Feminist Allies and the Movement to End Violence against Women*, 138-139.

<sup>74</sup> Childs and Krook, “Analysing Women’s Substantive Representation.”

<sup>75</sup> Simon Tormey, *The End of Representative Politics* (Cambridge: Polity, 2015), 1.

## Network Feminism

While the above concepts surrounding political representation are more formal in nature, the concept of network feminism serves as a way to present a more informal, yet effective way of expressing a political agenda without necessarily being part of the traditional and formal policymaking process. Network feminism often encompasses small grassroots campaigns and local or national networks. The concept is often associated with the larger discussion of third wave feminism and how the third wave “has been closely associated with intersectionality, and inclusion of specific groups who had previously felt excluded from feminist activism.”<sup>76</sup> In addition to better attention to intersectionality and inclusion, the third wave and network feminism have seen a shift towards a greater online activism, networking, and campaigning.<sup>77</sup> Therefore, “[t]his shift... has significant implications for feminism, as many of those who were not able to attend rallies or meetings can now participate in the debate.”<sup>78</sup> Issues which dominate today’s discourse of activism include women’s sexuality and violence against women. Because of the increased use of the internet, there is an observable overlap between third wave feminism and a new fourth wave of feminism.<sup>79</sup> For example, Twitter, a popular social networking site, is often used to draw attention to various issues that otherwise would be overlooked, such as everyday violence against women. As stated by Ealasaid Munro, “[c]ontemporary feminism is characterised by its diversity of purpose, and amid the cacophony of voices it is easy to overlook one of the main constants within the movement as it currently stands—its reliance on the internet.”<sup>80</sup> In addition to drawing attention to important issues, the internet has created a ‘call-out’ culture where it focuses on micropolitics and challenges sexism and misogyny.<sup>81</sup> One aspect of network feminism that cannot be overlooked then, is the use of networks and online activism as a way for more women to become involved in political discourse because of the traditional and continued exclusion of women from formal policymaking processes.

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<sup>76</sup> Elizabeth Evans, “What Makes a (Third) Wave?,” *International Feminist Journal of Politics* (2015): 5.

<sup>77</sup> Evans, “What Make a (Third) Wave,?” 9.

<sup>78</sup> Evans, “What Make a (Third) Wave,?” 9.

<sup>79</sup> Evans, “What Make a (Third) Wave,?” 9; “Feminism: A Fourth Wave?,” accessed July 8, 2018, <https://www.psa.ac.uk/insight-plus/feminism-fourth-wave>.

<sup>80</sup> “Feminism: A Fourth Wave?,” accessed July 8, 2018, <https://www.psa.ac.uk/insight-plus/feminism-fourth-wave>.

<sup>81</sup> “Feminism: A Fourth Wave?,” accessed July 8, 2018, <https://www.psa.ac.uk/insight-plus/feminism-fourth-wave>.

One of the important concepts that network feminism has embraced is the notion of intersectionality and its impact upon how women ‘do’ feminism today. As stated by Brittney Cooper, “Intersectionality emerged in the late 1980s as an analytic frame capable of attending to the particular positionality of black women and other women of color both in civil rights law and within civil rights movements.”<sup>82</sup> Coined by Kimberlé Crenshaw in the 1980s, “It is the most visible and enduring contribution that feminism, and in particular black feminism, has made to critical social theory in the last quarter century.”<sup>83</sup> Because it is one of the most widely recognised contributions of black feminism, intersectionality has been adapted and utilised beyond civil rights law and the civil rights movement in the United States. It has become a major tool that is used to rethink current policy frameworks, including when discussing ‘women’s interests’ and acting on behalf of women.<sup>84</sup>

At the heart of intersectionality is the idea of how “different axes of oppression intersect, producing complex and often contradictory results.”<sup>85</sup> The concept of intersectionality has shown how gender as a standalone identifier of experience and identity is insufficient in understanding the ways in which women can be oppressed. As detailed by Munro, “[a]s a tactic, privilege-checking is about reminding someone that they cannot and should not speak for others.”<sup>86</sup> While especially important, this privilege-checking does not always reflect reality. For example, this thesis examines SRW and the policymaking process surrounding domestic violence legislation in England and Wales. While women are overwhelmingly the victims of domestic violence, much of the formal discussion within parliament is typically left for men. This reflects both how women are underrepresented in formal discussions around issues central to them, but also how women continue to be spoken for and on behalf of.

As stated by Alison Evans and Divya Nambiar, “[t]oday, the power behind these movements is even greater as globalisation and new communications technology have created new opportunities to raise awareness, create networks, generate debate and

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<sup>82</sup> Brittany Cooper, “Intersectionality.” In *The Oxford Handbook of Feminist Theory*, ed. Lisa Disch and Mary Hawkesworth (Oxford: Oxford University Press, 2016), 385.

<sup>83</sup> Cooper, “Intersectionality,” 385.

<sup>84</sup> Cooper, “Intersectionality,” 386.

<sup>85</sup> “Feminism: A Fourth Wave?,” accessed July 8, 2018, <https://www.psa.ac.uk/insight-plus/feminism-fourth-wave>.

<sup>86</sup> “Feminism: A Fourth Wave?,” accessed July 8, 2018, <https://www.psa.ac.uk/insight-plus/feminism-fourth-wave>.

mobilise people of all social groups against inequalities.”<sup>87</sup> Network feminism is important for purposes of this thesis by introducing how it can serve as an informal, yet effective way of expressing political voices and change without being in a formal policymaking setting.

### **Rationale: Violence against women legislation as an issue for evaluation**

Today, violence against women is seen as one of the most widely recognised problems plaguing women around the world. Various acts of violence against women are recognised as crimes in most societies, and affect women regardless of citizenship, religion, race, age, class, and ethnicity.<sup>88</sup> Because of the pervasive nature of the problem, “[s]exual violence is a profound human rights violation and public health concern. It cuts across class and race, and occurs in peace and conflict settings. Perpetrators are most commonly men known to the victims, and often an intimate partner or, in the case of child sexual abuse, a trusted family or community member.”<sup>89</sup> Because of the universality, violence against women as a gender-based problem is a significant policy area to evaluate. Further, it has remained a constant problem that women’s movements have addressed throughout time and place. Today, violence against women continues to be one of the major issues that are on the agenda of feminists in the United Kingdom.<sup>90</sup> As a phenomenon, when “[a]sked how similar they [feminists] thought the important feminist issues of today were to those of the 1970s, 84.5 [percent] responded that they were very similar or quite similar.”<sup>91</sup> This shows that while women’s movements and feminist movements have evolved over time, many of the issues of importance remain similar. Because of this similarity over time, violence against women remains an important universal problem to be studied.

As a political issue, violence against women has shifted from the local context to be seen as a more global social issue.<sup>92</sup> Today, there are demands for “public solutions, including

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<sup>87</sup> Alison Evans and Divya Nambiar, *Collective Action and Women’s Agency: A Background Paper* (The World Bank, 2013): 20.

<sup>88</sup> Francine Pickup, Suzanne Williams, and Caroline Sweetman, *Ending Violence against Women: A Challenge for Development and Humanitarian Work* (Oxford: Oxfam GB, 2001); Elizabeth Dartnall and Rachel Jewkes, “Sexual Violence against Women: The Scope of the Problem,” *Best Practice & Research Clinical Obstetrics and Gynaecology* (2013): 4.

<sup>89</sup> Dartnall and Jewkes, “Sexual Violence against Women,” 4.

<sup>90</sup> Kristin Aune and Rose Holyoak, “Navigating the Third Wave: Contemporary UK Feminist Activists and ‘Third-Wave Feminism,’” *Feminist Theory* (2017): 7.

<sup>91</sup> Aune and Roseoak, “Navigating the Third Wave,” 7.

<sup>92</sup> Merry, *Gender Violence*, 25.

the establishment of programs and services, including the involvement of the criminal justice system to hold men accountable for their violence.”<sup>93</sup> In addition, professionals and scholars believe there should be action at the policy and legislative levels as violence against women is now recognised as a serious social problem.<sup>94</sup> The following section will focus on feminist theories regarding violence against women in order to provide context for why violence against women is an important universal issue. Further, feminist theories are presented here because it was women’s movements and feminist movements that helped raise awareness regarding violence against women and show the universal experiences that women had specifically concerning domestic violence. This section is not intended to be an exhaustive account of feminist theories on violence against women, rather the section is presented as a way to contextualise the experiences of violence against women that are presented in the case study.

### ***Feminist Theories on Violence against Women***

Feminist theories on violence against women specifically focus on micro and macro-level experiences and how these experiences interact in various settings.<sup>95</sup> Feminist theories on violence have been widely accepted amongst gender scholars, although to varying degrees. For the purpose of this thesis, feminism is understood to mean “all ideologies, activities and policies [whose] goal is to remove discrimination against women and to break down the male domination of society.”<sup>96</sup> Further, in specific relation to bodies and space, Andrea Dworkin states “[t]wo elements constitute the discipline of feminism: political, ideological, and strategic confrontation with the sex-class system—with sex hierarchy and sex segregation—and a single standard of human dignity.”<sup>97</sup> This is further articulated where “[t]he crimes committed against women because they are women articulate the condition of women.”<sup>98</sup> But why is feminism important to the study of politics in general? Catherine

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<sup>93</sup> Beverley A. McPhail et al., “An Integrative Feminist Model: The Evolving Feminist Perspective on Intimate Partner Violence,” *Violence against Women* (2007): 818.

<sup>94</sup> McPhail et al., “An Integrative Feminist Model,” 818.

<sup>95</sup> Walter S. DeKeseredy and Martin D. Schwartz, “Theoretical and Definitional Issues in Violence against Women,” in *Sourcebook on Violence against Women*, ed. Claire M. Renzetti, Jeffrey L. Edleson, and Raquel Kennedy Bergen (Thousand Oaks: SAGE Publications, Inc., 2011), 11; Desmond Ellis, *The Wrong Stuff: An Introduction to the Sociological Study of Deviance* (Toronto: Collier Macmillan, 1987).

<sup>96</sup> Joni Lovenduski and Vicky Randall, *Contemporary Feminist Politics: Women and Power in Britain* (Oxford: Oxford University Press, 1993), 2.

<sup>97</sup> Andrea Dworkin, *Right-Wing Women* (New York: Perigree, 1983), 220.

<sup>98</sup> Dworkin, *Right-Wing Women*, 220-221.

Redfern and Kristin Aune propose four reasons why feminism is significant, why it is not ‘dead,’ and why women need it. First, feminism is a ‘survival mechanism’ in that it “prompts you to question the status quo, rather than assuming that the way things are is the best they can be. Feminism assures you that you’re not alone, that the problems you experience are shared by others.”<sup>99</sup> Feminism is also about collective action and support networks, and—finally—feminism can help to politicise various issues. For example, “women’s political representation has moved from being seen as unacceptable to being ‘actively encouraged.’ The responsibility for this success lies with the international women’s movement.”<sup>100</sup> Moreover, feminists have drawn attention to the patriarchal nature of violence against women, where “arguments over a woman’s cooking, housework standards, money, sex, going out with friends and arguing back are regularly cited by offenders as provocations for their ‘explosions of anger’.”<sup>101</sup> Because of feminist movements in general, there has been a vast amount of increased public awareness, lobbying, fund-raising, calls for legislation, and education programmes.<sup>102</sup>

Specifically, feminist theories on violence against women emphasise how macro-level powers, such as patriarchy, contribute to micro-level manifestations of everyday violence against women.<sup>103</sup> Often cited as beginning with Susan Brownmiller in 1975, patriarchy has been seen as a system of power, where males enjoy superior privilege and authority, simply by way of their performed gender.<sup>104</sup> Using this definition, violence becomes a manifestation of patriarchy.<sup>105</sup> Further to this, according to Gwen Hunnicutt, patriarchy manifests not only at the micro level between individuals, but also reveals itself at the macro level, such as within the government and the law.<sup>106</sup> Further to this, “male violence within intimate relationships results from historic and current power differentials that keep women subordinate, primarily through the use of control, including physical, sexual,

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<sup>99</sup> Catherine Redfern and Kristin Aune, *Reclaiming the F Word: Feminism Today* (London: Zed Books, 2013), 206.

<sup>100</sup> Redfern and Aune, *Reclaiming the F Word*, xxxiii.

<sup>101</sup> Redfern and Aune, *Reclaiming the F Word*, 87.

<sup>102</sup> Redfern and Aune, *Reclaiming the F Word*, 97, 100, 101, 103.

<sup>103</sup> DeKeserdy and Schwartz, “Theoretical and Definitional Issues in Violence against Women,” 12.

<sup>104</sup> Zillah Eisenstein, *Capitalist Patriarchy and the Case for Socialist Feminism* (New York: Monthly Review Press, 1980), 16.

<sup>105</sup> Jennifer Lawson, “Sociological Theories of Intimate Partner Violence,” *Journal of Human Behavior in the Social Environment* (2012): 579; Rebecca E. Dobash and Russell P. Dobash, *Violence against Wives: A Case against the Patriarchy* (New York: Free Press, 1979), ix.

<sup>106</sup> Gwen Hunnicutt, “Varieties of Patriarchy and Violence against Women: Resurrecting ‘Patriarchy’ as a Theoretical Tool,” *Violence against Women* (2009): 558.



economic, and psychological abuse, comprising tactics of intimidation and isolation.”<sup>107</sup> Moreover, traditional gender roles, imposed at the macro level, are said to play a part in how individuals manifest violent actions. For example, it is posited that those with more traditionally masculine identities, are expected to be more violent and show a range of ‘aggressive’ traditionally masculine behaviours.<sup>108</sup>

While there are varying feminist theories on violence against women, most of these carry the following assumptions: gender, patriarchy, and power are important features that explain men’s violence against women.<sup>109</sup> These assumptions are furthered by introducing various aspects of control including: victim blaming, male privilege, coercion, threats, and emotional abuse, among other.<sup>110</sup> In addition, “feminist theory emphasizes the value of direct experience as the place where theory should begin. The realm of personal experience, the ‘private,’ which has always been trivialised as unworthy of serious scrutiny, particularly for women, is an appropriate and important subject of public inquiry.”<sup>111</sup> One important criticism of the feminist theories, primarily those focusing solely on concerns and voices of elitist white women, are the exclusion of women’s socioeconomic class, regardless of the findings that some women are more susceptible to violence than others, and some men are more liable to commit violent acts, or that those constructing the theories believed that they applied to all women, irrespective of race, class, etc.<sup>112</sup> Additionally, some “have challenged the primacy of gender as an exploratory model of domestic violence and have emphasized the need to examine how other forms of inequality and oppression, such as racism, ethnocentrism, class privilege, and heterosexism, intersect with gender oppression.”<sup>113</sup> For instance, the construction of black feminism in the United States and multiracial feminism elsewhere, where issues of

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<sup>107</sup> McPhail et al., “An Integrative Feminist Model,” 818.

<sup>108</sup> Erica M. Wooden and K. Daniel O’Leary, “Theoretical Approaches to the Etiology of Partner Violence,” in *Preventing Partner Violence: Research and Evidence Based Intervention Strategies* (Washington, D.C.: American Psychological Association, 2009), 43.

<sup>109</sup> DeKeserdy and Schwartz, “Theoretical and Definitional Issues in Violence against Women,” 12; Woodin and O’Leary, “Theoretical Approaches to the Etiology of Partner Violence,” 44.

<sup>110</sup> Woodin and O’Leary, “Theoretical Approaches to the Etiology of Partner Violence,” 44.

<sup>111</sup> Elizabeth M. Schneider, *Battered Women and Feminist Lawmaking* (New Haven: Yale University Press, 2000), 35.

<sup>112</sup> DeKeserdy and Schwartz, “Theoretical and Definitional Issues in Violence against Women,” 13; James W. Messerschmidt, *Masculinities and Crime: Critique and Reconceptualization of Theory* (Lanham: Rowman & Littlefield Publishers, Inc., 1993).

<sup>113</sup> Natalie J. Sokoloff and Ida Dupont, “Domestic Violence at the Intersections of Race, Class, and Gender: Challenges and Contributions to Understanding Violence against Marginalized Women in Diverse Communities,” *Violence against Women* (2005).

difference not only *between* women were spoken, but were also established in order to examine *structures* of dominance which can create these differences.<sup>114</sup>

Because of this scrutiny, matters of difference have become important to consider when thinking of employing feminism and the feminist method in research. Sandra Harding exemplifies this point. She positions the argument stating that there are not necessarily ‘gender relations’ as a general category, rather, gender relations exist at an intersection between gender, class, race, and other categories of difference.<sup>115</sup> Patricia Hill Collins identifies this intersection as a ‘matrix of domination’ where “[p]eople experience race, class, gender, and sexuality differently depending upon their social location in the structures of race, class, gender, and sexuality.”<sup>116</sup> While there are diverging issues within feminism, there is also common ground between the strands. Lewis Okun’s assertion in 1986 continues to be relevant where he stated feminism is “the most important theoretical approach to conjugal violence/women abuse.”<sup>117</sup> Okun does not state *which* feminism is most central, but rather identifies feminism in general as the most important approach. This common ground is the basis for my research. For the purpose of this thesis, *acknowledgement* of these differences is key, where the diversity between the varying strands of the feminist theory can be a strength.

While one theory regarding violence against women cannot explain every aspect of the topic due to its widespread nature and overall complexity at its root, feminist theories use gender, patriarchy, and power as the main reasons why women are subjected to violence, in societies around the world.<sup>118</sup> In addition, specifically feminist approaches to violence against women are “united by a common central underpinning: Intimate partner violence is fundamentally a gender issue that cannot be adequately understood through any lens that does not include gender as the central component of analysis.”<sup>119</sup> Feminist theories and

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<sup>114</sup> Maxine Baca Zinn and Bonnie Thornton Dill, “Theorizing Difference from Multiracial Feminism,” *Feminist Studies* (1996): 321.

<sup>115</sup> Zinn and Dill, “Theorizing Difference from Multiracial Feminism,” 322; Sandra Harding, *Whose Science? Whose Knowledge?: Thinking From Women’s Lives* (Ithaca: Cornell University Press, 1991), 179.

<sup>116</sup> Zinn and Dill, “Theorizing Difference from Multiracial Feminism,” 326-327; Patricia Hill Collins, “Learning From the Outside Within: The Sociological Significance of Black Feminist Thought,” *Social Problems* (1986).

<sup>117</sup> DeKeserdy and Schwartz, “Theoretical and Definitional Issues in Violence against Women,” 12; Lewis Okun, *Woman Abuse: Facts Replacing Myths* (Albany: State University of New York Press, 1986), 100.

<sup>118</sup> DeKeserdy and Schwartz, “Theoretical and Definitional Issues in Violence against Women,” 12.

<sup>119</sup> Lawson, “Sociological Theories of Intimate Partner Violence,” 579; Walter S. DeKeserdy and Molly Dragiewicz, “Understanding the Complexities of Feminist Perspectives on Woman Abuse: A Commentary on Donald G. Dutton’s Rethinking Domestic Violence,” *Violence against Women* (2007); Dobash and Dobash, *Violence against Wives: A Case against the Patriarchy*; Demie Kurz, “Social Science Perspectives

activism are responsible for bringing violence against women from the private sphere of the family into the public realm, which in turn has led to waves of action in terms of legislative responsiveness and government action, making the political representation of women even more important to study.<sup>120</sup> In terms of the political aspect of violence against women, “[f]eminist legal arguments about gender violence have developed from feminist insights about the way heterosexual intimate violence is part of a larger system of coercive control and subordination; this system is based on structural gender inequality and has political roots.”<sup>121</sup>

### **Problems in the Literature: Gaps identified**

In terms of feminist theories regarding violence against women, Marysia Zalewski and Anne Sisson Runyan have stated, “[d]espite the clear identification of many violences, even the most ‘obvious’ violence can slip out of grasp quickly, both theoretically and legislatively. Though, perhaps, it is the very grasping at the violence and grappling with it that reproduces violence through (inevitable) failures to maintain clear and sharp boundaries around what counts as a violent deed.”<sup>122</sup> This is especially true in the case of England and Wales where domestic violence itself is not a criminal offence.<sup>123</sup> Therefore, because there is no specific offence of domestic violence, despite specific types of violence being identified, boundaries are not drawn and does not seemingly ‘count’ as violence. This is an important gap to explore because “[r]ecognizing the links between individual change and social change means going beyond theory and understanding the importance of political activity. In this way, theory emerges from practice and practice then informs and reshapes theory.”<sup>124</sup> Evaluating this problem in the context of England and Wales is important because it will help illuminate any further gaps in regard to policy, practice, or rhetoric surrounding the issue of violence.

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on Wife Abuse: Current Debates and Future Directions,” *Gender and Society* (1989); Kersti Yllo, “Through a Feminist Lens: Gender, Power, and Violence,” in *Current Controversies on Family Violence* (Newbury Park: SAGE Publications, Inc., 1993).

<sup>120</sup> Weldon, *Protest, Policy, and the Problem of Violence against Women*, 61-62.

<sup>121</sup> Schneider, *Battered Women and Feminist Lawmaking*, 5.

<sup>122</sup> Marysia Zalewski and Anne Sisson Runyan, “Taking Feminist Violence Seriously in Feminist International Relations,” *International Feminist Journal of Politics* (2013): 297.

<sup>123</sup> “Is Domestic Violence a Criminal Offence?,” last modified October 31, 2014, [http://england.shelter.org.uk/get\\_advice/domestic\\_abuse/criminal\\_offences](http://england.shelter.org.uk/get_advice/domestic_abuse/criminal_offences).

<sup>124</sup> Schneider, *Battered Women and Feminist Lawmaking*, 36.

According to representation scholars, there continues to be a gap in certain areas of the literature in terms of institutional mechanisms, types of parliamentary proceedings, party allegiances, men as actors, and non-left and non-feminist actors.<sup>125</sup> For example, it has been shown that in some cases, non-left, non-feminist, and male MPs sometimes claim to represent women and this continues to challenge theories which state that women need women representatives, because they may be more likely to act in the interests of other women.<sup>126</sup> In addition, current research must expand the ‘sites’ where political representation is researched.<sup>127</sup> For instance, not only should researchers examine parliaments, but they must evaluate the impact of other sites where action may take place.<sup>128</sup> For example, “[t]hese various actors might be involved in several *acts* and might play different *roles* that constitute SRW: for example, parliamentary activities... prioritizing and ‘constructing’ women’s interests... and engaging in intra-party strategies” (authors’ emphasis).<sup>129</sup> Not only are policies that concern women important, but so too are the implications in general. For example, in a recent report on British politics, districts with women MPs have more women that are more actively involved in politics, speaking perhaps to the symbolic effects of having women in politics.<sup>130</sup> As stated by Childs, “[a]t the 2001 general election, the [Electoral Commission’s 2004 report] notes, women’s turnout was [four] per cent higher than men’s in seats that returned women MPs. Women represented by women were more likely to report that ‘government benefits people like me’ than men.”<sup>131</sup>

Additionally, the question remains whether representative politics, as has been conceptualised, even matters. As Tormey details, there is “a growing body of evidence that suggests that many of us have become—or are becoming—disillusioned with politics and politicians, with our representatives and with representation.”<sup>132</sup> Further, “[i]n place of a politics based on a practice of speaking and acting for others, we do not find a plethora of

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<sup>125</sup> Paul Chaney, “Critical Actors vs. Critical Mass: SRW in the Scottish Parliament,” *The British Journal of Politics and International Relations* (2012); Karen Celis and Silvia Erzeel, “Beyond the Usual Suspects: Non-Left, Male and Non-Feminist MPs and SRW,” *Government and Opposition* (2013).

<sup>126</sup> Celis and Erzeel, “Beyond the Usual Suspects,” 14.

<sup>127</sup> Krook, “Women’s Representation in Parliament,” 236.

<sup>128</sup> Celis and Childs, “Introduction: The Descriptive and Substantive Representation of Women: New Directions,” 421.

<sup>129</sup> Celis and Childs, “Introduction: The Descriptive and Substantive Representation of Women: New Directions,” 421.

<sup>130</sup> Sarah Childs, *Women and British Party Politics: Descriptive, Substantive and Symbolic Representation* (London: Routledge, 2008),

<sup>131</sup> Childs, *Women and British Party Politics*, 423-424.

<sup>132</sup> Tormey, *The End of Representative Politics*, 1.

forms and styles of what might be called immediate or non-mediated politics: direct action, flash protests, Twitter-led mobilizations, ping-pong, hacking, squatting, boycotting, buy-cotting, occupying and other interventions of a direct, practical kind.”<sup>133</sup> In the general sense, this may be true. But in terms of feminism and representative politics, women have always been disenfranchised from the system by way of representatives *not* representing them. The feminist women’s movement has always been engaged in these types of immediate or non-mediated politics, even before the question of whether or not the populace is becoming unrepresentable. Whether this is true, Tormey does observe one factor that is not going away: “power and privilege in the hands of the few remains unchanged.”<sup>134</sup>

In a relatively short period of time, there has been a vast exploration of women and politics, beginning with what women do, to exploring critical actors and who actually acts on behalf of women. It is important to think of representation today as a process where acts and actors combine with ideas and interests and bring them forward to the political agenda.<sup>135</sup> Because of the expansion of representation literature, this thesis seeks to further develop the knowledge surrounding SRW, in combination with how it impacts violence against women legislation in England and Wales, specifically concerning domestic violence.

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<sup>133</sup> Tormey, *The End of Representative Politics*, 2.

<sup>134</sup> Tormey, *The End of Representative Politics*, 146.

<sup>135</sup> Karen Celis, “Studying Women’s Substantive Representation in Legislatures: When Representative Acts, Contexts and Women’s Interests Become Important,” *Representation* (2008): 114.

## Chapter 2: The Case Study Method, Feminist Research, and the Critical Path Framework

### The Case Study Method

This thesis employs a case study of a seven-question framework surrounding SRW in England and Wales from 2010-2015. The case study itself centres on England and Wales and substantive representation, and the cases to be evaluated within the case study are key legislation passed by the national parliament. These cases include: The Crime and Security Act 2010, the Protection of Freedoms Act 2012, the Criminal Justice and Courts Act 2015, and the Serious Crime Act 2015. This evaluation does not seek to determine or predict *future* behaviour of legislators, or those involved in the representation process, rather, this evaluation seeks to assess the behaviour that has already happened.<sup>136</sup> The following section will provide a general overview of what a ‘case’ is, and what it means to do case study research in the social sciences.

In the social sciences, a case is defined as a ‘bounded system’ or a unit of research, such as an event, a period of time, or a country.<sup>137</sup> Because a case can be any unit or system of research, a case study then attempts to ‘catch’ the details and workings of a chosen case.<sup>138</sup> To this, social scientist Robert Yin states: “case studies investigate real-life events in their natural settings. The goal is to practice sound research while capturing both a phenomenon (the real-life event) and its context (the natural setting).”<sup>139</sup> Case studies become useful when you are unable to separate the real-life event and the natural setting.<sup>140</sup> This strength becomes important for this thesis because the case study deals with people in complex

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<sup>136</sup> Childs and Krook, “Analysing Women’s Substantive Representation, 136.

<sup>137</sup> Robert Stake, *The Art of Case Study Research* (London: SAGE Publications, Inc., 1996), 2; Matthew David, “Case Study Research: Overview,” in *Case Study Research*, ed. Matthew David (London: SAGE Publications Ltd., 2009), 3.

<sup>138</sup> David, “Case Study Research: Overview,” 5.

<sup>139</sup> Robert Yin, *The Case Study Anthology* (London: SAGE Publications, Inc., 2004), xii.

<sup>140</sup> Yin, *The Case Study Anthology*, xii.

settings. Since the data gathered will most certainly not be quantitative but rather qualitative, a case study then becomes the only method in which to evaluate these people and settings and draw conclusions from the qualitative data gathered.

Case studies are also important for bringing together multiple sources of data, which remains important for the seven questions of the substantive representation framework, in addition to the exploration of the topic in general.<sup>141</sup> Further to this, it is important to employ a ‘thick description’ in case study research whereby the layers of context and details are explored.<sup>142</sup> This thick description will be aided by document analysis and observation. Specifically, in regard to the political representation of women, a ‘thick’ understanding for gender scholar Fiona Mackay means “analysing the complexity and contingency of ‘what is going on in political representation’ [which] requires a ‘thick’ conception of substantive representation. In short, a contextualised, inter-relational, whole-system approach is needed, rather than a narrow focus on whether or not women representatives ‘act for’ women.”<sup>143</sup> This thick description aids in understanding the ‘social world.’<sup>144</sup> The goals of a case study are therefore to understand meaning and context within the case, to discover (possible) new theories or ideas within the case, to recognise under what conditions actions or events may occur, and finally to develop possible explanations of the explored processes.<sup>145</sup>

It is also important to consider the political context under which this case study takes place in England and Wales. The United Kingdom comprises of England, Wales, Scotland, and Northern Ireland. Wales, Scotland, and Northern Ireland have devolved parliaments, unlike England. As stated by the national parliament, “[d]evolution in the UK created a national Parliament in Scotland, a national Assembly in Wales and a national Assembly in Northern Ireland. This process transferred, and continues to transfer, varying levels of power from the UK Parliament to the UK's nations - but kept authority over the devolved institutions in

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<sup>141</sup> David, “Case Study Research: Overview.”

<sup>142</sup> Jane Dawson, “Thick Description,” in *Encyclopedia of Case Study Research*, ed. Albert Mills, Gabrielle Durepos, and Elden Wiebe (Thousand Oaks: SAGE Publications, Inc., 2010), 942.

<sup>143</sup> Fiona Mackay, “‘Thick’ Descriptions of Substantive Representation: Women, Gender and Political Institutions,” *Representation* (2008): 125.

<sup>144</sup> Dawson, “Thick Description,” 942.

<sup>145</sup> Joseph Maxwell, “Designing a Qualitative Case Study,” in *The SAGE Handbook of Applied Social Research Methods*, ed. Leonard Bickman and Debra Rog (Thousand Oaks: SAGE Publications, Inc., 2009), 216.

the UK Parliament itself.”<sup>146</sup> Simply, this means that those three territories are able to make laws which concern only their citizens. Although Wales has a devolved parliament, it mostly deals with matters such as housing, local government, and town and country planning, and does not have the same powers as the devolved parliament of Scotland and Northern Ireland for example, and is therefore included in this case study.<sup>147</sup> In the case of Wales, the Westminster parliament in London, England holds primary legislative responsibilities while the Welsh Assembly retains secondary legislative responsibilities, and the Welsh MPs continue to hold voting power within the national parliament where “[p]rimary legislation is effectively the type of law passed currently at Westminster in that it lays down the scope of legislation. It might, for example, say that there must be a national curriculum in schools. Secondary legislation governs the way the laws work in practice. Following the above example, it might allow the minister in charge to decide exactly which subjects the national curriculum contains.”<sup>148</sup> Therefore, while Wales, Scotland, and Northern Ireland have devolved parliaments, they continue to vote and serve in the national parliament in England, and many of these MPs are mentioned within the cases in the following chapters. Legislation from the devolved parliaments also serves as inspiration in many of the cases to follow. While devolution is not an issue to explore within this thesis, it is important to mention as the majority of this case study takes place by examining the national parliament in England.

Therefore, a case study, using document analysis and observation, such as attending All-Party Parliamentary Groups (APPG) meetings, will be employed in order to answer the following research question: what does SRW mean in England and Wales, regarding violence against women?<sup>149</sup> To reiterate, this question will be explored through the following aims: implementing a formalised framework surrounding SRW, using this framework to research the impact of SRW on violence against women in England and

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<sup>146</sup> “Devolved Parliaments and Assemblies,” last accessed August 21, 2018, <https://www.parliament.uk/about/how/role/devolved/>.

<sup>147</sup> “The Welsh Assembly,” last accessed August 21, 2018, [http://news.bbc.co.uk/2/hi/events/wales\\_99/the\\_welsh\\_assembly/309033.stm](http://news.bbc.co.uk/2/hi/events/wales_99/the_welsh_assembly/309033.stm).

<sup>148</sup> “The Welsh Assembly,” last accessed August 21, 2018, [http://news.bbc.co.uk/2/hi/events/wales\\_99/the\\_welsh\\_assembly/309033.stm](http://news.bbc.co.uk/2/hi/events/wales_99/the_welsh_assembly/309033.stm).

<sup>149</sup> In attempts to employ a thick description of representation in England and Wales, I attempted to conduct interviews with various actors who operate within areas of policymaking, law, non-profit, or activism. Of the 12 MPs and political parties that I attempted to interview, none were willing to participate. I was able to interview five individuals (not within policymaking or law) however, there was not enough information from these interviews to be included in the findings of this thesis. It is interesting to note that the MPs whom I contacted often express interest in the area of domestic violence within debates, etc. but did not respond to requests to be interviewed in regards to this specific issue, even after numerous attempts to contact them.



Wales, including identifying critical actors, drawing conclusions on SRW, producing meaningful research, and expanding future knowledge on the political representation of women, as well as its effects on violence against women. The next section will detail the feminist methods used within case studies, specifically regarding the political and substantive representation of women. Feminist methods will be described as they inform the research topic, research question, and case study.

## **Feminist Research and Methodology**

Much of the current and former research regarding the political representation of women, and especially violence against women, has been carried out by gender scholars using feminist methodology, or ideas that guide the research practices and processes, such as having gender as the key tool of analysis. Feminist research “insists that the ‘personal is political’ and rejects, both in theory and in practice, the entire distinction between private and public spheres. ...feminist politics may take place anywhere, and what was formerly understood as private life may be the most political of all sites of activity.”<sup>150</sup> Thus, this research will use feminist ideas for theory on conducting research but will not solely focus on explicitly feminist goals of certain actors. For example, some political parties make claims to act on behalf of women, even when these claims may not be feminist.<sup>151</sup>

Moving away from the public/private divide described above, as feminist scholars Brooke Ackerly and Jacqui True detail, feminist methods require an assurance of attention to: “(1) unequal power relations, (2) to relationships, (3) to boundaries of inclusion–exclusion and forms of marginalization, and (4) to situating the researcher in the research process.”<sup>152</sup> Specifically regarding gender and politics questions, Mona Lena Krook and Judith Squires state: “There is no distinctive feminist methodology, but there is a distinctive feminist approach to methodology and methods. More specifically, feminist research is driven by substantive political problems and is thus open to the deployment of a broad range of methodological frames.”<sup>153</sup> Therefore, a feminist approach to research is ‘problem centric’

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<sup>150</sup> Lovenduski and Randall, *Contemporary Feminist Politics*, 5.

<sup>151</sup> Celis and Childs, *Gender, Conservatism and Political Representation*, 68.

<sup>152</sup> Brooke Ackerly and Jacqui True, *Doing Feminist Research in Political and Social Science* (Basingstoke: Palgrave Macmillan, 2010).

<sup>153</sup> Krook and Squires, “Gender Quotas in British Politics,” 44.

and is not necessarily driven by strict, specific methods.<sup>154</sup> In this sense, feminist research can use old problems, such as political representation, to ask new questions and reframe the answers regarding an issue from a feminist approach, giving attention to the four requirements above.<sup>155</sup>

Specifically regarding political representation, feminist research has looked beyond the numbers, as stated by feminist scholar Marian Sawer to “research what kind of institutional supports can help legislators focus more effectively on gender equality issue[s], whether parliamentary committees, parliamentary commissions, women’s caucuses or parliamentary friendship groups with a specific gender equality mandate.”<sup>156</sup> While not all feminist research is the same, much of the research overlaps in many ways. For example, most feminist research tends to be context-driven, with an attention to feminist theories, with gender at the foreground, or ‘nucleus’ of the analysis.<sup>157</sup> Furthermore, feminist research and methods are not *about* women, but instead are *for* women.<sup>158</sup> These foci have aided in the general research process by reinventing normative research to show previously ignored facets (such as in the case of gender).<sup>159</sup> In all, feminist research and methods agree on many research standards that bind it together as ‘feminist.’<sup>160</sup> These standards are detailed by author Sotirios Sarantakos as being: “that women have been marginalized...that male superiority is perpetuated despite policies, assurances and political promises...that there is still a long way to go to establish gender equality.”<sup>161</sup> Using feminist methods will aid in the case study by enriching it as a whole. The methods will help to ‘gender’ the conversation surrounding political representation in England and Wales, specifically regarding violence against women legislation, as well as bring attention to the potential marginalization of women in the political process.

In order to fully understand what is meant by violence against women as a concept for purposes of this thesis, the next section will detail what exactly is meant by ‘violence

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<sup>154</sup> Krook and Squires, “Gender Quotas in British Politics,” 45.

<sup>155</sup> Ackerley and True, *Doing Feminist Research in Political and Social Science*.

<sup>156</sup> Sawer, “The Story of RU486 in Australia,” 143-144.

<sup>157</sup> Sotirios Sarantakos, *Social Research* (Basingstoke: Palgrave Macmillan, 2012), 55-56.

<sup>158</sup> Sarantakos, *Social Research*, 56.

<sup>159</sup> Sarantakos, *Social Research*, 60.

<sup>160</sup> Sarantakos, *Social Research*, 60.

<sup>161</sup> Sarantakos, *Social Research*, 60.

against women,’ as well as ‘domestic violence’ and why they require defining in the first place.

### ***Defining Violence against Women***

For some, gender-based violence and violence against women are interchangeable terms. However, they should be understood as different for the purpose of this thesis. As True clarifies, gender-based violence:

Captures women’s experience of violence due to unequal gender power relations but not exclusively, since men are also victims of violence due to gender stereotyping and denigration when they fail to live up to dominant forms of masculinity. Thus, GBV [gender-based violence] affects both men and women, whereas VAW [violence against women] embraces those violent acts that are primarily directed toward women.<sup>162</sup>

In this sense, violence against women is a subsection of gender violence, where in addition to violence against men, gender-based violence encompasses same-sex violence, female-perpetrated violence, and violence against gay and lesbian individuals.<sup>163</sup> Violence should be seen through the interpretation of gender and because women are more likely to be victims of gender violence, the term violence against women will be employed in this thesis.<sup>164</sup> Further to this, it is important to consider that “[c]reating gender-symmetrical language risks rendering women invisible—and women are still by far the most common targets of sexual and domestic violence, still most in need of support services.”<sup>165</sup>

An internationally-recognised definition of violence against women comes from the UN, described in General Assembly Resolution 48/104, establishing the Declaration on the Elimination of Violence against Women (DEVAW) in 1993. In this document, violence against women is seen as an act (or series of acts) “that results in, or is likely to result in,

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<sup>162</sup> Jacqui True, *The Political Economy of Violence against Women* (Oxford: Oxford University Press, 2012), 9.

<sup>163</sup> R. Amy Elman, “Gender Violence,” in *The Oxford Handbook of Gender and Politics*, ed. Georgina Waylen, Karen Celis, Johanna Kantola, and S. Laurel Weldon (Oxford: Oxford University Press, 2013), 237.

<sup>164</sup> Merry, *Gender Violence*, 1; Nancy A. Crowell and Ann W. Burgess, *Understanding Violence against Women* (Washington, D.C.: National Academy Press, 1996), 9.

<sup>165</sup> Michael A. Messner et al., *Feminist Allies and the Movement to End Violence against Women: Some Men* (New York: Oxford University Press, 2015), 102.

physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life”<sup>166</sup> The acts that the UN recognises under this definition include: familial violence, which encompasses the sexual abuse of children, marital rape, violence relating to dowry, battering, female genital mutilation, and non-partner violence.<sup>167</sup> Including familial violence, DEVAW recognises violence occurring within the community, comprising of sexual harassment, sexual abuse, rape, forced prostitution and trafficking.<sup>168</sup> Any form of violence perpetrated by the state, including physical, sexual or psychological is also recognised in the declaration.<sup>169</sup> DEVAW was the first international declaration intended to address and deal with the issue of violence against women, and the UN-created definition is the most widely used amongst the international community.<sup>170</sup>

Prior to DEVAW, definitions of violence against women originally only encompassed rape, assault, and murder.<sup>171</sup> Scholars studying violence against women have introduced issues with the DEVAW definition, however. For example, the DEVAW definition does not reference economic or structural violence (or a type of violence that is not personal per se, but instead is ‘built into structure’).<sup>172</sup> In addition, the DEVAW definition “appears to create a hierarchy of harms, with the primary focus on family violence, followed by violence within the general community, and finally violence perpetrated or condoned by the state.”<sup>173</sup> Because of the discrepancies with the DEVAW definition, the latter will be considered in conjunction with the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa definition. The protocol defines violence against women as “all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or

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<sup>166</sup> United Nations General Assembly, “United Nations Resolution 48/104” (1994): Article 1.

<sup>167</sup> United Nations General Assembly, “United Nations Resolution 48/104,” Article 2.

<sup>168</sup> United Nations General Assembly, “United Nations Resolution 48/104,” Article 2.

<sup>169</sup> United Nations General Assembly, “United Nations Resolution 48/104,” Article 2.

<sup>170</sup> Michael L. Penn and Rahel Nardos, *Overcoming Violence against Women and Girls: The International Campaign to Eradicate a Worldwide Problem* (Lanham: Rowman & Littlefield Publishers, Inc., 2003), 9; Edwards, *Violence against Women under International Human Rights Law*, 20.

<sup>171</sup> Merry, *Human Rights and Gender Violence*: 20.

<sup>172</sup> Johan Galtung, “Violence, Peace, and Peace Research,” *Journal of Peace Research* (1969): 170, 171.

<sup>173</sup> Edwards, *Violence against Women under International Human Rights Law*, 20, 22; see also: Penn and Nardos, *Overcoming Violence against Women and Girls*; True, *The Political Economy of Violence against Women*; Maria Holt, *Women and Conflict in the Middle East: Palestinian Refugees and the Responses to Violence* (London: I.B. Tauris & Co Ltd., 2014).

of war.”<sup>174</sup> In addition, sexual violence can encompass intimate partner violence, severe intimate partner violence, current intimate partner violence, prior intimate partner violence, and non-partner sexual violence.<sup>175</sup> In addition to these internationally-recognised definitions of violence against women, the United Kingdom-government definition of violence against women, specifically domestic violence must be considered. Most recently, in 2013, the government definition of domestic violence was updated to include the following:

Any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. The abuse can encompass, but is not limited to: psychological, physical, sexual, financial, emotional. ...

Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behavior.  
...

Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.<sup>176</sup>

For example, the government definition was introduced in 2013; however, controlling and coercive behaviour was not against the law until 2015 (discussed in Chapter 4) and as Elfyn Llwyd stated on February 26, 2014 in attempts to introduce a new legal framework regarding domestic violence, “there are gaps in the current law that are failing victims of domestic violence. Perpetrators are thus able to abuse their partners without facing arrest for that behavior.”<sup>177</sup>

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<sup>174</sup> African Commission on Human and Peoples’ Rights, “Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa” (2003): 4.

<sup>175</sup> World Health Organization, “Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence” (2013).

<sup>176</sup> “Domestic Violence and Abuse,” last modified March 8, 2016, <https://www.gov.uk/guidance/domestic-violence-and-abuse>.

<sup>177</sup> House of Commons, “Parliamentary Debates, 26 February 2014, Vol. 576, No. 126,” (2014): col. 283.

Although the definitions presented above are not without their downfalls, such as their lack of statutory enforcement, they are important to include in order to understand exactly what is meant by the contemporary definitions of violence against women and domestic violence, in the international and the domestic context. The definitions above will be considered for the remainder of this thesis when violence against women and domestic violence are discussed.

The next section of this chapter will present the concept of a critical path and critical actions. The creation of a consistent route for the expansion and assessment of research on SRW remains an important and so far, unsolved methodological issue within the field. There is a tendency to draw conclusions about the representation process as a whole based on the evaluation of different cases or issues—and using a variety of methods—which generates inconsistent and varying results. This thesis then, attempts to do two things: first, formulate the term ‘critical actions,’ by conceptualising them in reference to the above ‘core tenets’ of SRW, *as actions or steps taken by critical actors, initiated by a critical juncture, which lead to critical acts*. Second, this thesis proposes bringing together these core tenets in order to construct a ‘critical path’ to trace and evaluate this representation process. Following this, this chapter sets out to describe, in detail, SRW framework and how this framework is used in the case study chapters of this thesis.

## **A Critical Path**

The tremendous progress that has been made in regard to SRW can present a multifaceted yet sometimes difficult route on how to actually go about its evaluation and find consistent patterns across various issues, periods of time, or locations. Currently, in order to examine the process of what is actually ‘going on’ in SRW, the research focuses on the above various questions.<sup>178</sup> Because these questions are intrinsically linked, the task of answering them and conducting empirical research can seem somewhat cluttered because there is no consistent path that is followed. In addition, there is the tendency for researchers to draw conclusions about the representation process as a whole, when in actuality researchers are evaluating different cases, issues or using different methods.

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<sup>178</sup> Childs and Lovenduski, “Political Representation.”

Other areas within the field of politics sometimes use a consistent type of path in order to evaluate various events which have already taken place, or to predict possible future occurrences. For example, in order to examine political institutions, scholars within the fields of institutionalism, new institutionalism or feminist institutionalism, use a type of ‘path dependency’ to evaluate the changing nature of institutions where ‘the past influences the future’ and to serve as ‘a central explanatory variable in political analysis.’<sup>179</sup> The field of representation lacks this sort of path. Because contemporary scholars of representation look beyond political institutions, it is important to introduce a way to evaluate the representation process in a strengthened sense, one which could provide important insights specifically regarding SRW.

This thesis suggests then, that what continues to be missing in the conversation surrounding representation is the lack of focus on the actual steps—what I call critical actions—which are important in SRW. What is also missing is a logical pathway to trace these steps, in order to effectively evaluate what is ‘going on.’ Adopting the use of critical actions and a critical path will provide a more consistent way of understanding the representation process as a whole, and will fill the gap that persists between major concepts within the field including critical junctures, critical actors, and critical acts. The adoption of these notions will increase the researcher’s ability to trace a variety of occurrences across several instances of substantive representation, for example, when examining an issue across several time periods or legislatures. The proposed operationalised pathway helps expand the knowledge regarding the issue in a particular case study. The remainder of this chapter will use the literature to frame the contributions of this thesis: the idea of critical actions and a critical path.

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<sup>179</sup> Fiona Mackay, Meryl Kenny, and Louise Chappell, “New Institutionalism Through a Gender Lens: Towards a Feminist Institutionalism?,” *International Political Science Review* (2010): 573; James Mahoney, “Path Dependence in Historical Sociology,” *Theory and Society* (2000): 507.

| <i>Path step</i>  | <i>Questions to be answered</i>   |
|---|---|
| 1. Critical juncture  | Why is SRW attempted?<br>When does SRW occur?   |
| 2. Critical actions by critical actors <sup>180</sup> <ol style="list-style-type: none"> <li>a. Communicative critical action</li> <li>b. Symbolic critical action</li> <li>c. Substantive critical action</li> </ol> | How is SRW manifested?<br>Who acts in SRW?<br>Where does the substantive representation occur?<br>In relation to which women is substantive representation expressed? |
| 3. Critical act   | What policies are being passed?   |

*Table 1: The critical path and questions to be answered*

### ***Using the Critical Path***

Today, the research surrounding SRW addresses many aspects of the concept. In order to present and analyse the most important aspects of the representation process, this thesis brings together the core tenets of this representation in order to create a critical path and present a more systematic and step-by-step process, starting with the point of a critical juncture, where these critical actions can be traced—along with critical actors and critical acts—to effectively evaluate SRW. This thesis borrows the idea of a critical path from both institutionalism and also the field of business, and is being proposed here for use when evaluating SRW. For instance, in project management and business literature, a critical path is understood as:

A technique... to identify the activities within a project that are critical to its success, usually by showing on a diagram or flow chart the order in which activities must be carried out so that the project can be completed in the shortest time.<sup>181</sup>

While in this definition the critical path is developed *prior* to the project, this thesis proposes a redefinition of this concept in order to be utilised when evaluating the representation process *after* the representation has occurred. After all, this evaluation does not seek to determine or predict future behaviour of those involved in the representation

<sup>180</sup> These critical actions are defined on page 55.

<sup>181</sup> Peter Hodgson Collin, *Dictionary of Business* (London: A&C Black, 2006).



process, rather, this evaluation seeks to assess the behaviour that has already happened.<sup>182</sup> The utility and development of this concept can help guide the evaluation of the representation process, by proposing a specific way to trace and assess this process. The critical path will continue to consider the seven questions, however, instead of answering these questions in a randomised way, by employing the following critical path, the evaluation becomes more focused and explicable.

By employing the concept of a critical path, the process can be seen as more inclusive, and less isolated in terms of answering the above seven questions. For example, the critical juncture is the beginning of the process where representation occurs. The critical juncture then leads to critical actions by critical actors, and follows with the outcome, or the critical act.

All of these steps make up the representation process as a whole. Once this instance of substantive representation is assessed, the researcher can then look for the next critical juncture and begin the process again, following this cyclical progression. This is important because it increases the researcher's ability to trace various junctures, actions, actors, and acts across several instances of substantive representation.

*The critical path is proposed as follows:*

(1) Identify where the critical juncture occurs.<sup>183</sup> In addition to identifying where this critical juncture occurs, the following questions can be answered using this critical juncture:

- When does SRW occur?
- Why is SRW attempted?

(2) After identifying the critical juncture, the critical actions from critical actors then need to be investigated and established. These critical actors can be identified by examining and answering the following questions, as conceptualised by Childs and Krook:<sup>184</sup>

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<sup>182</sup> Childs and Krook, "Analysing Women's Substantive Representation," 136.

<sup>183</sup> See: Jennifer Curtin, "Women, Political Leadership and the Substantive Representation: the Case of New Zealand," *Parliamentary Affairs* (2008); Mona Lena Krook and Fiona Mackay, *Gender, Politics and Institutions* (Basingstoke: Palgrave Macmillan, 2011); Sawyer, "The Story of RU486 in Australia."

<sup>184</sup> Childs and Krook, "Analysing Women's Substantive Representation," 139.

- ‘Who initiates policy proposals?’
- Who acts on these policy proposals?
- Do they act individually or as part of a group?
- If they join with others: Who? On what basis? How long? Why?
- How do they set out to achieve policy change?
- Do they provoke resistance or backlash?
- Do they achieve policy change?’

Following the identification of critical actors, the following questions can be answered in order to establish these critical actions:

- How is SRW manifested?
- Who acts in SRW?
- Where does the substantive representation occur?
- In relation to which women is substantive representation expressed?

(3) After the establishment of the critical juncture, critical actors, and critical actions, the critical act, can then be recognised. Importantly, this determination of these critical acts can be evaluated by asking: What policies are being passed? If no policies are being passed, that realisation can also be used to evaluate the representation process as well.

### **Critical Path Framework Questions**

For purposes of this thesis, a seven-question critical path framework will guide the research, in regard to domestic violence in England and Wales. The following section will present the seven questions in detail, by specifying what the questions are actually asking, how the questions have been previously conceptualised, and how I will answer the questions in specific relation to England and Wales. The questions below are presented in the order according to the critical path conceptualised earlier in this chapter. The questions themselves were framed throughout previous research by Dovi (2007), Celis et al. (2008), and Lovenduski and Guadagnini (2010).

### *Why is SRW attempted?*

Frequently, in order to answer this question, researchers have focused on ‘women's issues.’ This focus however can cause ‘women’ to be seen as a singular group, with the same interests and goals. This can cause SRW to be synonymous with feminist conceptions of SRW.<sup>185</sup> This problem can be eradicated by various means of examination including the consideration of ‘strategic gender interests,’<sup>186</sup> ‘practical gender interests,’<sup>187</sup> claims-making, motivation, obligation, and opportunity.<sup>188</sup> In terms of the interests themselves, in research it is theorised that ‘women’s issues’ cannot be condensed to a specific number of areas.<sup>189</sup> However, one issue that *all* actors achieved consensus on in the United Kingdom was the issue of violence against women and because of this finding, it is deemed acceptable for the purpose of this thesis to use this single issue.<sup>190</sup> Despite this, some political parties may take ‘ownership’ or ‘claim’ an issue, such as domestic violence, particularly around election time, promising action on the issue. To this point, as stated by Shaun Bevan and Zachary Greene, “elections alone do not explain changes in the distribution of policies across issues. Instead, the parties’ organizations, responses to economic conditions, and the size of the parliamentary delegation influence the stability of issue attention...”<sup>191</sup> According to Bevan and Greene, it is not solely because of an election platform that actors choose to act on a particular issue, whether it be a declared party position or a personal one. Admittedly, this thesis largely does not focus on the party aspect of representation, as this case study revolves around a single issue that each political party has agreed is an important issue that must be addressed. Furthermore, this case study does not focus on the workings of a particular party, so that critical actors may be determined regardless of party affiliation. Lastly, it may be important for MPs to have the support of their fellow party members on more partisan issues, such as austerity spending, however, it will be interesting to see if this support is as necessary on an issue of

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<sup>185</sup> Celis et al., “Rethinking Women’s Substantive Representation,” 106.

<sup>186</sup> Strategic gender interests are created “from the analysis of women’s subordination and from the formulation of an alternative, more satisfactory set of arrangements to those which exist” (Molyneux 1985, 232). An example is the adoption of policies to deal with violence against women.

<sup>187</sup> Practical gender interests are interests voiced by women who experience them, rather than interests created in formal institutions, such as by elected legislators (Molyneux 1985, 233).

<sup>188</sup> Celis et al., “Rethinking Women’s Substantive Representation,” 106; Lovenduski and Guadagnini, “Political Representation.”

<sup>189</sup> Celis et al., “Constituting Women’s Interests through Representative Claims,” 164.

<sup>190</sup> Celis et al., “Constituting Women’s Interests through Representative Claims,” 165.

<sup>191</sup> Shaun Bevan and Zachary Greene, “Looking for the Party? The Effects of Partisan Change on Issue Attention in UK Acts of Parliament,” *European Political Science Review* (2016): 49.

importance such as domestic violence or whether actors from other parties will join in debates and the drafting of legislation.

The above categories of gender interests were first developed by Maxine Molyneux in 1985 where she stated “we need to specify how the various categories of women might be affected differently, and act differently on account of the particularities of their social positioning and their chosen identities.”<sup>192</sup> In terms of this thesis, interests and claims-making regarding domestic violence were typically framed around notions of prevention, provision, and protection established by the government via inquiries, reports, or action plans. Furthermore, because this project focuses specifically on the issue of domestic violence within the English and Welsh context, these ‘categories of women’ are somewhat already distinguished from *all* women. This differentiation does not necessarily include only victim-survivors of domestic violence, but it can include those close to or affected by domestic violence in some way, such as those at risk, family members of victim-survivors, friends, etc. Many of the debates examined within the case study in Chapter 3 and Chapter 4 speak about various categories of women and how different women may be affected by the various proposed policies. For example, in Case 2 Protection Against Stalking (PAS) conducted a study on victim-survivors’ experience with the criminal justice system, while the National Association of Probation Officers (NAPO) study focused on convicted male perpetrators of domestic violence. While both of these studies concentrated on different categories of individuals with differing interests and social positioning, PAS and NAPO were able to draw similar conclusions that changes were needed in terms of the criminal justice system in dealing with the issue of domestic violence.

The claims-making suggestion, framed by Michael Saward, offers that “discourses are central features to SRW [substantive representation of women], in which acting for women involves claiming to represent women and framing issues as being of importance to women.”<sup>193</sup> Therefore, the answering of this question does not focus solely on women’s interests as a general category, but instead on the conceptions of created and voiced interests, as well as representative claims, aims, and motivations.<sup>194</sup> Specifically, the conceptions of motivation, obligation, and opportunity are most closely associated with

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<sup>192</sup> Maxine Molyneux, “Mobilization without Emancipation? Women’s Interests, the State, and Revolution in Nicaragua,” *Feminist Studies* (1985): 232.

<sup>193</sup> Celis et al., “Rethinking Women’s Substantive Representation,” 106.

<sup>194</sup> Celis et al., “Rethinking Women’s Substantive Representation,” 106.

representatives within legislatures and how their claims-making coincides with these concepts. For Lovenduski and Guadagnini, these three notions can either be undertaken in isolation, or be used in combination. For example, “[m]otivation follows from interests and desire, obligation from legal and/or moral responsibility, and opportunity from a combination of capacity and position.”<sup>195</sup>

When answering this question, the concept of ‘discourse’ becomes important when determining why an actor may claim to substantively represent women. A specific discourse, such as that surrounding domestic violence, can reinforce what we already know about a specific issue. This can be reflected in how debates are framed and how legislation is written. This can then highlight whether there is a gap in the popular discourse of an issue and the issue itself. For example, does the legislation actually address the primary issue, or does it only address the discourse spoken of from the legislators.

This thesis does not employ a discourse analysis, yet a brief introduction of discourse and how it affects legislators’ approach to violence against women is needed. As stated by Christina Schäffner, “Discourse as a form of verbal interaction, as an actual instance of communication, is meaningful in a specific context of situation (and in culture). Discourse analysis as the examination of the structure and function of language in use thus involves the analysis of context and participants.”<sup>196</sup> Throughout the case study it will be important to consider this idea, that language is meaningful and contextual, as a way to examine why an actor may claim to act for women. It is also important to consider whether the language used within debates, etc. throughout the case study reinforces the current language that is used regarding domestic violence, such as viewing women as victims deserving of protection, or whether the conversation is framed in an entirely different way. It will be important to examine whether the formal discourse within the legislature is actually the discourse that is being used by those working in non-profits organisations, etc.

Therefore, as a researcher attempting to answer this question, it is significant to consider the following: ‘women’ as a group are situated at various intersections in society, including race and class and this can influence the identification of ‘interests.’<sup>197</sup> Representation must be seen as a process of claims-making and include the many reasons for why an actor

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<sup>195</sup> Lovenduski and Guadagnini, “Political Representation,” 182.

<sup>196</sup> Christina Schäffner, “Discourse Analysis,” in *Handbook of Translation Studies: Volume 4*, ed. Yves Gambier and Luc Van Doorslaer (Amsterdam: John Benjamins Publishing Company, 2013), 47.

<sup>197</sup> Molyneux, “Mobilization without Emancipation?,” 232.

may frame interests in a certain way.<sup>198</sup> As noted, “the claims-making approach, importantly does not necessarily refute the possibility that women share a common set of interests; rather, its strength lies in highlighting the fact that numerous actors are involved in portraying and thus constructing what ‘women’s interests’ may be.”<sup>199</sup> In order to find and analyse these claims, expressions and meanings of certain claims are evaluated, through the language of the various acts and actors, and also bring motivation, obligation, and opportunity into the discussion.<sup>200</sup>

### ***When does SRW occur?***

The question of political time has rarely been researched in regard to the political representation of women, but two things are essential to consider in regard to political time: juxtaposition and sequence.<sup>201</sup> Juxtaposition includes other priority issues of legislators, immediacy of elections, public opinion regarding the issue being researched (in this case, domestic violence), the economic positioning of the country being studied (and whether resources are available), dates of debates, and whether the ‘political climate’ is amenable to the issue.<sup>202</sup> Sequence, on the other hand, includes whether an act or proposition in regard to the issue being investigated received success or defeat previously.<sup>203</sup>

In order to understand these two concepts, Childs and Lovenduski present two examples of how juxtaposition and sequence are important to evaluate when considering political time within SRW. They state:

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<sup>198</sup> Celis et al., “Constituting Women’s Interests through Representative Claims,” 151; Michael Saward, *The Representative Claim* (Oxford: Oxford University Press, 2010), 36.

<sup>199</sup> Celis et al., “Constituting Women’s Interests through Representative Claims,” 157.

<sup>200</sup> Celis et al., “Constituting Women’s Interests through Representative Claims,” 159-160; Lovenduski and Guadagnini, “Political Representation.”

<sup>201</sup> Childs and Lovenduski, “Political Representation.”

<sup>202</sup> Childs and Lovenduski, “Political Representation”; Lovenduski and Guadagnini, “Political Representation,” 181.

<sup>203</sup> Childs and Lovenduski, “Political Representation.”

A classic example of juxtaposition is the insertion of a ban on sex discrimination in the U.S. 1964 Civil Rights Act in which an amendment extending rights for women was added to the bill by southern Democrat Virginian congressman Judge Howard Smith who hoped (wrongly) that this would sufficiently increase opposition to the bill to prevent its enactment (Meehan 1985). Sequence is illustrated by the extension of the public sector duty, previously limited to racial minorities and disabled people, to promote sex equality in the British Equal Rights Act of 2010 and the successive Equality and Anti Discrimination Directives of the European Union that extended the rights of women (and other groups) over a period of three decades.<sup>204</sup>

In the case of England and Wales, it is important to use juxtaposition and sequence as starting points for which to answer this question. For example, it became important to look at when the specific cases of legislation were introduced and in relation to other parts of the proposed bill. Further, it was important to explore the public consultations given by the government in order to discover whether the issues consulted were followed up on in the proposal of legislation. Readings, other parliamentary inquiries, and discerning whether there was a victory or defeat in regard to the legislation was important to assess SRW. Researching the political time of certain issues helps to contextualise the issue in regard to other issues and, if there was a defeat in certain instances, what was the sequence following this defeat? Was it reintroduced or did the issue lapse? All of these issues are important to the framework.

### ***Who acts in SRW?***

This question attempts to discover who is acting on behalf of women and is a major reason for why it is important to evaluate SRW. Conventionally, the focus of this question has been on the actions of female representatives and their stated preferences and policy priorities in state legislatures. Today, however, identifying critical actors is seen to be more important in gaining the larger picture of representation as a whole.<sup>205</sup> To further this point, Lovenduski and Guadagnini state: “Representation is performed by elected and appointed actors, movements, and individuals operating in different and changing circumstances at

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<sup>204</sup> Childs and Lovenduski, “Political Representation.”

<sup>205</sup> Karen Celis et al., “Rethinking Women’s Substantive Representation,” *Representation* (2008).

different stages of policy debates.”<sup>206</sup> In answering this question, there are important points to consider: first, those that represent women do not have to be women in parliament; they can instead be men in parliament, movement actors, ministers or cabinet members, or other members of civil society, such as those involved in charities or other non-governmental organizations (NGOs).<sup>207</sup> As stated in the literature review of this thesis, the question of whether women represent women is a long-standing question within the literature regarding the political representation of women. A secondary question is if men can effectively represent women, and whether it is problematic for men to claim to represent women in the first place. While it has been argued that men and women in politics behave in similar ways, others note there are differences.<sup>208</sup> As Manon Tremblay notes, “it is worth noting that having more women elected into parliament is important not only in order to provide role-models for girls and women, and symbols of what females can achieve, but also to change the attitudes, opinions and behaviour of men in political parties.”<sup>209</sup> This is important because it not only shows the symbolic nature of actors *outside* of the policymaking arena, but also *within* it.

Secondly, critical actors can be non-left and do not have to be feminist.<sup>210</sup> Right-leaning and conservative parties also claim to act for women, which raises the question of what ‘acting for’ women actually means in this context.<sup>211</sup> For example, the 2015 Conservative party manifesto claimed that the party would prioritise combating the issue of violence against women and girls in England and Wales.<sup>212</sup> Instead, critical actors are characterised by their actions and claims of representing. Another example is Labour-leader Jeremy Corbyn. In a Labour published document entitled ‘Working with Women,’ Corbyn acknowledged that “[w]omen continue to face discrimination and sexism— hampering life chances and collectively damaging our society and our economy.”<sup>213</sup> He further states that

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<sup>206</sup> Lovenduski and Guadagnini, “Political Representation,” 170.

<sup>207</sup> Celis et al., “Rethinking Women’s Substantive Representation,” 104.

<sup>208</sup> Manon Tremblay, “Do Female MPs Substantively Represent Women? A Study of Legislative Behavior in Canada’s 35<sup>th</sup> Parliament,” *Canadian Journal of Political Science* (1998): 436.

<sup>209</sup> Tremblay, “A Study of Legislative Behavior in Canada’s 35<sup>th</sup> Parliament,” 435.

<sup>210</sup> Karen Celis, “Representativity in Times of Diversity: The Political Representation of Women,” *Women’s Studies International Forum* (2013): 6.

<sup>211</sup> Celis and Childs, *Gender, Conservatism and Political Representation*.

<sup>212</sup> The Conservative Party, “The Conservative Party Manifesto” (2015): 59-60.

<sup>213</sup> Jeremy Corbyn, “Working With Women” (2015): 2.



he would end cuts to public services that affect women the most, including those services which help women who experience violence.<sup>214</sup>

Therefore, the criterion for choosing who critical actors are is two-fold. As stated by Celis and Silvia Erzeel, actors in this sense “exhibit specific attitudes and behavior: they are attitudinally strongly motivated to promote women’s interests in parliament and are highly active in representing women’s issues.”<sup>215</sup> In addition to the importance of identifying critical actors, so too is the determination of these actors as ‘claims-makers.’<sup>216</sup> Criteria that have been assigned to this category include elected and nonelected actors who make claims on behalf of women or women’s perceived interests.<sup>217</sup>

In order to determine the critical actors in the English and Welsh context, I observe the actions of: female and male legislators, movement actors, relevant policy agencies, cross-party groups, parliamentary committees, sponsors of bills, sponsors and signatories of Early Day Motions (EDMs), and various charity actors, such as those in Women’s Aid, who help bring issues with domestic violence in England and Wales to the forefront of discussion in both the everyday context but also within the policymaking arena. This observation is done by analysing the following, in regard to the above criteria: government documents, legislative evaluations, daily Hansard debates, parliamentary debates, and publications by various organisations. These resources are analysed in order to determine who is gendering the debate or gendering interests. Questions considered for this section included asking what the role of parliamentarians are, and what the role of parliament more generally is.

### ***How is SRW manifested?***

The posing and answering of this question draws attention to the actual *actions* that take place during the representation process. Much of the literature on substantive representation today focuses on critical actors.<sup>218</sup> While the actions of critical actors are

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<sup>214</sup> Corbyn, “Working With Women,” 2.

<sup>215</sup> Celis and Erzeel, “Beyond the Usual Suspects,” 6.

<sup>216</sup> Karen Celis et al., “Constituting Women’s Interests through Representative Claims,” *Politics & Gender* (2014): 152.

<sup>217</sup> Celis et al., “Constituting Women’s Interests through Representative Claims,” 158.

<sup>218</sup> See: Celis and Childs, *Gender, Conservatism and Political Representation*; Celis and Erzeel, “Beyond the Usual Suspects,”; Childs and Krook, “Analysing Women’s Substantive Representation.”

observed, they are rarely explicitly spoken of in terms of their key importance, or criticality. Instead, the emphasis is typically on the actors and the outcomes of the representation. But the question remains: what is happening between the actors and the point of actual policy change? To borrow from March and Olsen, there is sometimes observation without attention to explication, where we observe the actors and the outcomes, but do not attempt to explain the process itself.<sup>219</sup>

‘Actions’ can be defined generally as the act of *doing*. As stated above, critical actions are defined here as *actions or steps taken by critical actors, initiated by a critical juncture, which lead to critical acts*. This thesis conceptualises critical actions as what has been defined in previous literature as critical acts, although they are in fact, actions and not necessarily outcomes. Instead, I argue that critical acts can be seen as the outcome of representation, or the point of actual policy change, as some scholars have pointed out.<sup>220</sup> Critical actions can be categorised within three types of actions: communicative critical actions, symbolic critical actions, and substantive critical actions. Communication critical actions encompass verbal or written responses or acknowledgement of an issue. Symbolic critical actions include actions such as voting, taking part in a parliamentary debate, broadening the political agenda, or supporting bills. Substantive critical actions encompass actions of accomplishment, such as the government launching a consultation or introducing bills or an issue for debate. Substantive critical actions are more measurable actions, whereas the communicative and symbolic are more figurative and ceremonial.

It is important to posit the question of how one arrives at these critical actions. To borrow examples from Celis, actions, formerly categorised as critical acts, include: “Voting, introducing and supporting bills, speaking for women, broadening the political agenda, formulating women’s interests, gendering debates and policy content, lobbying the state, [and] feminist policy analysis.”<sup>221</sup> Rather than seeing these activities as critical acts, we can use the definition presented above to describe these instead as critical actions. Further, these actions do not have to lead directly to a new law or policy change per se, in order to be considered a critical action. Instead, critical actions are steps of enablement, rather than ‘successful’ policy outcomes. For example, a proposed bill may not become a new law or

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<sup>219</sup> James G. March and Johan P. Olsen, “The New Institutionalism: Organizational Factors in Political Life,” *The American Political Science Review* (1984), 747.

<sup>220</sup> See: Childs and Krook, “Analysing Women’s Substantive Representation,” 138.

<sup>221</sup> Celis, “Substantive Representation of Women (and improving it),” 101.

piece of legislation, but the claims of a representative, i.e. voting or introducing the legislation itself, can still be regarded as critical actions because it could lead to further action or the issue being addressed in the future. Furthermore, some actions may not be considered ‘critical’ at the time of the event, but could become critical when utilising the critical path framework and evaluating previous instances of representation. When considering the definition of SRW, the definition is contingent on the *acting* (critical actions), not necessarily the *success* of the acting. To this, it becomes apparent that the knowledge of critical actions and critical acts are required, with attention being paid to what Celis describes as a ‘kaleidoscope of actions’ where “acting for women is not limited to a specific act in parliament, but is defined as broadening the definition of what is in the ‘interest of women.’”<sup>222</sup> Therefore it is not one act, but many critical actions that help to guide this research.

These critical actions are also identified by the ‘processes of framing’ where “[w]omen’s representatives put forward gendered ideas in attempts to frame or reframe a debate so that its discourse is gendered or regendered.”<sup>223</sup> However, this process does not have to be done by female representatives. Gendering a debate, or gendering a frame can be done by male actors as well. Women may descriptively represent women, but men can also represent women. More specifically, ‘frames’ are conceptualised as statements made by actors.<sup>224</sup> In addition to statements, frames also include a ‘diagnosis’ and ‘solution.’<sup>225</sup> Framing therefore is how these frames are defined and preserved.<sup>226</sup> In addition to framing by representatives, framing occurs by movement actors and also within WPAs: “Movement actors attempt to establish and maintain consultative relationships with policy agencies; policy agencies seek movement support and occasionally establish consultative groups that include movement actors.”<sup>227</sup> For example, movement actors add to policy inquiry, where this is seen as both lobbying and framing.<sup>228</sup>

In order to answer this question in regard to England and Wales, many actions are considered. These include: voting records and policy priorities of both men and women in

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<sup>222</sup> Celis, “Substantive Representation of Women (and improving it),” 114.

<sup>223</sup> Lovenduski and Guadagnini, “Political Representation,” 170.

<sup>224</sup> McBride and Mazur, *The Politics of State Feminism*, 34.

<sup>225</sup> McBride and Mazur, *The Politics of State Feminism*, 281.

<sup>226</sup> McBride and Mazur, *The Politics of State Feminism*, 35.

<sup>227</sup> Lovenduski and Guadagnini, “Political Representation,” 171.

<sup>228</sup> Lovenduski and Guadagnini, “Political Representation,” 171.

the Westminster parliament, lobbying and activism by parliamentarians, the women's movement, and WPAs, in addition to the frames and policy initiatives made by relevant charity organizations, such as Women's Aid. Additionally, public debates, the drafting of bills, political party manifestos, public consultations initiated by the government, speeches in which claims are made, the introduction of an issue to parliament, independent parliamentary inquiries, and parliamentary standing orders are consulted.

***In relation to which women is substantive representation expressed?***

Similar to other questions within the framework which invoke a symbolic assessment, discussing which women are represented within a certain context raises important issues surrounding how representation is evaluated and which women are actually being represented, due to the contentious topic of 'women's interests' and whether or not they actually exist. Because of this, it is assumed that not *all* women are represented equally, either descriptively within the legislature, or as a citizen. Further to this, women do not solely identify as 'women' as a standalone term. There are intersecting identities to which women subscribe—or are prescribed by society—including: race, class, ethnicity, religion, disability, age, party and group memberships, employment, ideology, and feminist and non-feminist sentiment.<sup>229</sup>

Additionally, it must be agreed that women's interests—as much as they exist—are not the same as feminist interests.<sup>230</sup> While many of the studies conducted on SRW tend to begin from a generally feminist standpoint, it is acknowledged that:

Focusing on how conservative representatives can and do make claims 'for women' presents an important opportunity to shed light on the role of other actors in SRW, as well as to understand the representative relationship between conservative representatives and conservative women in society, and to capture the broader processes of responsiveness towards women.<sup>231</sup>

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<sup>229</sup> Childs and Lovenduski, "Political Representation."

<sup>230</sup> Daniela Piccio, "A Complex Mediation of Interests: Party Feminisation Processes in the Italian Christian Democratic Party," in *Gender, Conservatism and Political Representation*, ed. Karen Celis and Sarah Childs (Colchester: ECPR Press, 2014), 63.

<sup>231</sup> Piccio, "A Complex Mediation of Interests," 68.

In addition, it remains important to recognise the responsiveness described above in regard to *which* women these conservative actors may claim to act for.

Further to this, as much as a government claims to speak on behalf of ‘women,’ women are affected differently by way of their intersectional identities, as shown by previous data.<sup>232</sup> This point is further illustrated by Joyce Outshoorn and Johanna Kantola where they state: “On the whole, different governments and agencies have been slow to recognize diversity among women and to take it into account in policy... Many agencies still tend to take women as an undifferentiated category.”<sup>233</sup> Given this, it is interesting to see and evaluate which women are represented within the process of representation, due to governments’ historic lack of understanding of women’s various identities. Instead of focusing specifically on whether or not women’s interests are represented, attention is paid to which women are represented by the various claims made in the representation process.<sup>234</sup> In England and Wales, this amounts to asking whether different women are considered, with attention paid to the various intersecting identities of women. What types of women are these government interventions aimed at, and in relation to which women were concerns expressed by various actors?

### ***Where does the substantive representation occur?***

Traditionally, researchers have focused on national parliaments when examining where SRW occurs, while excluding other possible sites of substantive representation, which is why this question is important for this thesis. These sites of representation include different levels of government (local, regional, national, and supranational), political forums (civil society, NGOs, WPAs, and cabinets), and possibly via social media or public protest.<sup>235</sup> For example, Sawyer examined the Australian national parliament but also studied Australian political forums such as The Parliamentary Group on Population and Development.<sup>236</sup> Sawyer stated “[t]he passage of the co-sponsored RU486 Bill [regarding an abortion drug] was widely viewed as a win for women. Apart from the policy outcome, the

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<sup>232</sup> Lovenduski and Guadagnini, “Political Representation,” 176.

<sup>233</sup> Joyce Outshoorn and Johanna Kantola, *Changing State Feminism* (Basingstoke: Palgrave Macmillan, 2007), 279, 280.

<sup>234</sup> Lovenduski and Guadagnini, “Political Representation,” 174.

<sup>235</sup> Celis et al., “Rethinking Women’s Substantive Representation,” 105.

<sup>236</sup> Sawyer, “The Story of RU486 in Australia.”

campaign involved mutual recognition and close interaction between women inside and outside parliament.”<sup>237</sup> This quote shows how SRW was strengthened by the involvement of different actors, but also the interaction between various sites of action as well.

In the English and Welsh context of this thesis, the question is answered by evaluating the following sites of potential representation, including within the national parliament from 2010-2015. These years have been chosen as they are inclusive of the five individual pieces of legislation chosen to be evaluated in the case study chapter, with the first being the Crime and Security Act 2010 and the last being the Serious Crime Act 2015. The national parliament context also includes the political forums mentioned above, especially WPAs which operate *within* the government context but also in conjunction with civil society and women’s movements, such as the former Women’s National Commission, which played an important role in helping to bring about the ‘go’ orders in Case 1 of this case study. Therefore, the sites of action do not necessarily need to be solely within the parliamentary context, but can be within other government contexts.

Other important sites to consider include WPAs. WPAs have been conceptualised as “[a] structure that meets both of the following criteria: 1) any agency or governmental body formally established by government statute or decree, and 2) any agency or governmental body formally charged with furthering women’s status and rights or promoting sex-based equality.”<sup>238</sup> WPAs are the reaction of politicians to demands from women’s movements and are therefore positioned between the women’s movement and government, especially in regard to research on European countries.<sup>239</sup> According to McBride and Mazur, WPAs are formal and official organisations created by the state, and as such are state agencies.<sup>240</sup>

In the United Kingdom, specifically England and Wales, WPAs have shifted from specifically women-based agencies, to diversity and equality agencies based on various facets of discrimination other than sex, including ethnicity and race, religion, age, sexual orientation, and disability.<sup>241</sup> As stated by Judith Squires, “[f]rom the late 1990s onward, the ‘separate strands’ approach to equality—in which sex, race and, more recently,

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<sup>237</sup> Sawyer, “The Story of RU486 in Australia,” 331.

<sup>238</sup> McBride and Mazur, *The Politics of State Feminism*, 284.

<sup>239</sup> McBride and Mazur, *The Politics of State Feminism*, 3, 28.

<sup>240</sup> McBride and Mazur, *The Politics of State Feminism*, 31.

<sup>241</sup> Judith Squires, “The Challenge of Diversity: The Evolution of Women's Policy Agencies in Britain,” *Politics and Gender* (2007): 514, 519.

disability equality were pursued independently—has gradually been replaced by a more integrated concern with ‘diversity,’ placing its gender equality approach into a wider equalities framework.”<sup>242</sup> For some, this shift only further complicates the degree of WPAs to deal specifically with sex-based inequality.<sup>243</sup>

In terms of violence against women, Weldon theorises that WPAs’ capacity is weakened if it is a ‘subdepartment,’ because the issue of violence against women must compete with the other policy aspects of the department.<sup>244</sup> Conversely, there are others who embrace the approach. For example, former Trade and Industry Secretary and Minister for Women Patricia Hewitt stated “tackling discrimination in the 21<sup>st</sup> century requires a joined-up approach that puts equality in the mainstream of concerns. As individuals, our identities are diverse, complex and multi-layered. People don’t see themselves as solely a woman, or black, or gay and neither should our equality organizations.”<sup>245</sup> In addition, the Equal Opportunities Commission (EOC), founded in 1976 with the passing of the Sex Discrimination Act 1975, supported this shift, as well as the Women and Equality Unit (WEU) and the Women’s National Commission (WNC). To be sure, this merger between WPAs and diversity agencies may be beneficial regarding some issues, although the merger could be harmful, rather than beneficial in situations detailed above by Weldon.

Regardless of the approach differences, women’s policy agencies and organisations, such as the EOC, Equality and Human Rights Commission (EHRC), the Centre for Women and Democracy, and the Hansard Society, have found that in all sectors of society, including politics and decision-making, the United Kingdom is mostly run by men.<sup>246</sup> Furthermore, “[f]eminist analyses of the state and public policy have also shown that women’s policy agencies and their agents are antidotes to the resistance of established institutions accustomed to reproducing dominant patterns of gender roles and patriarchy.”<sup>247</sup> The extent to which women’s policy agencies are effective or not in terms of bringing attention

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<sup>242</sup> Squires, “The Challenge of Diversity,” 519.

<sup>243</sup> Squires, “The Challenge of Diversity,” 514; Susan Moller Okin, “Is Multiculturalism Bad for Women?,” in *Is Multiculturalism Bad for Women?*, ed. J. Cohen, M. Howard, and M. Nussbaum (Princeton: Princeton University Press, 1999); Ayelet Shachar, “Should Church and State Be Joined at the Altar? Women’s Rights and the Multicultural Dilemma,” in *Citizenship in Diverse Societies*, ed. W. Kymlicka and W. Norman (Oxford: Oxford University Press, 2000).

<sup>244</sup> Weldon, *Protest, Policy, and the Problem of Violence against Women*, 129.

<sup>245</sup> Squires, “The Challenge of Diversity,” 521.

<sup>246</sup> Centre for Women and Democracy, “Sex and Power 2013: Who Runs Britain?” (2013): 5; Hansard Society, “Women at the Top: Politics and Public Life in the UK” (2012).

<sup>247</sup> McBride and Mazur, *The Politics of State Feminism*, 29.

to violence against women in the United Kingdom will be reviewed throughout the case study.

In addition to the national parliament and WPAs, regional governments will also be considered. For example, the Welsh government recently passed the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Bill, making it the first in the United Kingdom to focus explicitly on the topic of violence against women.<sup>248</sup> Other sites of action include civil society, charities, associations, and conferences which include the issue of violence against women and domestic violence, such as the Labour Party's Women Conference. To conclude, Celis writes, "representation is surely not limited to parliaments and elected politicians; it takes place in different arenas and several actors claim to represent women. In particular, women's movements and women's policy agencies offer alternative—and perhaps more effective—sites of representation."<sup>249</sup> These sites of action are able to bring attention to issues and articulate the need for change. For example, a particular women's movement may be able to articulate and frame gendered interests in a more prolific way by bringing together varying perspectives, as detailed by Weldon.<sup>250</sup> This way of representation can be conceptualised as being more effective because it takes into account actually articulated interests rather than the perceived interests of a represented group. Despite the above developments, much of the investigation on representation continues to use debates in national parliaments as the key source for exploring where SRW occurs. This thesis therefore uses debates in national parliaments, but also brings together other various sites of action including women's policy agencies, organisations, and civil society.

### ***What policies are being passed?***

While vital to this framework, this question becomes rather straightforward to answer when evaluating SRW. The answering of this question is seen as the culmination of the representation process as a whole, encompassing the critical acts that are detailed in Chapter 2. While imperative to identify what new policies or offences were passed in the policymaking process, it is also important to examine what proposals or recommendations

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<sup>248</sup> "Violence against Women Bill Receives Royal Assent," last modified 2015, <http://www.calandvs.org.uk/connect-to-calan/blog/77-violence-against-women-bill-receives-royal-assent>.

<sup>249</sup> Celis, "Substantive Representation of Women (and improving it)," 97-98.

<sup>250</sup> Celis, "Substantive Representation of Women (and improving it)," 98; Weldon, "Beyond Bodies," 1156.



were made and those that were not accepted during the legislative process. For example, there were 30 recommendations made by the Justice Unions' Parliamentary Group inquiry on stalking in Case 2, yet many of these recommendations were not taken into account when the updated bill was being debated. Those recommendations that were presented to the House of Lords chamber for example, were either dismissed or tabled. The policy failures therefore are just as important to evaluate as the policy successes. For this reason, 'failures' are considered as well when I assessed this question. It is important at the conclusion of the thesis to acknowledge the troubles around legislation in general, as far as implementation.

### **Concluding Remarks**

To conclude, the methods to be undertaken in this case study include attention to power relations, relationships, and the marginalization of women in political life, as well as in non-political situations. The cases chosen focus on problem-centric approaches to research, by using violence against women as the underlying issue to explore, with gender as the nucleus for analysis. The seven specific questions presented above will help to present a more detailed approach by looking beyond traditional methods and questions discussed previously. These questions help guide the research process, especially in asking what SRW means in England and Wales, specifically regarding domestic violence legislation.

Additionally, this chapter has demonstrated how the study of representation is ever-changing and has attempted to contribute to those changes by breaking down critical acts into critical *actions*, and also borrowing the idea of instituting a pathway in order to assess and draw conclusions on SRW. This chapter has introduced these changes in order to bring attention to the *process* of representation and how critical actors perform these critical actions, which then lead to critical acts, with consideration being paid to how the field would benefit from analysing the critical path in terms of future evaluation. This framework proposes a revelation, where it increases the researcher's future ability to highlight and trace the core tenets of representation across several instances of substantive representation, whether it be in regard to specific issues, representatives, or states.

## Chapter 3: Evaluating SRW in England and Wales: The Crime and Security Act 2010 and the Protection from Freedoms Act 2012

*“I do not think this House is a fit and proper place for any respectable woman to sit in”<sup>251</sup>*

### Introduction

This chapter will engage with the critical path framework conceptualised in Chapter 2, by examining and evaluating the first two cases of domestic violence legislation in England and Wales during the period of 2010-2015. This case study is comprised of bills that have passed through the formal parliamentary process and received Royal Assent, becoming acts of law. The point of analysis for this case study begins with the Crime and Security Act 2010 because of the government strategy that was released on November 25, 2010 in which a new plan of action regarding violence against women and girls was undertaken. This government plan sought to move beyond “an approach which is purely centred on the criminal justice system, [where] it envisages a role for all relevant public sector organisations, ranging from central government departments and public service delivery bodies through to local government and the voluntary sector.”<sup>252</sup> The legislation to be evaluated for this chapter includes: The Crime and Security Act 2010 and the Protection of Freedoms Act 2012. Again, this evaluation does not seek to determine or predict *future* behaviour of legislators or those involved in the representation process; rather, this evaluation seeks to assess the behaviour that has already happened.<sup>253</sup>

To restate, the research question asks what SRW means in the context of England and Wales. The sub-questions guiding this research question are: 1) When does SRW occur; 2) why is SRW attempted; 3) who acts in SRW; 4) how is SRW manifested; 5) where does the substantive representation occur; 6) in relation to which women is substantive

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<sup>251</sup> Admiral of the Fleet Sir Hedworth Meux MP, 23 October 1918 (Cowman, *Women in British Politics*, 1).

<sup>252</sup> HM Government, “Together We Can End Violence against Women and Girls: A Strategy” (2010): 77.

<sup>253</sup> Childs and Krook, “Analysing Women’s Substantive Representation,” 136.

representation expressed; and 7) what policies are passed or debated. Furthermore, the main aims of this thesis include: employing a formalised framework surrounding SRW by answering the above questions and utilising the proposed critical path, using this framework to research the impact of SRW on violence against women legislation in England and Wales, drawing conclusions on SRW, and expanding future knowledge on the political representation of women, as well as its effects on violence against women. The next section of this chapter will discuss why laws and legislation are important to examine, followed by the evaluation of the first two case studies.

### **Why Are Laws and Legislation Important?**

Before introducing the first two cases of legislation in this chapter and assessing the representation process of both, it is important to discuss why laws and legislation are important to evaluate at all. By classification in England and Wales, “[c]riminal offences define acts (or omissions) which are so harmful that the wrong is thought to be against the state rather than the individual who has suffered the act; the state prosecutes and, on conviction by a court, the state punishes, by deprivation of liberty, fine or other means.”<sup>254</sup>

While criminal offences in England and Wales are thought to be against the state, and are therefore ‘worthy’ of punishment, “one must not equate the adoption of laws with enforcement, the existence of progressive policies with effective implementation, or the establishment of women's agencies and NGOs with empowerment.”<sup>255</sup> On the other hand, it is also true that laws and legislation, or the lack thereof, are a direct reflection of the social environment and culture at the time. In many instances, laws can be ‘behind the times,’ such as in the example of the cases below. In each of these cases, there was an outside push to change the law. These pushes can be observed vis-à-vis public government consultations or examples of other countries changing their domestic law and these changes being used as impetuses for change within England and Wales. This shows that even when the social environment has progressed to a certain extent, the laws are slow to catch up.

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<sup>254</sup> House of Lords Select Committee on Communications, “Social Media and Criminal Offences: HL Paper 37,” (2014): 7.

<sup>255</sup> R. Amy Elman, “Gender Violence,” in *The Oxford Handbook of Gender and Politics*, ed. Georgina Waylen et al. (Oxford: Oxford University Press, 2013), 252.

The way that the issue of violence against women was historically framed in terms of legislation in England and Wales was a reflection of the power relations and hierarchy between men and women. This ‘residue’ of the past continues, where the same type of problems, specifically regarding domestic violence, continue.<sup>256</sup> To paraphrase Dworkin, laws are important not because they are always implemented and enforced, but because laws themselves determine how we function in society and how we understand what happens to us.<sup>257</sup> Acts of violence then, are interpreted by way of the law. For example, “[l]aws create male dominance, and maintain it, as a social environment. Male dominance is the environment we know, in which we must live. ... Laws shape our perceptions and knowledge of what male dominance is, of how it works, of what it means to us.”<sup>258</sup> This argument, that laws help to create and foster male dominance, is important to this case study, where I will be evaluating the representation of women, but also specifically whether legislation regarding domestic violence is actually furthering this male dominance as a social condition vis-à-vis the way the issue is framed during the representation process. For example, is domestic violence raised as an issue because of the traditional male notion of protecting women, or is the policy area discussed as a way to further women’s equality within the wider society? Further to this, “[i]ndividuals are positioned as they are because of laws and constraints, resources and opportunities and the lack of these; and from those positions they engage in unequal encounters, running particular sets of risks.”<sup>259</sup> In this sense, it is not so much about what the law is criminalising; instead it is about how a piece of legislation either improves or upholds certain attitudes about a particular act—in this case, an act of violence—and either changes or reinforces citizens’ positions in society. Therefore, laws are significant in the way that they are a reflection of society as a whole, and it is significant in turn how women may internalise this individually. As stated by Robert Buckland MP (Con) in terms of legislation: “The journey does not end here.”<sup>260</sup>

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<sup>256</sup> Stefania Abrar, Joni Lovenduski, and Helen Margetts, “Feminist Ideas and Domestic Violence Policy Change,” *Political Studies* 48 (2000): 244.

<sup>257</sup> Andrea Dworkin, *Intercourse* (New York: Basic Books, 1987), 176.

<sup>258</sup> Dworkin, *Intercourse*, 176.

<sup>259</sup> Elizabeth Frazer and Kimberly Hutchings, “Feminism and the Critique of Violence: Negotiating Feminist Political Agency,” *Journal of Political Ideologies* 19 (2014): 145.

<sup>260</sup> House of Commons, “Parliamentary Debates,” (19 March 2012): col. 554.

## Case 1: The Crime and Security Act 2010

| <i>Stage</i>                       | <i>Date</i>   | <i>Hansard reference</i>      |
|------------------------------------|---|-------------------------------|
| <b>House of Commons</b>            |   |                               |
| Introduction                       | 19 November 2009  | Vol. 501 Col. 141             |
| Second reading                     | 18 January 2010   | Vol. 504 Col. 24-127          |
| Committee                          | 26 January 2010<br>28 January 2010<br>2 February 2010<br>4 February 2010<br>9 February 2010<br>23 February 2010 | Hansard Public Bill Committee |
| Report and Third reading           | 8 March 2010  | Vol. 507 Col. 32-121          |
| <b>House of Lords</b>              |   |                               |
| Introduction                       | 9 March 2010  | Vol. 718 Col. 142             |
| Second reading                     | 29 March 2010   | Vol. 718 Col. 1225-1278       |
| Committee                          | 7 April 2010  | Vol. 718 Col. 1540-1570       |
| Report and Third reading           | 7 April 2010  | Vol. 718 Col. 1750            |
| <b>Royal Assent – 8 April 2010</b> | <b>House of Lords Hansard Vol. 718 Col. 1738</b><br><b>House of Commons Hansard Vol. 508 Col. 1256</b>          |                               |

*Table 2: Hansard references for the Crime and Security Act 2010<sup>261</sup>*

<sup>261</sup> Table taken from: HM Government, “Crime and Security Act 2010 Explanatory Notes” (2010): 30.

| <b>Party (with more than one representative; as of 6 January 2009)<sup>262</sup></b> |                        |
|--|------------------------|
| Labour   | 350                    |
| Conservative   | 193                    |
| Liberal Democrat   | 63                     |
| Democratic Unionist Party (DUP)  | 9                      |
| Scottish National Party (SNP)  | 7                      |
| Sinn Fein  | 5                      |
| Independent  | 5                      |
| Plaid Cymru  | 3                      |
| Social Democratic and Labour Party (SDLP)  | 3                      |
| <b>Total</b>   | <b>646</b>             |
| <b>Gender</b>  |                        |
| Men  | 520/646 (80 percent)   |
| Women  | 126/646 (19.5 percent) |

*Table 3: 54<sup>th</sup> House of Commons composition (2005-2010)*

### ***The Crime and Security Act 2010***

The Crime and Security Act 2010 was introduced in the House of Commons on November 19, 2009 as the Crime and Security Bill. The bill had four main stated themes under which various issues were considered. These were: ‘safer streets,’ ‘preventing crimes against the vulnerable,’ ‘shutting down criminal and exploitative markets,’ and ‘justice for victims and their families.’<sup>263</sup> Under the theme of preventing crimes against the vulnerable fell the new Domestic Violence Protection Notices (DVPNs). The DVPNs were a new government remedy, coined as ‘go’ orders, in which there is ‘immediate exclusion [for the determined perpetrator] from the home’ for an initial 48 hours, while a hearing is pending.<sup>264</sup>

These notices differ from other criminal justice options, such as those within the Family Law Act 1996 and the Protection from Harassment Act 1997, because the ‘go’ orders involve an immediate removal, namely a ‘cooling off’ period, where other options can be weighed by the victim or the perpetrator themselves. As stated in the Home Office Research Report 76, the initial aim was “to give victim-survivors time, space and support to consider their options by placing conditions on perpetrators, including

<sup>262</sup> Information in the table taken from: “List of Members of Parliament by Party,” last modified January 6, 2009, <https://web.archive.org/web/20090223120551/http://www.parliament.uk:80/directories/hcio/party.cfm>; “Women in National Parliaments,” last modified January 31, 2009, <http://www.ipu.org/wmn-e/arc/classif310109.htm>.

<sup>263</sup> Pat Strickland et al., “Crime and Security Bill Research Paper 09/97” (2009): 3

<sup>264</sup> HM Government, “Crime and Security Act 2010 Explanatory Notes,” 14.

restricting/removing perpetrators from households, and preventing contact with, or molestation of, victim-survivors.”<sup>265</sup>

On the suspicion that there is domestic violence taking place, a senior police officer can make the perpetrator leave the common home immediately, which they share with an associated person, while a court hearing is pending.<sup>266</sup> Legally, these notices aim to “secure the immediate protection of a victim of domestic violence... from future violence or a threat of violence from a suspected perpetrator.”<sup>267</sup> Because victim-survivors of domestic abuse are often fearful of the consequences of phoning the police or unwilling to take further action against the perpetrator of abuse, a police officer called to the scene of a domestic incident is not required to gain consent from the complainant in order to issue the notice.<sup>268</sup> Once the notice is issued, “the DVPN may explicitly: prohibit [the perpetrator] from evicting or excluding [the victim] from the premises; prohibit [the perpetrator] from entering the premises; require [the perpetrator] to leave the premises; or prohibit [the perpetrator] from coming within a certain distance of the premises... for the duration of the DVPN.”<sup>269</sup> Further, a breach of the DVPN allows for the perpetrator to be arrested without a warrant.

The issuing of a DVPN automatically initiates a hearing in the magistrate’s court for a Domestic Violence Protection Order (DVPO), lasting no less than 14 days, and no more than 28 days.<sup>270</sup> In order for a DVPO to be granted by the court, there are two conditions which must be met. In instances where a DVPO is applied for, “[t]he court must be satisfied on the balance of probabilities that [the perpetrator] has been violent, or threatened violence, towards an associated person, [the victim]. The second condition is

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<sup>265</sup> Home Office, “Evaluation of the Pilot of Domestic Violence Protection Orders: Research Report 76” (2013): 4.

<sup>266</sup> HM Government, “Crime and Security Act 2010 Explanatory Notes,” 13; suspicion in this sense includes cases where “the authorising officer has reasonable grounds for believing that, firstly, [the perpetrator] has been violent or has threatened violence towards an associated person, [the victim], and that, secondly, the issue of a notice is necessary in order to secure the protection of [the victim] from violence or the threat of violence (HM Government 2010, 13). In the UK, an associated person is defined under the Family Law Act 1996 as persons “who are, or have been, married to each other or civil partners of each other; who are cohabitants or former cohabitants; who live, or have lived, in the same household, otherwise than merely by reason of one of them being the other’s employee, tenant, lodger or boarder; who are relatives; who have agreed to marry one another or to enter into a civil partnership agreement (whether or not that agreement has been terminated); [and] who have or have had an intimate personal relationship with each other which is or was of significant duration” (HM Government 2010, 13-14).

<sup>267</sup> HM Government, “Crime and Security Act 2010 Explanatory Notes,” 13.

<sup>268</sup> HM Government, “Crime and Security Act 2010 Explanatory Notes,” 13.

<sup>269</sup> HM Government, “Crime and Security Act 2010 Explanatory Notes,” 13.

<sup>270</sup> HM Government, “Crime and Security Act 2010 Explanatory Notes,” 13.

that the court thinks the DVPO is necessary to secure the protection of [the victim] from violence, or the threat of violence, from [the perpetrator].”<sup>271</sup> Similar to the provision present within the DVPN, a breach of the DVPO allows for the perpetrator to be arrested. Further, following a breach of the order, the perpetrator is held in custody until there is a hearing.<sup>272</sup>

After the bill received Royal Assent on April 8, 2010, a pilot scheme was initiated for 15 months in 2011/2012 in order to assess the effectiveness of the programs in Greater Manchester, West Mercia, and Wiltshire.<sup>273</sup> The Home Office Research Report 76 found that of 487 DVPNs issued, 414 full DVPOs were authorised, with very few breaches reported to the police (one percent).<sup>274</sup> While there were problems observed in the three pilot sites, such as the accessibility to senior police officers to issue the initial DVPN, increased paperwork, and timing restrictions to apply for the full DVPO, the programs were generally seen as positive by the police, courts, support personnel, and importantly, the victim-survivors.<sup>275</sup> As stated in the report, “[m]ost of those interviewed felt safer, and reported that DVPOs provided them with time and space to consider their options. ... victim-survivors were relieved to find that the police had the power to remove the perpetrator from their home, and indicated that they would call the police again.”<sup>276</sup> As stated in the report, the DVPNs and subsequent DVPOs helped to fill a gap for victim-survivors by providing protection and support from potential future abuse and because of this protection, the researchers recommended that the scheme be applied more widely in England and Wales, with increased police training on these matters, monitor DVPOs and any breaches of those protection orders.<sup>277</sup> Because of the preliminary reduction in re-

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<sup>271</sup> HM Government, “Crime and Security Act 2010 Explanatory Notes,” 15.

<sup>272</sup> HM Government, “Crime and Security Act 2010 Explanatory Notes,” 15.

<sup>273</sup> Home Office, “Evaluation of the Pilot of Domestic Violence Protection Orders,” 4.

<sup>274</sup> Home Office, “Evaluation of the Pilot of Domestic Violence Protection Orders,” 5.

<sup>275</sup> Home Office, “Evaluation of the Pilot of Domestic Violence Protection Orders,” 5.

<sup>276</sup> Home Office, “Evaluation of the Pilot of Domestic Violence Protection Orders,” 5-6; in the interviewing phase of the 2013 Home Office evaluation, two-stage telephone interviews were conducted with 16 victim-survivors who had experienced violence for many years (Home Office 2013, 27).

<sup>277</sup> Home Office, “Evaluation of the Pilot of Domestic Violence Protection Orders,” 7; the complete list of recommendations includes: “Streamline processes of recording DVPNs, and material for courts; consider lowering the level of approval for [DVPNs] from police superintendent to inspector; explore how to increase recognition of extended routes into DVPOs; embed DVPNs into routine responses; enhance police training to demonstrate the range of cases in which DVPOs can be used; provide training and advice to specialist and general legal advisers and magistrates; issue guidance to clarify the relationship between ‘no contact’ conditions, non-molestation and child contact arrangements; monitor DVPOs, particularly if they are used as a first or second police response to domestic violence cases” (Home Office 2013, 7). In terms of re-victimisation, there were 2.6 fewer repeat incidents on average based on ‘police call-outs’ (Home Office 2013, 6).



victimisation, the pilot scheme was expanded, and the new powers were implemented in England and Wales on March 8, 2014 to all 43 police forces. In a report by the Home Office in 2016, police forces reported 3,337 applications for DPVNs, with 3,072 of those applications granted full DVPOs from implementation to December 31, 2014.<sup>278</sup> Given the statistics for the first ten months of the program, it shows that many victim-survivors were initiating these DVPNs and many of those applied for and were granted DVPOs. Longer-term data shows that this trend continues. For example, 17 forces returned data from January 1 to July 31, 2015 where 1,384 DVPOs were granted.<sup>279</sup> For purposes of wider implementation, various considerations were proposed by the Home Office, including the criminalisation of DVPO breach, however, initial findings from various police forces show that many victim-survivors are initiating these new notices.<sup>280</sup>

The remainder of this chapter section will detail how the Crime and Security Act came to being, by tracing the path specifically in regard to clauses 24-33 concerning domestic violence and critical DVPNs and DVPOs. The critical path for this case begins with the House of Commons Home Affairs Committee proposition of adding ‘go’ orders to English and Welsh legislation in May 2008, ending with the bill being passed and granted Royal Assent on April 8, 2010.

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<sup>278</sup> Home Office, “Domestic Violence Protection Orders (DVPO): One Year On – Home Office Assessment of National Roll-Out,” (2016): 3.

<sup>279</sup> Home Office, “One Year On – Home Office Assessment of National Roll-Out,” 3.

<sup>280</sup> Home Office, “One Year On – Home Office Assessment of National Roll-Out,” 5.

## Tracing the Critical Path

| <i>Date</i>       | <i>Event</i>  | <i>Path step</i>   |
|-------------------|---|--|
| May 2008          | House of Commons Home Affairs Committee proposition of Domestic Violence Protection Notices (DVPNs); international comparisons included Poland, Austria, Germany, and Switzerland | Critical juncture  |
| July 2008         | Government response to the committee proposition: receptive to learning from other countries  | Communicative critical action<br>Critical actor: Government                |
| March 2009        | Government consultation where DVPNs were mentioned; international comparisons: Austria, Switzerland, Germany, Poland; welcomed by Refuge  | Substantive critical action<br>Critical actor: Government                  |
| March-June 2009   | Women's National Commission (WNC) start focus groups of women and girls on what would make them feel and be safer (report released in July)                                       | Substantive critical action<br>Critical actor: WNC                         |
| September 2009    | Association of Chief Police Officers (ACPO) working group report for the Home Secretary; key loophole identified: DVPNs; international comparisons: Austria and Germany           | Communicative critical action<br>Critical actor: ACPO                      |
| September 2009    | Alan Johnson MP (Lab) announced the government's plans to introduce the protection notices and protection orders  | Critical actor: Alan Johnson MP (Lab)                                      |
| November 19, 2009 | House of Commons first reading (Bill 3) <sup>281</sup> where Alan Johnson MP (Lab) proposed the DVPNs   | Critical actors: Alan Johnson (Lab) and other Labour supporters            |
| January 18, 2010  | House of Commons second reading   | Critical actors: Alan Johnson (Lab) and other supporters (Lab and Lib Dem) |
| March 8, 2010     | House of Commons report and third reading   |  |

<sup>281</sup> The readings of the bill have been added for context, so that the reader knows when the parliamentary hearings were heard, alongside the critical actions.

| <i>Date</i>    | <i>Event</i>   | <i>Path step</i>  |
|----------------|--|---|
| March 9, 2010  | Lord West (Lab) announced his support of the bill during the House of Lords first reading (Bill 45); mentions political time | Critical actors: Lord West (Lab) and other spoken supporters including Baroness Hamwee (Lib Dem), Lord Sheikh (Con), Baroness Stern (Cross Bencher), Lord Dholakia (Lib Dem), and Lord Skelmersdale (Con) |
| March 29, 2010 | House of Lords second reading  |   |
| April 7, 2010  | House of Lords report and third reading  |   |
| April 8, 2010  | Royal Assent   | Critical act  |

*Table 4: The critical path to the passing of the Crime and Security Act 2010*

### ***The Critical Juncture***

In May 2008, the House of Commons Home Affairs Committee, a cross-party group of MPs, published a report entitled ‘Domestic Violence, Forced Marriage, and “Honour”-Based Violence,’ after their inquiry into the various types of violence against women in the United Kingdom.<sup>282</sup> Overall, the inquiry determined that:

The [g]overnment’s approach to all forms of domestic violence remains disproportionately focused on criminal justice responses at the expense of effective prevention and early intervention. ... We therefore recommend that the [g]overnment adopts a national strategy on domestic violence, or on violence against women more generally, to include an explicit emphasis on prevention.<sup>283</sup>

Specifically in terms of the ‘go’ orders, the report proposed that the British government consider adding this legislation after respondents to the eConsultation and organisations such as Men’s Advice Line (MALE) advocated for the orders.<sup>284</sup> MALE explicitly detailed that these would be an ‘inexpensive’ and ‘dynamic short-term measure’ in order to separate a victim and perpetrator.<sup>285</sup> As one respondent detailed on this measure: “As it

<sup>282</sup> These committee members were: Keith Vaz (Lab; chairperson), Tom Brake (Lib Dem), Jeremy Browne (Lib Dem), Karen Buck (Lab), James Clappison (Con), Ann Cryer (Lab), David TC Davies (Con), Janet Dean (Lab), Patrick Mercer (Con), Margaret Moran (Lab), Gwyn Prosser (Lab), Bob Russell (Lib Dem), Martin Salter (Lab), Gary Streeter (Con), and David Winnick (Lab).

<sup>283</sup> House of Commons Home Affairs Committee, “Domestic Violence, Forced Marriage, and “Honour”-Based Violence: Sixth Report of Session 2007-08” (2008): 6.

<sup>284</sup> House of Commons Home Affairs Committee, “Sixth Report of Session 2007-08,” 107-108.

<sup>285</sup> House of Commons Home Affairs Committee, “Sixth Report of Session 2007-08,” 107-108.

stands hundreds of thousands of women and children every year have to flee their homes from domestic abuse...the men in the majority of cases remain at home. Emergency accommodation should be made available for perpetrators so that women don't have to be the ones to leave."<sup>286</sup>

The committee also detailed that other European countries have created legislation establishing these 'go' orders, such as Poland, Austria, Germany, and Switzerland.<sup>287</sup> While each of these countries has initiated different legislation surrounding the 'go' orders, the committee thought it important that England and Wales use these examples as to why they could be important to consider for possible legislation. Specifically, in the Austrian and German cases, these orders have "been seen as a progressive step in relation to the protection of victim's human rights [with] favourable conclusions in both countries. The Austrian approach has been adopted as best practice legislation by the Council of Europe [sic]."<sup>288</sup>

Various issues were addressed by the committee in regard to how these would operate and be legislated. For example, one issue was to what extent does the state, in this case police officers, mediate the situation and weigh the wishes of the victim in terms of whether the victim wishes to have the perpetrator removed.<sup>289</sup> The question becomes whether the judgement of the police officer should supersede the desires of the victim. To reconcile this, the committee looked to the Austrian provision and found that in the first stage, the victim has no influence, in theory, whether a protection notice can be issued, but in the second stage, when it becomes time to issue the protection order, this is done in consultation with the victim.<sup>290</sup> As stated by Birgitt Haller in reference to the Austrian case, "This two phase approach makes clear that the state feels responsible for safety in private lives and that it is aware of the problematic situation of victims who are involved in a violent relationship and who are put under pressure by the offender."<sup>291</sup> This distinction

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<sup>286</sup> House of Commons Home Affairs Committee, "Sixth Report of Session 2007-08," 107; while there are Sanctuary Schemes in the UK, "[t]he implementation of Sanctuary Schemes across the country has been variable and as such, the schemes have received a luke warm response. ... some local authorities are using the schemes as 'cheap' alternatives to emergency housing, simply providing a spare lock or bolt" (House of Commons Home Affairs Committee 2007-08, 74, 75).

<sup>287</sup> House of Commons Home Affairs Committee, "Sixth Report of Session 2007-08," 107.

<sup>288</sup> Association of Chief Police Officers (ACPO), "Tackling Perpetrators of Violence against Women and Girls: ACPO Review for the Home Secretary" (2009): 50.

<sup>289</sup> House of Commons Home Affairs Committee, "Sixth Report of Session 2007-08," 108.

<sup>290</sup> House of Commons Home Affairs Committee, "Sixth Report of Session 2007-08," 108.

<sup>291</sup> Birgitt Haller, "The Austrian Legislation against Domestic Violence" (2005): 3.

between a victim's autonomy to make their own choice in reference to these notices is important because at times, a victim may be under duress, or pressure as Haller states, to make a decision about this 'go' order. The victim may also feel guilt or feel badly for making the perpetrator leave their shared home.

Weighing these options and potential risks, the committee made the recommendation to the government that 'go' orders be introduced, with the above difficulties in mind when determining the best course of action. The committee stated:

We recognise that it is important to ensure that, as far as possible, the victim is involved in the decision to remove the perpetrator from the home. However, it seems to us that a compromise arrangement is possible, with an initial decision to remove the perpetrator taken by the police, and subsequent decisions taken in consultation with the victim. Feedback from victims, through our eConsultation, suggests that they would welcome such a scheme.<sup>292</sup>

This proposal from the House of Commons Home Affairs Committee for the government to put forward these 'go' orders is what I argue is the critical juncture, or 'window of opportunity,' beginning the critical path for the Crime and Security Act 2010.<sup>293</sup>

### ***Critical Actions***

In response to the Home Affairs Committee report, the government issued a reply in July 2008. In specific reference to the proposition of the 'go' orders, the government agreed with the committee's recommendation and stated that they recommended the notices be introduced to parliament.<sup>294</sup> In agreeing to the introduction of these 'go' orders, the government reply stated that they were "open to learn from the good practice and experiences of other countries, which we keep under review."<sup>295</sup>

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<sup>292</sup> House of Commons Home Affairs Committee, "Sixth Report of Session 2007-08," 108; as stated by the Home Affairs Committee, a six week eConsultation was set up between January and February 2008 to "hear directly from the victims and survivors of domestic violence" (House of Commons Home Affairs Committee 2008, 26). The eConsultation received over 240 postings from victim-survivors and various support personnel.

<sup>293</sup> Sawyer, "The Story of RU486 in Australia," 322.

<sup>294</sup> HM Government, "The Government Reply to the Sixth Report from the Home Affairs Committee: Session 2007-08 HC 263: Domestic Violence, Forced Marriage and 'Honour'-Based Violence" (2008): 34.

<sup>295</sup> HM Government, "The Government Reply," 34.

By March 2009, before the ‘go’ orders had been introduced into legislation, the government undertook another consultation in regard to violence against women. The aims of the consultation were proposed as: recognising the success that had been done on the issue of violence against women and girls, including victim support, raising awareness surrounding the issue, specifically the scale of the violence, as well as the nature of why it occurs.<sup>296</sup> In addition, the government wanted the consultation to assess proposals on future policy in regard to the prevention of violence against women, and lastly, to build community confidence that the government was ready and willing to ‘listen and respond’ to those who participated in the consultation.<sup>297</sup> As stated in the consultation, the government relayed that they were “committed to a vision of society in which women and girls feel safe and confident in their homes and communities, to live freely, contribute to society, and prosper in their daily lives.”<sup>298</sup> The question is not whether the government wants to prevent domestic violence or other forms of violence against women; the matter that is often disagreed upon is *how* to actually go about this prevention, provision, and protection that the domestic abuse charity Refuge has been advocating for since the 1980s.<sup>299</sup>

In terms of how the ‘go’ orders fit within this consultation, they were specifically mentioned under the question of ‘how best can we keep track of the most serious offenders, and reduce the risks those individuals pose?’<sup>300</sup> More specifically, ‘what new powers would help the police to control serial perpetrators?’<sup>301</sup> The consultation proposed these ‘go’ orders as a solution to this question, citing again examples from Austria, Switzerland, Germany, and Poland. In their response to the consultation, the domestic abuse charity Refuge supported and welcomed the proposal to include ‘go’ orders in the criminal justice response to violence against women, and interestingly had *already* proposed these orders in 2003 in response to the ‘Safety and Justice: The Government’s Proposals on Domestic Violence’ consultation.<sup>302</sup> Further, Refuge asked an essential question of ‘where would the perpetrator go?’ The question is important because if the

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<sup>296</sup> HM Government, “Together We Can End Violence against Women and Girls: A Consultation Paper” (2009): 2.

<sup>297</sup> HM Government, “A Consultation Paper,” 2.

<sup>298</sup> HM Government, “A Consultation Paper,” 3.

<sup>299</sup> Refuge, “Together We Can End Violence against Women and Girls: A Consultation Paper” (2009): 4.

<sup>300</sup> HM Government, “A Consultation Paper,” 19.

<sup>301</sup> Refuge, “Together We Can End Violence against Women and Girls: A Consultation Paper,” 27.

<sup>302</sup> Refuge, “Together We Can End Violence against Women and Girls: A Consultation Paper,” 27.

perpetrator is not taken into account, it may deter officers from issuing the ‘go’ orders if there is no concrete or certain answer on where the perpetrator would go, and in order to not create confusion, police officers could decide not to issue the protection notice. As Refuge mentioned, “the perpetrator usually goes straight back to the home, even after the police have removed him.”<sup>303</sup> These ‘go’ orders then, would be able to provide protection in the criminal sense, where breaches would be considered a criminal offence.<sup>304</sup> It will be important to see whether this was discussed at the parliamentary level, and whether the question was resolved. Overall, the consultation sought to create a model for the government to address “the issue across government, focusing attention on prevention, provision, and protection; the key themes for government action, which we will use to drive public debate and discussion on what more we could do.”<sup>305</sup>

To aid in informing the cross-government consultation, the Women’s National Commission (WNC), a major women’s policy agency, began leading focus groups of 300 women and girls in July 2009 to “gather women’s and girl’s views on what would make them feel and be safer, and on proposals to prevent violence against women and girls. The focus groups were designed around the themes used in the cross-government consultation: prevention, provision and protection.”<sup>306</sup> From these focus groups, taking place from March-June 2009, one of the recommendations that the WNC proposed was the inclusion of removal orders into legislation, under the category of ‘protection.’<sup>307</sup> As stated in the published report, “[w]omen wanted more effective access to protection after reporting incidents of violence to the police and there was widespread support amongst women for the police to immediately remove perpetrators when attending an incident.”<sup>308</sup> This proposal from women *within* the focus groups is an important development in the policymaking process, as it shows that the ‘go’ orders were proposed, initiated, and recommended by various government and non-government bodies and through various avenues.<sup>309</sup>

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<sup>303</sup> Refuge, “Together We Can End Violence against Women and Girls: A Consultation Paper,” 28.

<sup>304</sup> HM Government, “A Consultation Paper,” 19.

<sup>305</sup> HM Government, “A Consultation Paper,” 4.

<sup>306</sup> Women’s National Commission, “Still We Rise: Report from WNC Focus Groups to Inform the Cross-Government Consultation ‘Together We Can End Violence against Women and Girls’ (2009): 4.

<sup>307</sup> Women’s National Commission, “Still We Rise,” 7.

<sup>308</sup> Women’s National Commission, “Still We Rise,” 66.

<sup>309</sup> In order to thicken the government’s consultation on violence against women and girls, they sought specific responses from: the WNC in the form of focus groups; the National Children’s Bureau (NCB), focusing on healthy relationships and schools, the impact of social attitudes, and early signs and support in

Returning to the Austrian Protection Against Domestic Violence Act 1996 and the German Protection from Violence Act 2002, the Association of Chief Police Officers (ACPO) released a review for the Home Secretary in September 2009 detailing the Austrian government's take on 'go' orders and how they were a 'progressive step' towards protection.<sup>310</sup> ACPO provided support for the 'go' orders and stated that "[t]here is strong evidence from other countries that 'emergency injunctions' have a positive impact on the safety of victims, at least in the cases of domestic violence. The approach relies on the availability of third-sector support for victims, and an increase in the availability of the relevant advocacy/support would need to be considered."<sup>311</sup> Prior to a 'course of conduct' being discussed in England and Wales, at least in terms of illegal conduct, Austria detailed domestic violence as a course of conduct which *specifically underlies* and is at the heart of this form of violence.<sup>312</sup> In Austria, actors pointed out that this course of conduct often involves 'repeat victimisation' and because of this, victims may feel pressured or coerced into not taking action against a perpetrator.<sup>313</sup> To counter this, the police *have* to remove the perpetrator from the home and following this, the victim is contacted by an 'intervention centre' to provide them with support and/or advocacy.<sup>314</sup> After the 'go' order has been issued, a hearing can then take place where an interim injunction can be applied for, for a period of 14 days to three months.

As stated by Haller, the success and application of the act "strongly depends on the persons involved in the intervention process, on their commitment and on their attitudes."<sup>315</sup> Because, according to Haller, success of these orders depends essentially on step two, it will be interesting to see whether this was taken into account for the British version of these 'go' orders. The question remains whether the orders would be successful without the support from these intervention centres. In comparison to the findings in Austria, what could the protection notices offer victims of domestic violence in England and Wales? In the same review for the Home Secretary, ACPO detailed a research report entitled

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the case of violence; a Home Office review on the response to rape victim-survivors via the criminal justice system conducted by Sara Payne MBE, and finally, a review by Baroness Vivien Stern CBE into rape complaints in England and Wales. Apart from the WNC report, 'go' orders were not mentioned in the other responses, and for this reason, they are not included in the critical path for the Crime and Security Act 2010, although they were important for the government consultation as a whole.

<sup>310</sup> ACPO, "Review for the Home Secretary," 50.

<sup>311</sup> ACPO, "Review for the Home Secretary," 53.

<sup>312</sup> ACPO, "Review for the Home Secretary," 50.

<sup>313</sup> ACPO, "Review for the Home Secretary," 50.

<sup>314</sup> ACPO, "Review for the Home Secretary," 50.

<sup>315</sup> Haller, "The Austrian Legislation against Domestic Violence," 8.



‘Domestic Violence Consumer Strategy Team Policy Options Paper to the Consumer Strategy Board’ by then-Department of Constitutional Affairs (DCA). The research quoted by ACPO found that these ‘go’ orders could potentially protect over 25,000 victim-survivors of domestic abuse that were not currently protected under existing measures.<sup>316</sup> To this, ACPO stated: “There is strong evidence from other countries that ‘emergency injunctions’ have a positive impact on the safety of victims, at least in the cases of domestic violence. The approach relies on the availability of third-sector support for victims, and an increase in the availability of relevant advocacy/support. ...”<sup>317</sup> Given these developments, at the September 2009 Labour Party Annual Conference, then-Home Secretary Alan Johnson (Lab) announced the government’s plans to introduce the protection notices and orders. In his speech, Mr. Johnson spoke of crime in the general sense, and then turned his attention to misery ‘behind closed doors.’<sup>318</sup> In response, Mr. Johnson stated “[t]hat is why I am bringing forward measures... to stop the aggressor from returning... [d]uring this time, support will be provided for the victim including counselling and practical options for getting away from a violent partner.”<sup>319</sup>

Why these orders were not proposed after Refuge and the DCA suggested them in 2003 and 2004 is unknown, especially after the DCA found that so many victim-survivors could be protected. Regardless of this, after the critical juncture in May 2008 with the Home Affairs Committee proposing ‘go’ orders in their report, they were finally introduced within the Crime and Security Bill (House of Commons Bill 3) on November 19, 2009.<sup>320</sup> The bill was introduced by Mr. Johnson, with support from then-Prime Minister Gordon Brown (Lab), Chancellor of the Exchequer Alistair Darling (Lab), David Miliband MP (Lab), Jack Straw MP (Lab), and David Hanson MP (Lab), with the DVPNs proposed in clauses 21-30.<sup>321</sup>

During the second reading of the bill on January 18, 2010, Mr. Johnson proposed that the protection notices would provide ‘greater protection to the victims of domestic violence,’

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<sup>316</sup> ACPO, “Review for the Home Secretary,” 52.

<sup>317</sup> ACPO, “Review for the Home Secretary,” 53.

<sup>318</sup> “Alan Johnson's speech to Labour Conference,” last modified 2009, <http://www2.labour.org.uk/alan-johnson-speech-conference>.

<sup>319</sup> “Alan Johnson's speech to Labour Conference.”

<sup>320</sup> “House of Commons Debates 19 November 2009: Column 141,” last modified November 19, 2009, <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm091119/debtext/91119-0003.htm#09111936000007>.

<sup>321</sup> “House of Commons Debates 19 November 2009: Column 141.”

and tackle crime overall.<sup>322</sup> In response specifically to the proposal of DVPNs, some MPs did argue whether they were necessary, or what good they would do. Others contended that they were absolutely essential. Chris Grayling (Con) used the term ‘Labour baggage,’ stating: “A Conservative Government would certainly... seek to do more to combat domestic violence. There are things in the [b]ill that are meant well. Given the usual Labour baggage that comes with them I am sceptical about whether they will actually make a difference, but they are superficially innocuous.”<sup>323</sup> Liberal Democrat Home Affairs Spokesperson Chris Huhne responded that these notices would ‘tackle’ and ‘protect’ victim-survivors, but that the success of the DVPNs depends especially on the support and counselling services for victims, linking back to what Haller and ACPO noted in their evaluation of the Austrian protection notices.<sup>324</sup>

As stated above, the question is not whether the government wants to prevent domestic violence or other forms of violence against women; instead, the disagreement often comes by way of whether new legislation is the answer, or whether new legislation is even necessary. No one is essentially ‘for’ domestic violence, with MPs specifically beginning any debate about measures regarding violence against women with a standard statement of ‘we all agree that domestic violence is a very serious issue...,’ yet measures such as the protection notices, fairly straightforward legislation, are met with tension.<sup>325</sup> This is especially evident, for example when Humfrey Malins (Con) questioned whether there was even a gap in the legislation, as had been discussed previously. He stated: “On domestic violence protection notices, I wonder whether there really is a serious gap in the law that needs to be filled. Do we not already have sufficient criminal charges to enable the mischief to be dealt with under existing laws?”<sup>326</sup> This is the standard question regarding

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<sup>322</sup> “House of Commons Debates 18 January 2010: Column 27,” last modified January 18, 2010, <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100118/debtext/100118-0004.htm#1001188000001>.

<sup>323</sup> “House of Commons Debates 18 January 2010: Column 47,” last modified January 18, 2010, <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100118/debtext/100118-0008.htm>.

<sup>324</sup> “House of Commons Debates 18 January 2010: Column 56-57,” last modified January 18, 2010, <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100118/debtext/100118-0009.htm>.

<sup>325</sup> “House of Commons Debates 18 January 2010: Column 75,” last modified January 18, 2010, <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100118/debtext/100118-0012.htm>.

<sup>326</sup> “House of Commons Debates 18 January 2010: Column 57,” last modified January 18, 2010, <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100118/debtext/100118-0009.htm>.

this issue: are the laws not already sufficient? This question was asked by Mr. Malins, but also by Elfyn Llwyd (PC), who stated that there were already existing provisions.<sup>327</sup>

The way in which these serious cases are described as ‘mischief’ shows that for some, the issue is not vital, regardless of the fact that domestic violence costs the United Kingdom billions of pounds a year, specifically over £15 billion in 2009 alone.<sup>328</sup> Mr. Malins went on to say that “[s]uch a notice could have some nasty results for the person who received it,” with disregard for the victim of this abuse, or the fact that these ‘go’ orders were introduced with *serial* perpetrators in mind, with an estimated 25,321 serial perpetrators known to police in 2009.<sup>329</sup> Further mentioned was the reliance on ‘hearsay evidence,’ giving too many powers to the police, and begging for MPs to ‘stick to what is real,’ with a focus on mostly physical violence.<sup>330</sup> Mr. Malins further went on to detail how “[i]t is frustrating for the police to turn up and be told by, usually, the woman, ‘[y]es, he thumped me, but I don't want to go ahead.’”<sup>331</sup> Again, the language used trivialises serious abuse, and in turn makes the legislation appear insignificant and petty. Opposition to Mr. Malins comprised of many MPs, including Mr. Johnson, Mr. Huhne, Mr. Hanson, Robert Ffello (Lab), Angela Smith (Lab), and Tony McNulty (Lab). Mr. Ffello specifically stated why they are important, pointing to the creation of an immediate ‘safe space,’ citing police officers first hand, in the case of serial perpetrators: “I know where this house is; this is not the first time I have been called out here.”<sup>332</sup>

Following the second reading, the third reading of the bill took place on March 8, 2010 with both cooperation and dissonance regarding the DVPNs. In regard to the exclusion from the home for 48 hours, James Brokenshire (Con) suggested that the initial protection notice be in place for seven days, so that a ‘substantive’ hearing could be held, with Mr. Malins warning not to ‘give the police too many powers,’ implying that the evidence heard

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<sup>327</sup> “House of Commons Debates 18 January 2010: Column 97,” last modified January 18, 2010, <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100118/debtext/100118-0016.htm>.

<sup>328</sup> “Domestic Violence – The Facts,” accessed September 25, 2017, <http://www.refuge.org.uk/get-help-now/what-is-domestic-violence/domestic-violence-the-facts/>.

<sup>329</sup> ACPO, “Review for the Home Secretary,” 28.

<sup>330</sup> “House of Commons Debates 18 January 2010: Column 79, 81,” last modified January 18, 2010, <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100118/debtext/100118-0013.htm>.

<sup>331</sup> “House of Commons Debates 18 January 2010: Column 77,” last modified January 18, 2010, <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100118/debtext/100118-0013.htm>.

<sup>332</sup> “House of Commons Debates 18 January 2010, Column 86,” last modified January 18, 2010, <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100118/debtext/100118-0014.htm>.

for the DVPO would be based solely on the police.<sup>333</sup> Mr. Malins further questioned the 48 hour period by asking: “Is the subject of the notice still thrown out of their house?”<sup>334</sup> This statement reverts back to the trivialisation of abuse by suggesting that the perpetrator of this abuse does not need to vacate the home. Regardless of this, none of the objections brought up or amendments were tabled, and the bill then went to the House of Lords for its first reading (HL Bill 45), where it was read and introduced.

At the second reading in the House of Lords on March 29, 2010, Lord West (Lab) announced his support for the bill, stating that it would “enable the victim and their children to stay in the family home rather than seek help from a refuge. It will give them the breathing space and support they need to consider their options.”<sup>335</sup> Baroness Hamwee (Lib Dem) pledged support, but also questioned whether the orders were completely necessary, but did state that she ‘welcome[d] the provisions.’<sup>336</sup> Instead of raising these issues in a patronising tone, she stated: “A refuge, good as it may be, is not home. The person at fault should leave, not the victim or the children of the relationship.”<sup>337</sup> In one of the first instances of obvious political time (introduced in Chapter 2), Baroness Hamwee referred to the ‘panicky’ tone of the bill, alluding to May 6, 2010 general election. In regard to the bill, she stated: “I read it as having a rather panicky tone. It asks what can be thrown into the pot of the criminal justice system and called ‘security’ to give it some gravitas.”<sup>338</sup> It is important to see whether the issue of time and the general election is addressed again, in reference to the passing of this bill, and whether perhaps the peers accepted the bill, even if there are stated problems with it.

Lending further support of this bill was Lord Sheikh (Con), Baroness Stern (Cross Bencher), Lord Dholakia (Lib Dem), and Lord Skelmersdale (Con), with Lord West reiterating the DVPNs and DVPOs should not be seen as a ‘substitute for prosecution.’<sup>339</sup> While offering support, Lord Skelmersdale brought up the concerns of Refuge, particularly

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<sup>333</sup> “House of Commons Debates 8 March 2010, Column 100,” last modified March 8, 2010, <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100308/debtext/100308-0016.htm>.

<sup>334</sup> “House of Commons Debates 8 March 2010, Column 103,” last modified March 8, 2010, <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100308/debtext/100308-0016.htm>.

<sup>335</sup> “House of Lords Debates 29 March 2010: Column 1229,” last modified March 29, 2010, <http://www.publications.parliament.uk/pa/ld200910/ldhansrd/text/100329-0008.htm>.

<sup>336</sup> “House of Lords Debates 29 March 2010: Column 1235-1236,” last modified March 29, 2010, <http://www.publications.parliament.uk/pa/ld200910/ldhansrd/text/100329-0009.htm>.

<sup>337</sup> “House of Lords Debates 29 March 2010: Column 1235-1236.”

<sup>338</sup> “House of Lords Debates 29 March 2010: Column 1235-1236.”

<sup>339</sup> “House of Lords Debates 29 March 2010: Column 1275,” last modified March 29, 2010, <http://www.publications.parliament.uk/pa/ld200910/ldhansrd/text/100329-0014.htm>.

what would be done with perpetrators who are issued a DVPN and must vacate the home for at least 48 hours.<sup>340</sup> Whether this was addressed in the final stages of the bill, or the following guidance, will be essential to note.

In the House of Lords, there were fewer instances of dissidence and disagreement, perhaps due to the issues with the bill being solved during the readings in the House of Commons. In another instance of time being brought in to the discussion, Baroness Stern indicated:

My Lords, since Parliament is soon to be dissolved, the Bill will not provide us with many days of sitting here, sometimes until late at night, pressing the Minister on the various clauses and engaging in spirited debate with him. ... It is also to be regretted that there will not be time for detailed consideration of each of the proposals before us tonight, as there is much to consider.<sup>341</sup>

Could this point, that there was not time for ‘detailed consideration’ be an indicator that there could be weak parts of the bill that would be accepted regardless of its flaws, because of the upcoming dissolution of parliament and the general election? This question will be further considered below and in the findings section of this chapter.

### ***The Critical Act***

The third reading of the bill, including the committee and report stage took place on April 7, 2010, with no amendments to the DVPN and DVPO clauses (24-33). This could be attributed to what Lord West pointed out as the ‘pressures to wash-up,’ alluding again to the dissolution of parliament and the general election.<sup>342</sup> The following day, on April 8, 2010, the bill received Royal Assent, becoming the Crime and Security Act 2010. This assent indicates the critical act, and the end of the critical path in this case, with the dissolution of parliament taking place on April 12, 2010, and the general election on May 6, 2010.

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<sup>340</sup> “House of Lords Debates 29 March 2010: Column 1268,” last modified March 29, 2010, <http://www.publications.parliament.uk/pa/ld200910/ldhansrd/text/100329-0013.htm>.

<sup>341</sup> “House of Lords Debates 29 March 2010: Column 1262,” last modified March 29, 2010, <http://www.publications.parliament.uk/pa/ld200910/ldhansrd/text/100329-0012.htm>.

<sup>342</sup> “House of Lords Debates 7 April 2010: Column 1570,” last modified April 7, 2010, <http://www.publications.parliament.uk/pa/ld200910/ldhansrd/text/100407-0015.htm>.

Interestingly, in this case, the role of political time seemed to provide momentum, especially in the House of Lords, to ‘wash-up’ and make sure the bill was passed. Not only was parliament dissolving, and the general election taking place less than a month after the Royal Assent, the government was also preparing to release its strategy on violence against women and girls on November 25, 2010. The plan, entitled ‘Together We Can End Violence against Women and Girls: A Strategy’ was based on the public consultation from March 2009 and the WNC focus groups from March-June 2009, among others.<sup>343</sup> According to the strategy, it drew on “the outcomes of one of the largest public consultations ever undertaken on this issue,” proposing an “integrated approach to tackling this problem and supporting its victims across the three key areas of prevention, provision, and protection.”<sup>344</sup> Under the protection section of the strategy, the introduction of the new DVPNs and DVPOs were mentioned as a way to help support victim-survivors from ‘report to court.’<sup>345</sup> The same language in the strategy was used from previous reports and debates, detailing the creation of ‘breathing space.’ One important statement from the strategy about these specific notices and orders detailed how there are over 600,000 calls each year to the police for aid from domestic violence victims, and from the testimonies they received, they stated that “the first response a victim receives from the police is crucial to setting the tone of their overall experience. Where that first response is dismissive or disbelieving the impact can be devastating.”<sup>346</sup>

## **Findings: Case 1**

In the case of the Crime and Security Act 2010, the evaluation of representation presented various findings, some of which agree with the previous literature examined in Chapter 1, and some of which does not. For example, the government action in this case was prompted by the Home Affairs Committee report, which was driven by the eConsultation, specifically concerning the ‘go’ orders. In addition to this, other European countries were pointed to as catalysts of change, as well as guides of good practice. The British version of the ‘go’ orders were almost identical to the Austrian version, put in place in 1996.

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<sup>343</sup> HM Government, “A Strategy,” 4-5.

<sup>344</sup> HM Government, “A Strategy,” 4.

<sup>345</sup> HM Government, “A Strategy,” 59.

<sup>346</sup> HM Government, “A Strategy,” 64.

The WNC played an important role as well, not only in helping to initiate the ‘go’ orders, but also for their role in influencing the new government strategy, released in 2010. ACPO and Refuge were also influential in the proposal of the protection notices, as well as almost exclusive spoken Labour party support for the notices once put forward in parliament. In addition to virtually exclusive Labour support, the critical actors observed were frequently part of a group, and were mostly men. It is important to keep this finding in perspective, so as not to assist in what is referred to as the ‘pedestal effect’ or ‘economy of gratitude’ where “The ‘going rate’ ... on men’s contributions to this [labour] is so low, men who make even token contributions stand out as rare men who are then showered with praise and gratitude.”<sup>347</sup> This, of course, is not meant to diminish men’s efforts in regard to the issue of domestic violence, but it serves as a reminder of the fact that women comprise a very low number of representatives in the national parliament overall, and therefore it is not unusual to see these critical actors mostly being men.

In terms of the perpetrator question raised by Refuge and Lord Skelmersdale, the interim guidance provided by the government for the pilot scheme stated that “consideration should be given to providing him/her with contact details of suitable local emergency accommodation.”<sup>348</sup> That is as far as the guidance went in terms of suggesting where the perpetrator would go. Therefore, that could be seen as a failure to follow-up on questions raised during the preliminary phases of the legislation. As far as the second step during the DVPN/DVPO process, in terms of the intervention centres and support, once the DVPO has been granted (stage four), Independent Domestic Violence Advocates (IDVA) are to give guidance and support to the victim (stage 6).<sup>349</sup> This only takes place however, after the DVPO has been granted and not necessarily after the initial DVPN is issued.

Further, as stated in Chapter 2, the concept of political time is often under-researched with little attention being paid to the concept at all; however, from this case and the critical path above, political time seemed to play a vital role in the swift passing of this bill, especially in the House of Lords.

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<sup>347</sup> Messner et al., *Feminist Allies and the Movement to End Violence against Women*, 141.

<sup>348</sup> HM Government, “Interim Guidance Document for Police Regional Pilot Schemes” (2011): 9.

<sup>349</sup> HM Government, “Interim Guidance.”

## Case 2: The Protection of Freedoms Act 2012

| <i>Stage</i>   | <i>Date</i>   | <i>Hansard reference</i>  |
|--|---|---|
| <b>House of Commons</b>                              |   |   |
| Introduction   | 11 February 2011  | Vol. 523 Col. 598   |
| Second reading                                       | 1 March 2011  | Vol. 524 Col. 205-271   |
| Committee  | 22 March 2011<br>24 March 2011<br>29 March 2011<br>5 April 2011<br>26 April 2011<br>3 May 2011<br>10 May 2011<br>12 May 2011<br>17 May 2011 | Hansard Protection of Freedoms Bill Public Bill Committee   |
| Report and Third reading                             | 10 October 2011<br>11 October 2011  | Vol. 533 Col. 80-152<br>Vol. 533 Col. 201-300   |
| Commons Consideration of Lords Amendments            | <b>19 March 2012</b>  | <b>Vol. 542 Col. 527-589 (537-557)</b>  |
| <b>House of Lords</b>                                |   |   |
| Introduction   | 12 October 2011   | Vol. 730 Col. 1732  |
| Second reading                                       | <b>8 November 2011</b>  | <b>Vol. 732 Col. 167-228 (174)</b>  |
| Committee  | 29 November 2011<br><b>6 December 2011</b><br>13 December 2011<br>15 December 2011<br>12 January 2012                                       | Vol. 733 Col. 131-232<br><b>Vol. 733 Col. 622-685 (648-664)</b><br>Vol. 733 Col. GC277-GC330<br>Vol. 733 Col. GC351-GC392<br>Vol. 734 Col. GC1-GC74 |
| Report   | 31 January 2012<br><b>6 February 2012</b><br><br>15 February 2012   | Vol. 734 Col. 1500-1556<br><b>Vol. 735 Col. 11-35, 47-86, 107-120 (75-86)</b><br>Vol. 735 Col. 791-864  |
| Third reading  | <b>12 March 2012</b>  | <b>Vol. 736 Col. 19-33</b>  |
| Lords Consideration of Commons Reason and Amendments | <b>24 April 2012</b>  | <b>Vol. 736 Col. 1714-1745 (Col. 1734-1745)</b>   |
| <b>Royal Assent – 1 May 2012</b>                     | <b>House of Lords Hansard Vol. 736 Col. 2114</b><br><b>House of Commons Hansard Vol. 534 Col. 1731</b>                                      |   |

*Table 5: Hansard references for the Protection of Freedoms Act 2012<sup>350</sup>*

<sup>350</sup> Table taken from: HM Government, “Protection of Freedoms Act 2012 Explanatory Notes” (2012): 85-86.



The second case to be presented as part of the larger case study in this thesis is the evaluation of representation concerning the Protection of Freedoms Act 2012, updating the Protection from Harassment Act 1997 to make stalking a specific criminal offence. This section will introduce definitions and understandings of stalking, generally and specifically within the context of England and Wales, detail the Protection from Harassment Act 1997 in order to contextualise the background of the current legislation and why it needed updating, and explain the Protection of Freedoms Act 2012. In addition, this section will offer an evaluation of why representation was attempted, and what that representation means in terms of SRW. This case has been chosen because stalking is recognised in England and Wales as a crime of violence against women, and also domestic violence, yet it is not fully understood by society, under the law, or by those tasked with enforcing the law.<sup>351</sup> It is stated that “[s]talking is a crime that rips relationships apart and shatters lives. But for too long it has remained a hidden crime, a crime which victims have been reluctant to report out of fear that they wouldn’t be taken seriously.”<sup>352</sup> Further to this, it has been indicated that public perceptions regarding stalking in the United Kingdom were similar to the perceptions of domestic violence twenty years ago.<sup>353</sup>

The Protection from Harassment Act 1997 did not use the term ‘stalking’ in the language of the legislation, therefore there were no legal ramifications specifically regarding stalking prior to 2012.<sup>354</sup> The explicit avoidance of the inclusion of the term ‘stalking’ is thought to be attributed to the fact that legislators wanted the language of the legislation to appear ‘wide-ranging’ and give the impression that any type of harassing conduct could be addressed by the act.<sup>355</sup> Stalking is generally understood to mean “malicious and repeated following and harassment of another person that threatens his or her safety,” in addition to “a course of conduct directed at a specific person that involves repeated physical or visual proximity, [and] non-consensual communication or verbal, written or implied threats.”<sup>356</sup> As of 2015, both harassment and stalking in England and Wales do not have specific or

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<sup>351</sup> Protection against Stalking, “Stalking and Harassment—The Victim’s Voice,” (2011): 1.

<sup>352</sup> Justice Unions’ Parliamentary Group, “Independent Parliamentary Inquiry into Stalking Law Reform: Main Findings and Recommendations,” (2012): 2.

<sup>353</sup> Justice Unions’ Parliamentary Group, “Independent Parliamentary Inquiry,” 2.

<sup>354</sup> Jessica Harris, “Home Office Research Study 203: An Evaluation of the Use and Effectiveness of the Protection from Harassment Act 1997,” (2000): 1; Protection against Stalking, “Stalking and Harassment,” 2.

<sup>355</sup> Harris, “Home Office Research Study 203,” 1.

<sup>356</sup> Harris, “Home Office Research Study 203,” 1.

strict definitions, according to the Crown Prosecutor Service (CPS).<sup>357</sup> Instead, there are various examples of behaviour that could be categorised as either harassment or stalking. These could include unwanted communication or following a person.<sup>358</sup> In England and Wales, the behaviours attributed to stalking do not have to be those with overt threatening tendencies. For example, monitoring an individual's use of the telephone or email can be behaviour indicative of stalking that an individual may not know is even occurring.<sup>359</sup> Stalking has been referred to as 'emotional terrorism' due to the sometimes covert nature and pattern of the crimes, where behaviours do not have to be physically violent.<sup>360</sup>

### ***The Protection from Harassment Act 1997***

There are few pieces of legislation which include both civil and criminal offences in the British legal system. The Protection from Harassment Act 1997 is an example which does include both civil and criminal offences. The lower level criminal offence (section 2) warrants punishment through the magistrate's court for a 'course of conduct,' or at least two offences, of harassment and can lead to imprisonment (six months), fines (up to £5,000), and/or a restraining order.<sup>361</sup> The higher level criminal offence (section 4) warrants punishment through either the magistrate's court or the crown court and includes a possible penalty of imprisonment (five years in the Crown Court), fines (unlimited in the Crown Court), and/or a restraining order.<sup>362</sup>

In the 1998 Home Office Research Study 203, conducted to evaluate the effectiveness of the act, evidence was presented regarding 74 harassment cases. Of these cases, 48 percent of perpetrators were charged and convicted under the lesser-level section 2 offence, and only four percent of those received imprisonment.<sup>363</sup> The majority (37 percent) instead received a 'conditional discharge' sentence.<sup>364</sup> The higher-level offence, Section 4, saw

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<sup>357</sup> "Stalking and Harassment," accessed September 25, 2017, [http://www.cps.gov.uk/legal/s\\_to\\_u/stalking\\_and\\_harassment/](http://www.cps.gov.uk/legal/s_to_u/stalking_and_harassment/).

<sup>358</sup> "Stalking and Harassment."

<sup>359</sup> Pat Strickland, "Stalking: Standard Note SN/HA/6261," *House of Commons Library* (2013): 9.

<sup>360</sup> House of Commons, "Parliamentary Debates," (19 March 2012): col. 554.

<sup>361</sup> Harris, "Home Office Research Study 203," 3.

<sup>362</sup> Harris, "Home Office Research Study 203," 3.

<sup>363</sup> Harris, "Home Office Research Study 203," 36.

<sup>364</sup> Harris, "Home Office Research Study 203," 36; a 'conditional discharge' sentence in the UK is one in which a defendant pleads guilty, but does not receive a punishment unless they reoffend within a certain period of time, as decided by the magistrate. More on sentencing and conditional discharges can be found by visiting the following: [https://www.cps.gov.uk/victims\\_witnesses/going\\_to\\_court/sentencing.html](https://www.cps.gov.uk/victims_witnesses/going_to_court/sentencing.html).

only 11 cases, with eight percent of those convicted being sentenced to prison.<sup>365</sup> Again, the majority of cases either received a ‘bound over’ punishment or a conditional discharge.<sup>366</sup> The civil offence (section 3) created the prospect for the complainant to receive an order of protection, where a breach of this order can result in arrest, fines, and imprisonment for the perpetrator.<sup>367</sup> In the same study, 56 percent of perpetrators that were convicted received a restraining order, with one observed breach where the perpetrator received a £250 fine, and a bound over punishment for six months.<sup>368</sup> It was detailed that: “The criminal and civil remedies were not necessarily intended to cover mutually exclusive types of behaviour and it is perfectly possible for victims to pursue a civil action in circumstances in which they might equally have reported the matter to the police and sought the arrest of the offender.”<sup>369</sup> This ability to pursue either a criminal or civil offence presented confusion in terms of what type of remedy was best suited for certain offences. For example, police officers tended to favour the criminal law option, whereas those involved in the courts favoured the civil option.<sup>370</sup> For police officers, because of the vagueness, they would use the act but were unsure whether it was appropriate or not.<sup>371</sup> To this, one prosecutor stated why he favoured the civil option: “Just one person’s word against another, that is not beyond reasonable doubt, that is just a balance of probabilities and would be better suited [to civil law].”<sup>372</sup>

In regard to the legislation and domestic violence, “[a]lthough the legislation was introduced to tackle stalkers, research suggests that it has been used far more to deal with domestic violence than the stalking of strangers scenario that the legislators had in mind.”<sup>373</sup> For example, in the Home Office study mentioned above, only four percent of cases were strangers to each other, with the main cause of the behaviour being cited as the ending of an intimate relationship.<sup>374</sup> In these cases, 41 percent of respondents were acquaintances of their stalker, and another 41 percent of cases were previously involved in

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<sup>365</sup> Harris, “Home Office Research Study 203,” 36.

<sup>366</sup> Harris, “Home Office Research Study 203,” 36.

<sup>367</sup> Harris, “Home Office Research Study 203,” 5.

<sup>368</sup> Harris, “Home Office Research Study 203,” 38-39.

<sup>369</sup> Harris, “Home Office Research Study 203,” 5.

<sup>370</sup> Harris, “Home Office Research Study 203,” 44.

<sup>371</sup> Harris, “Home Office Research Study 203,” 44.

<sup>372</sup> Harris, “Home Office Research Study 203,” 44.

<sup>373</sup> Mandy Burton, *Legal Responses to Domestic Violence* (London: Routledge-Cavendish, 2008), 62; see also: Harris, “Home Office Research Study 203.”

<sup>374</sup> Harris, “Home Office Research Study 203,” vi.

an intimate relationship.<sup>375</sup> In the cases mentioned, males were disproportionately the perpetrators (80 percent), with the most common forms of harassment being named as damage to property, threats, violence, unwelcome gifts, and other ‘distressing behaviour’ such as silent phone calls and following the complainant.<sup>376</sup> In one case study, the complainant and perpetrator were in a long-term relationship, which ultimately ended because of his violent behaviour. Following the end of the relationship, he began “a course of behaviour which caused both distress and embarrassment to the victim.”<sup>377</sup> This course of behaviour included shouting threats and abuse outside her home, threatening letters, silent phone calls, property damage, physical assault on the street in one instance, and also love letters.<sup>378</sup> It was also found by this study that victim-survivors were not aware of the 1997 act, and had therefore tolerated the distressing behaviour or violence for a prolonged period of time.<sup>379</sup> This is a serious problem and shows a lack of concern by the government for not publicizing or disseminating the proper information about the harassment offences under the act. It will be interesting to see whether this problem was rectified under the update. To summarise, while the act created a criminal offence for both harassment and for creating fear through a course of conduct, many shortcomings have been revealed within the current legislation, especially since no specific offence of stalking was created.<sup>380</sup> Looking back, there was an overall muddled nature surrounding the act and whether charges were appropriate in regard to either section 2, section 3, or section 4. The statistics presented in the research study further show this confusion, as instances of harassment could be charged ‘either-way’ and were most often deferred to the lesser section 2 offence. In all of the cases, there were few sentences of imprisonment, showing that harassment was seen as a less-serious crime, warranting only fines. The next section of this chapter will detail the Protection of Freedoms Act 2012, and the critical path that was taken to update the Protection from Harassment Act 1997.

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<sup>375</sup> Harris, “Home Office Research Study 203,” 10.

<sup>376</sup> Harris, “Home Office Research Study 203,” vi.

<sup>377</sup> Harris, “Home Office Research Study 203,” 13.

<sup>378</sup> Harris, “Home Office Research Study 203,” 13.

<sup>379</sup> Harris, “Home Office Research Study 203,” vi.

<sup>380</sup> Burton, *Legal Responses to Domestic Violence*, 62; Pat Strickland, “The Protection from Harassment Act 1997: Standard Note 06648,” *House of Commons Library* (2013).

### ***The Protection of Freedoms Act 2012***

The Protection of Freedoms Act 2012 (sections 2A and 4A) updated the Protection from Harassment Act 1997, the main piece of legislation regarding harassment in England and Wales. Briefly, there were seven key areas considered under the Protection of Freedoms Act 2012, which were the (1) regulation of biometric data, (2) regulation of surveillance, (3) protection of property, (4) counter-terrorism powers, (5) the safeguarding of vulnerable groups, (6) the freedom of information, and (7) miscellaneous and general.<sup>381</sup> After the Protection of Freedoms Act 2012 received Royal Assent on May 1, 2012, the act covered many areas of the law that were either neglected, outdated, or previously missing altogether. Part 7 of the Protection of Freedoms Act 2012, under ‘miscellaneous and general’ introduced the new offence of stalking (section 2A) through a ‘course of conduct’ including but not limited to, ‘following a person’ or ‘watching or spying on a person’ and can be punishable by a fine or up to six months in prison.<sup>382</sup> This offence of stalking was further extended to include a ‘fear of violence or serious alarm or distress’ (section 4A) and can carry a punishment from a fine to up to five years imprisonment.<sup>383</sup> While stalking is now a specific criminal offence, it was not considered from the beginning when the bill was initially introduced in the House of Commons on February 11, 2011 (refer to Table 5 in this chapter). As will be discussed in further detail below, the proposal to include a stalking offence was not mentioned or proposed until the bill reached the second reading in the House of Lords on November 8, 2011 by Baroness Royall (Lab). Further specifics of this legislation and the representation process will be considered below when the critical path is detailed in order to evaluate SRW for this case.

### **Tracing the Critical Path**

| <i>Date</i> | <i>Event</i>   | <i>Path Step</i>   |
|-------------|--|--|
| May 2011    | Justice Unions’ Parliamentary Group holds inquiry on stalking law reform | Critical juncture<br><br>Critical actor: Elfyn Llwyd MP (PC); Justice Unions’ Parliamentary Group panel participants |

<sup>381</sup> “Protection of Freedoms Act 2012,” last modified 2012, <http://services.parliament.uk/bills/2010-12/protectionoffreedoms.html>.

<sup>382</sup> HM Government, “Explanatory Notes: Protection of Freedoms Act 2012—Chapter 9,” (2012): 81.

<sup>383</sup> HM Government, “Protection of Freedoms Act 2012,” 81.

| <i>Date</i>       | <i>Event</i>  | <i>Path Step</i>   |
|-------------------|---|--|
| September 2011    | Then-Shadow Home Secretary Yvette Cooper MP (Lab) put forward the case for legislation at the Labour Party Women's Conference             | Communicative critical action<br>Critical actor: Yvette Cooper MP (Lab)                      |
| November 2011     | Launch of Home Office public consultation on stalking   | Substantive critical action<br>Critical actor: Theresa May MP (Con)                          |
| November 8, 2011  | Loophole in legislation regarding stalking addressed during the second reading of the bill; Scotland act mentioned                        | Symbolic critical action<br>Critical actor: Baroness Royall (Lab)                            |
| November 10, 2011 | Protection Against Stalking (PAS) survey report on the criminal justice system  | Communicative critical action<br>Critical actor: PAS   |
| November 23, 2011 | Then-Prime Minister David Cameron MP (Con): acknowledged gap in the law on stalking   | Communicative critical action<br>Critical actor: David Cameron MP (Con)                      |
| December 2011     | NAPO publication on male perpetrators of stalking   | Communicative critical action<br>Critical actor: NAPO  |
| December 6, 2011  | House of Lords committee meeting: mentioned Scotland and Sweden stalking laws; introduced amendments to specifically criminalise stalking | Substantive critical action<br>Critical actor: Baroness Royall (Lab); Lord Sharkey (Lib Dem) |
| February 2012     | Parliamentary inquiry on stalking law reform published  | Communicative critical action  |
| March 12, 2012    | House of Lords third reading: mentioned Scotland stalking laws  | Symbolic critical action   |
| March 19, 2012    | Commons consideration of Lords amendments: Scotland act mentioned; challenge to amendments and debate                                     | Symbolic critical action<br>Critical actor: Stella Creasy MP (Lab)                           |
| March 19, 2012    | Support and description of the amendments for the House of Lords: Scotland stalking laws mentioned  | Symbolic critical action<br>Critical actor: Theresa May MP (Con)                             |
| April 24, 2012    | Lords consideration of Commons reason and amendments; more challenges, debate, and acceptance of the stalking offence in the bill         | Substantive critical action  |

| <i>Date</i> | <i>Event</i> | <i>Path Step</i> |
|-------------|--------------|------------------|
| May 1, 2012 | Royal Assent | Critical act     |

*Table 6: The critical path to updating the Protection from Harassment Act 1997*

### ***The Critical Juncture***

Before the move forward to update the Protection from Harassment Act 1997, the devolved parliament of Scotland introduced a new stalking offence in 2010. The timing of this followed Paladin’s National Stalking Awareness Week in April, in order to raise awareness. Rhoda Grant MSP (Lab) introduced the amendment into the Scottish parliament in June 2010, where she stated:

Action Scotland Against Stalking has made it clear that the approach that was taken in the Protection from Harassment Act 1997 in England and Wales, which does not name the crime of stalking, has kept stalking hidden in the same way as breach of the peace has done in Scotland. (...) By calling that behaviour stalking, we recognise it and mark it as unacceptable.<sup>384</sup>

This statement by Ms. Grant demonstrates that the 1997 act lacked any real influence on stalking in England and Wales, as it continued to mask the actual crime of stalking by not naming it for the violence that it is. For example, prior to the update to the Protection from Harassment Act 1997, there was little recourse for victim-survivors who were upset or frightened by behaviour that was not considered illegal, although it was distressing.<sup>385</sup> Further, instead of these instances being seen through a course of conduct, they instead were treated as single incidents, or as a ‘breach of the peace.’<sup>386</sup> In addition, Ms. Grant points out that Action Scotland Against Stalking played an important role in bringing this insufficiency to light. After the amendment was proposed, the Criminal Justice and Licensing (Scotland) Act 2010 was passed. This act named stalking as a criminal offence and also acknowledged that stalking entailed a course of conduct; something that had previously been lacking. Once the crime of stalking was named as such by a regional parliamentary body in Scotland, the pressure to do the same in England and Wales began

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<sup>384</sup> Strickland, “Stalking,” 4.

<sup>385</sup> Harris, “Home Office Research Study 203,” 2.

<sup>386</sup> Harris, “Home Office Research Study 203,” 13.

to intensify. This critical act in Scotland, revealed a critical juncture in England and Wales to do the same.

It was revealed in May 2011 that the Justice Unions' Parliamentary Group and its chair, Mr. Llwyd, would hold an independent inquiry on stalking. The group undertook the 'Independent Parliamentary Inquiry into Stalking Law Reform.'<sup>387</sup> This group, comprised of members from various political parties, was one of the first cross-party groups that was not a formalised committee within the parliament.<sup>388</sup> The panel included seven Labour party members, three Conservative party members, two Liberal Democrats, two cross benchers, and one member of the Plaid Cymru party. Within this committee, there were five male members of the panel and ten female members. Party members were not the only participants of the panel. The inquiry brought together various lawyers, psychologists, organization managers, university faculty, victim-survivors, parents of victims, commissioners, barristers, police officers, probation officers, and members of various charity organizations including Action Scotland Against Stalking, and Women's Aid.<sup>389</sup> These oral and written evidentiary sessions, and the 30 recommendations made in the inquiry, laid the foundation for what would become the update to the 1997 Act. In regard to chairing the panel, Mr. Llwyd stated: "The inquiry has been the most enriching and worthwhile experience of my political life, and I am delighted to see the result."<sup>390</sup>

The inquiry identified the main problems with the Protection from Harassment Act 1997. Firstly, section 2 was only punishable through the magistrate's court and therefore the police had limited power in regard to search and seizure of the perpetrator's home.<sup>391</sup> Secondly, section 4 of the act was seldom used. This was also demonstrated by the 1998 Home Office Research Study, mentioned above. Only 170 defendants out of 2,000 prosecuted were given a custodial sentence from 2010-2012.<sup>392</sup> Finally, any breaches of

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<sup>387</sup> The report, released in 2012, entitled the "Independent Parliamentary Inquiry into Stalking Law Reform: Main Findings and Recommendations" can be found by visiting the following webpage: <http://www.dashriskchecklist.co.uk/uploads/Stalking%20Law%20Reform%20Findings%20Report%202012.pdf>

<sup>388</sup> Strickland, "Stalking," 6; panel inquiry members included the following: Elfyn Llwyd (PC); Baroness Brinton (Lib Dem); Robert Buckland (Con); Jenny Chapman (Lab); Baroness Gibson (Lab); Helen Goodman (Lab); Baroness Gould (Lab); Baroness Greengross (Cross Bencher); Gordon Henderson (Con); Baroness Howe (Cross Bencher); Baroness Linklater (Lib Dem); John McDonnell (Lab); Sandra Osborne (Lab); Claire Perry (Con); Barry Sheerman (Lab).

<sup>389</sup> Justice Unions' Parliamentary Group, "Independent Parliamentary Inquiry," 6-7.

<sup>390</sup> Strickland, "Stalking," 9.

<sup>391</sup> Justice Unions' Parliamentary Group, "Independent Parliamentary Inquiry," 28.

<sup>392</sup> Justice Unions' Parliamentary Group, "Independent Parliamentary Inquiry," 29.



section 3 by the perpetrators were often dealt with as new incidents, instead of as a course of conduct. In reference to these problems, the inquiry determined the following: “Patterns of behaviour were missed. Sentences handed down, if custodial, tended to be expressed in days and there was no evidence of perpetrators receiving treatment or participating in programmes.”<sup>393</sup> The lack of treatment and participation in programmes was attributed to the short period of incarceration that perpetrators received, as well as the non-existence of appropriate programmes in general.<sup>394</sup> Further to this inquiry, the majority of victim-survivors stated that they had little confidence in the criminal justice system, and the researchers found that the training of professionals was inadequate.<sup>395</sup> These failings were reasons why representation occurred in terms of updating the Protection from Harassment Act 1997. The key reason often pointed to with specific regard to modifying the Protection from Harassment Act 1997 is the fact that it was cited as ‘not fit for purpose’ by the Justice Unions’ Parliamentary Group’s inquiry into stalking law reform.<sup>396</sup> For instance, the inquiry found that “a holistic approach was needed for reform and that amendments to the 1997 Act would not be enough to express the concerns of victims. There was therefore all party support for fundamental changes in attitudes towards the offence and behaviour of stalking.”<sup>397</sup>

Also during this time, reports by PAS and NAPO were released in 2011. These organizations wanted to bring attention to the deficiencies and limitations present within the Protection from Harassment Act 1997, specifically concerning the victims of stalking.<sup>398</sup> The PAS study focused on victim-survivors’ experiences with the criminal justice system, while the NAPO study centred on 79 convicted male perpetrators. These campaigns highlighted the need for change. For example, the research conducted by PAS found that there were grave problems with responses to stalking and harassment from both the criminal justice system and the police in general.<sup>399</sup> These problems led to a lack of protection for victims and survivors. This attention led to an opportunity to do something about the inadequate legislation in England and Wales.

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<sup>393</sup> Justice Unions’ Parliamentary Group, “Independent Parliamentary Inquiry,” 29.

<sup>394</sup> Justice Unions’ Parliamentary Group, “Independent Parliamentary Inquiry,” 29.

<sup>395</sup> Justice Unions’ Parliamentary Group, “Independent Parliamentary Inquiry,” 3.

<sup>396</sup> Justice Unions’ Parliamentary Group, “Independent Parliamentary Inquiry,” 28.

<sup>397</sup> Justice Unions’ Parliamentary Group, “Independent Parliamentary Inquiry,” 3.

<sup>398</sup> Strickland, “Stalking,” 4.

<sup>399</sup> Strickland, “Stalking,” 4.

### *Critical Actions*

Once the legislation in Scotland was passed, and the parliamentary inquiry into stalking was complete, these instances were used as important motives for England and Wales to follow suit and update the Protection from Harassment Act 1997. At the Labour Party Women's Conference in 2011, then-Shadow Home Secretary Yvette Cooper (Lab), stated:

Almost one in five women in their lifetime experiences persistent harassment and threats. Intimidating, threatening, persecuting. Stalking.

Yet stalking itself is not defined as a criminal offence. (...)

We strengthened the law. But it doesn't go far enough and it still isn't strong enough. So we should campaign to change it now to make stalking a criminal offence and help protect women's lives.<sup>400</sup>

This important statement helped cement the Labour party's policy on stalking, illuminate the seriousness of the behaviours listed, and name those behaviours for what they are: stalking. Interestingly, popular perceptions of stalking and harassment have been described as being 'coloured' because of media attention concerning various celebrities or well-known individuals. For example, "[t]he victims have included members of the royal family as well as various celebrities and television presenters."<sup>401</sup> The media attention surrounding these high profile cases have been widely reported; however, other cases such as the case of Tracey Morgan, have "received considerable publicity and it was in the wake of this case that the government decided to frame legislation to address the problem."<sup>402</sup> Therefore, while the high profile cases have coloured the conversation in a way that labels 'stalkers' as 'people with mental illnesses,' the research shows that many cases of stalking and harassment are perpetrated by ex-partners or those known to the victim-survivors.<sup>403</sup> While opinions of the general public cannot be widely measured, one in five women and one in ten men are victims of stalking in the United Kingdom. Further, the British Crime

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<sup>400</sup> Strickland, "Stalking," 6; more information regarding this speech can be found by visiting the following webpage: <http://archive.labour.org.uk/yvette-coopers-speech-to-womens-conference>.

<sup>401</sup> Harris, "Home Office Research Study 203," 1.

<sup>402</sup> Harris, "Home Office Research Study 203," 1. In the case of Tracey Morgan, a former colleague stalked her endlessly for years, and was only arrested when he was caught stealing at Morgan's mother's home. She had reported the stalking over 20 times to the police but laws did not exist to prosecute the incidences because he had never physically harmed her. He was imprisoned for life when he attempted to murder one of his ex-girlfriends. More information on Morgan's case can be found by visiting the following webpage: <http://www.telegraph.co.uk/women/life/lily-allens-stalking-hell-made-me-relive-my-own-10-year-ordeal-h/>.

<sup>403</sup> Harris, "Home Office Research Study 203," 2.

Survey identified stalking as “one of the most common types of intimate violence, with the 2010/11 BCS showing that 4.1 [percent] women aged 16-59 and 3.2 [percent] of men aged 16-59 [have] experienced stalking in the last year.”<sup>404</sup> The Home Office also held a consultation on stalking, showing the increased importance of this topic within the wider public. For example, 56 percent of respondents did not believe that stalking legislation at that time was sufficient in dealing with the problem.<sup>405</sup> These instances show that stalking and harassment was a major problem for many, and because of this, the update to the Protection from Harassment Act 1997 could benefit many victim-survivors.

As stated above, these behaviours named in the Protection from Harassment Act 1997 were not named as stalking, and instead were referred to as harassment. In addition, this statement helped to ‘gender’ the conversation regarding stalking, declaring that at least one in five women experience not only harassment, but *persistent* threats and stalking. It shows the *pattern* of harassment, and attempts to end the bias that occurs when stalking behaviours are seen as isolated, individual incidents, especially under the law. This declaration helped put the case forward for changes in legislation in England and Wales.

The month of November in 2011 was an important month for stalking law reform. The Home Office decided to launch a public consultation on stalking, with proposal and support by then-Home Secretary Theresa May (Con) in hopes of finding more effective ways to protect victims of stalking.<sup>406</sup> More specifically it was stated that “almost 15 years on from the original legislation, we are launching a consultation into the operation of the current law and how we can protect stalking victims more effectively. This includes whether there should be a specific criminal offence in legislation which is clearly labelled ‘stalking.’”<sup>407</sup> The results of this consultation, released in July 2012, were clear. These results included the following: 69 percent of respondents found that local level agencies and public knowledge surrounding stalking and stalking behaviours were not sufficient and 69 percent did not believe local level agencies received adequate training on stalking.<sup>408</sup> Additionally, 56 percent of respondents found that current legislation was *not adequate* in dealing with stalking, and 51 percent of respondents stated that a specific offence of

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<sup>404</sup> Home Office, “Consultation on Stalking,” (2011): 3, 5.

<sup>405</sup> Home Office, “Review of the Protection from Harassment Act 1997: Improving Protection for Victims of Stalking—Summary of Consultation Responses and Conclusions,” (2012): 13.

<sup>406</sup> Home Office, “Consultation on Stalking,” 3-4.

<sup>407</sup> Home Office, “Consultation on Stalking,” 5.

<sup>408</sup> Home Office, “Summary of Consultation Responses and Conclusions,” 6-7.

stalking needed to be considered by the government.<sup>409</sup> Lastly, 76 percent stated that more perpetrators needed to be brought to account, and 85 percent believed victims needed to be better protected.<sup>410</sup> These results are important because of the variety of those that responded to the consultation. The participants included policing agencies, legal professionals, members of the British Psychology Society, charity and voluntary groups, central and local government agencies, NGOs, trade unions, and individuals.<sup>411</sup> The results and respondents show that it was believed that stalking law reform was necessary across the board. It was not only victims that sought this change, but all of those involved.

Further to this, Baroness Royall addressed the loophole in the legislation on November 8, 2011 during the second reading of the Protection of Freedoms Act 2012, where she mentioned the new Scottish act, stating:

Stalking behaviour is consistently unidentified and underestimated by the criminal justice system. The lack of legal definition of a stalking offence means that the police, probation officers and the courts will look at offences in isolation; as a result, patterns of behaviour are often not spotted until a serious offence is committed. (...) I know that the Minister [Lord Henley] is a fan of the Scottish model for other provisions within this Bill, so I hope he will support changes to the Protection from Harassment Act 1997 that are similar to those introduced in Scotland last year and that would make stalking a specific offence, thereby naming and defining this poorly understood crime.<sup>412</sup>

This was an extremely important claim made by the baroness, as she attempted to bring attention to three things: first, she stated that stalking is both unidentified and underestimated *because* of the lack of a legal definition; second, she identified the gap where a course of conduct was not previously taken into account; and third, she brought to attention to the fact that this course of conduct is often ignored or unidentified until a serious offence such as murder has taken place. Importantly, David Cameron MP (Con), then-Prime Minister, acknowledged this gap in a separate parliamentary debate on

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<sup>409</sup> Home Office, "Summary of Consultation Responses and Conclusions," 13-14.

<sup>410</sup> Home Office, "Summary of Consultation Responses and Conclusions," 14, 16.

<sup>411</sup> Home Office, "Summary of Consultation Responses and Conclusions."

<sup>412</sup> House of Lords, "Parliamentary Debates," (8 November 2011): col. 174.

November 23, 2011, stating that victim-survivors of stalking needed proper legal protection.<sup>413</sup>

Using the opportunity to speak on behalf of the victims of stalking, on December 6, 2011 during a committee hearing Baroness Royall introduced an amendment with hopes of updating the Protection from Harassment Act 1997. This amendment sought to specifically name and criminalise stalking, increase statutory penalties for perpetrators, and allow offences to either be tried in the magistrate's court or Crown Court under section 4. For instance, if there was not enough evidence to convict under section 4 the perpetrator could be convicted under the section 2 offence.<sup>414</sup> This would also allow search powers for police for offences under section 2, which at the time was not a police power.<sup>415</sup> With regard to her motives for introducing these amendments, she stated:

We have debated on many occasions the freedoms of defendants and, in some cases, criminals, but now we have the opportunity to debate the protection of the freedoms of victims of stalking, many of whom are women, who are insufficiently protected at present by the legal arrangements. (...) The current law is patently not working and the state is failing victims, 80 per cent of whom are women, according to data from the National Stalking Helpline.<sup>416</sup>

After Baroness Royall introduced these amendments, a back and forth occurred, due to some mentioning that these laws already existed, such as the Lord Henley, then-Minister of State (Con). He stated: "I reassure the House that legislation does currently exist to cover this criminal behaviour and that, as I made clear earlier, the work that we are doing with the police and the CPS means that they have guidance on the 1997 Act, which sets out that stalking and cyberstalking are covered by the Act."<sup>417</sup> Regardless of this, Baroness Royall continued to push these amendments through the House of Lords. She stated:

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<sup>413</sup> House of Commons, "Parliamentary Debates," (23 November 2011): col. 292.

<sup>414</sup> House of Lords, "Parliamentary Debates," (6 December 2011): col. 650.

<sup>415</sup> House of Lords, "Parliamentary Debates," col. 652.

<sup>416</sup> House of Lords, "Parliamentary Debates," col. 650.

<sup>417</sup> House of Lords, "Parliamentary Debates," col. 661.

It is staggering that the Government are proposing to retain the fear of violence distinction, despite such evidence. It is also staggering because in Scotland we have a clear legal precedent for a single offence of stalking without fear of violence. The Criminal Justice and Licensing (Scotland) Act, which was introduced in 2010, created a single offence of stalking, triable either way, with a maximum sentence of five years' imprisonment. It is then up to prosecutors and the courts to decide at what level the case should be heard.<sup>418</sup>

This divergence, she further argued, perpetuated the main problem that existed within the Protection from Harassment Act 1997 and would thus continue if the legislation was not updated. However, in order to allow the amendments to move forward, Baroness Royall accepted Lord Henley's proposals.<sup>419</sup> These amendments advanced to the House of Commons, where they became new offences to 'sit alongside' the already existing offences within the Protection from Harassment Act 1997, with the support of Stella Creasy MP (Lab). Prior to this, Ms. Creasy attempted to eradicate the distinction of section 2 and section 4 offences by 'seriousness.' Previous evidence has shown that because the burden of proof was so high to convict under section 4 and prove fear of violence, most were charged under section 2 and did not serve adequate sentences for the crimes of stalking that they committed because of this 'seriousness' differentiation. Ms. Creasy stated:

As many experts have pointed out, this distinction risks retaining one of the problems with the existing legislation: it is extremely unusual for someone to be found guilty under section 4 of the Protection from Harassment Act 1997. (...) As NAPO and PAS have pointed out, allowing the offence to be triable either way would have two advantages. First, if evidence came out during a magistrates court trial indicating that the matter was more serious than first thought and may warrant a sentence of more than six months, the case could be sent to the Crown court for sentence. Secondly, many stalkers who do not threaten violence and who may be tried under section 2A for less serious matters are, nevertheless, highly persistent.<sup>420</sup>

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<sup>418</sup> "House of Lords Daily Hansard Debates 12 March 2012: Column 22," last modified 2012, <http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120312-0001.htm#12031216000435>.

<sup>419</sup> "House of Lords Daily Hansard Debates 12 March 2012: Column 33," last modified 2012, <http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120312-0001.htm#12031216000435>.

<sup>420</sup> House of Commons, "Parliamentary Debates," (19 March 2012): col. 541-542.

This is an important recommendation to the Lords amendment, as it attempted to change the nature of the legislation itself by allowing offences to be tried ‘either-way,’ instead of simply tacking on offences to ‘sit alongside’ the current harassment legislation. As Ms. Creasy stated, keeping the legislation how it was in its current state would continue to be inadequate in terms of combatting stalking by providing adequate justice for victims and perpetrators. There was a vote in the Commons on this recommendation and it was defeated, 286 Noes to 200 Ayes.<sup>421</sup> Instead, the Lords amendment was accepted by Ms. May on March 19, 2012 and was further accepted in the House of Lords on April 24, 2012.

### ***The Critical Act***

The act receiving Royal Assent on May 1, 2012 was the point of actual policy change, and thus constitutes the critical act. Although the updated offences in the act were accepted, many of the recommendations suggested by the Justice Unions’ Parliamentary Group inquiry have not yet been taken into account. For example, there is still no registry for serial perpetrators of stalking and harassment, nor is there a Bill of Rights for victims or an update to the Bail Act 1976 to disallow bail for violent perpetrators. Further, those who breach protection and restraining orders often do not receive a custodial sentence for those breaches, as is recommended by the inquiry.<sup>422</sup>

### **Findings: Case 2**

The conversation surrounding stalking during the debate regarding the Protection of Freedoms Act 2012 has added to and is expressed within the wider rhetoric on violence against women in the United Kingdom. The legislation does not go far enough however, or attempts to change the culture regarding how stalking and harassment is treated under the criminal justice system, as Baroness Royall and Ms. Creasy specified. This representation however, can lead to potential future changes, especially given the recommendations made by the parliamentary inquiry. For example, after the Protection of Freedoms Act 2012 was updated, a government action plan was introduced where the government promised to bring more awareness to the topic of stalking and harassment, as well as improve training

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<sup>421</sup> House of Commons, “Parliamentary Debates,” col. 554-557.

<sup>422</sup> Justice Unions’ Parliamentary Group, “Independent Parliamentary Inquiry,” 5.

of police and those who work within the criminal justice, in addition to the introduction of the All-Party Parliamentary Group on Stalking and Harassment. Moreover, PAS vowed to monitor the implementation of the new legislation, in order to hold representatives to account for their actions.

Furthermore, in terms of interests and why this representation was attempted, the strategic gendered interests as defined in Chapter 2, had already been realised through the initial adoption of the Protection from Harassment Act 1997, as the Protection of Freedoms Act 2012 was not wholly new legislation; rather, it created a new offence to ‘sit alongside’ the harassment offences. The practical gender interests however, according to Molyneux, were ‘voiced by women who experience them.’<sup>423</sup> These interests were voiced by women who had experienced stalking and harassment and were not protected under the then-provisions of the 1997 Protection from Harassment Act. As stated by Tracey Morgan, a victim who had previously campaigned for legislative change and also contributed to the parliamentary inquiry: “Victims are never taken seriously, from police forces to courts to the whole criminal justice system. The victims I hear from are saying the same things I was 15 years ago—what’s changed? We need to do more. This is about murder prevention.”<sup>424</sup> This statement is just one example of the affirmation of practical gender interests at work when considering why SRW was attempted in this case. These practical interests also invoke the notion of motivation (interests) by actors and representatives but also the notion of obligation (a feeling of responsibility).

The representation which occurred in order to update the Protection from Harassment Act 1997 included many sites of action, critical actors, and critical acts. The 1997 act was ineffective, and the national parliament took the lead from the regional parliament of Scotland in order to specifically criminalise and name the offence of stalking. The fact that the amendments proposed by Baroness Royall were almost identical to the Scottish provision backs up the notion that the national parliament took notes and followed suit from one of the regional parliaments in the United Kingdom. From the onset of this bill becoming an act, one can see that the parliament is not the first step in the process, nor is it the only step. As stated in Chapter 1, the literature surrounding the political representation of women has mostly started from the examination of the makeup of the national

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<sup>423</sup> Maxine Molyneux, “Mobilization without Emancipation? Women’s Interests, the State, and Revolution in Nicaragua,” *Feminist Studies* (1985): 233.

<sup>424</sup> Justice Unions’ Parliamentary Group, “Independent Parliamentary Inquiry,” 8.



parliament. However, only very rarely is legislation conceived of and completed solely in the parliament. Many sites of action, as well as levels of action, are interacting throughout the process. Important implications of this case include the new legislation that was presented in Scotland in regard to stalking, where Scotland was mentioned 15 times by 12 different actors and on five of the six dates where stalking was discussed within the parliament. Further, many actors from various political parties played an important role in accepting the new stalking offence amendment, but the amendment to the bill itself was proposed by a female parliamentarian, Baroness Royall. Prior to this, Ms. Cooper put the case forward for new legislation, and Rhoda Grant was the Scottish MP who proposed the criminal offence of stalking in Scotland. Juxtaposed to these actors, was the important role that Mr. Llwyd played in first deciding to hold a parliamentary inquiry on stalking. This decision was the critical juncture that followed from the critical act in Scotland. This is important because it helped push the issue to the forefront of the parliament, where the critical act was achieved in 2012. There was also cross-party cooperation, as demonstrated by the participants in the parliamentary inquiry, and also those who voted for the bill in general.

## **Chapter 4: Evaluating SRW in England and Wales: The Criminal Justice and Courts Act 2015 and the Serious Crime Act 2015**

### **Introduction**

This chapter will evaluate the critical path framework conceptualised in Chapter 2, by examining and assessing the last two cases of domestic violence legislation in England and Wales. This case study is comprised of bills that have passed through the formal parliamentary process and received Royal Assent, becoming acts of law. The point of analysis for this chapter begins with the Criminal Justice and Courts Act 2015 and ends with the Serious Crime Act 2015. To reiterate from Chapter 3, this evaluation seeks to assess the behaviour that has already happened within the policymaking process.

To restate, the research question asks what SRW means in the context of England and Wales. The sub-questions guiding this research question are: 1) When does SRW occur; 2) why is SRW attempted; 3) who acts in SRW; 4) how is SRW manifested; 5) where does the substantive representation occur; 6) in relation to which women is substantive representation expressed; and 7) what policies are passed or debated. Furthermore, the main aims of this thesis include: employing a formalised framework surrounding SRW by answering the above questions and utilising the proposed critical path, using this framework to research the impact of SRW on violence against women legislation in England and Wales, drawing conclusions on SRW, producing meaningful research, and expanding future knowledge on the political representation of women, as well as its effects on violence against women.

### Case 3: The Criminal Justice and Courts Act 2015

| <i>Stage</i>  | <i>Date</i>  | <i>Hansard Reference</i>                        |
|---|--|---|
| <b>House of Commons</b>   |  |   |
| Introduction  | 5 February 2014  | Vol. 575 Col. 276                               |
| Second reading  | 24 February 2014   | Vol. 576 Col. 47-127                            |
| Committee   | 11 March 2014<br>13 March 2014<br>18 March 2014<br>20 March 2014<br>25 March 2014<br>27 March 2014<br>1 April 2014 |   |
| Report and Third reading  | 12 May 2014<br>17 June 2014  | Vol. 580 Col. 455-542<br>Vol. 582 Col. 963-1083 |
| <b>House of Lords</b>   |  |   |
| Introduction  | 18 June 2014   | Vol. 754 Col. 836                               |
| Second reading  | 30 June 2014   | Vol. 754 Col. 1537-1572, 1583-1630              |
| Committee   | 14 July 2014<br>21 July 2014<br>23 July 2014<br>28 July 2014<br>30 July 2014                                       |   |
| Report  | 20 October 2014<br>22 October 2014<br>27 October 2014  |   |
| Third reading   | 10 November 2014   |   |
| <b>Ping Pong</b>  |  |   |
| Commons Consideration of Lords Amendments   | 1 December 2014  |   |
| Lords Consideration of Commons Reasons and Amendments   | 9 December 2014  |   |
| Commons Consideration of Lords Insistence and Reasons, Lords Non-Insistence and Amendment in Lieu of those Amendments | 13 January 2015  |   |

| <i>Stage</i>                              | <i>Date</i>     | <i>Hansard Reference</i> |
|---|-----------------|--------------------------|
| Lords Consideration of Commons Amendments | 21 January 2015 |                          |
| <b>Royal Assent</b> – 12 February 2015    |                 |                          |

*Table 7: Hansard references for the Criminal Justice and Courts Act 2015*

| <b>Party (with more than one representative; as of 1 May 2015)</b> |                        |
|--|------------------------|
| Conservative   | 302                    |
| Labour   | 256                    |
| Liberal Democrat   | 56                     |
| Democratic Unionist Party (DUP)                                    | 8                      |
| Scottish National Party (SNP)                                      | 6                      |
| Independent  | 5                      |
| Sinn Fein  | 5                      |
| Plaid Cymru  | 3                      |
| Social Democratic and Labour Party (SDLP)                          | 3                      |
| UK Independence Party (UKIP)                                       | 2                      |
| <b>Total</b>   | <b>650</b>             |
| <b>Gender</b>  |                        |
| Men  | 502/650 (77 percent)   |
| Women  | 148/650 (22.8 percent) |

*Table 8: 55<sup>th</sup> House of Commons composition (2010-2015)*

### ***The Criminal Justice and Courts Act 2015***

The Criminal Justice and Courts Act 2015 was introduced in the House of Commons on February 5, 2014. The bill sought to change several aspects of the English and Welsh criminal justice system and was broken into four sections: criminal justice, young offenders, courts and tribunals, and judicial review. These aspects included ‘sentencing; cautions; prisoners’ release and recall; and the detention of young offenders.’<sup>425</sup> The bill sought to further reform ‘courts proceedings and costs; establish a new system of strict liability in contempt proceedings; create new offences for juror misconduct; make changes to the conduct and funding of judicial review claims; and amend the law on extreme

<sup>425</sup> “Have Your Say on the Criminal Justice and Courts Bill,” last modified February 26, 2014, <http://www.parliament.uk/business/news/2014/february/have-your-say-on-the-criminal-justice-and-courts-bill/>.

pornography.<sup>426</sup> Initially, so-called revenge pornography was not mentioned during the introduction of the bill, or during its time in the House of Commons.<sup>427</sup> Any offences relating to revenge pornography were not introduced as part of this act until July 21, 2014 during the House of Lords Committee meeting.<sup>428</sup> Once the offence of revenge pornography was introduced in the House of Lords and received Royal Assent, the act then “create[d] an offence disclosing private sexual photographs or films with intent to cause distress.”<sup>429</sup> The revenge pornography offence fits within the first part of the act, under the criminal justice section, within the subdivision of ‘offences involving intent to cause distress etc.’, comprising of clauses 33-35, which state: “It is an offence for a person to disclose a private sexual photograph or film if the disclosure is made—(a) without the consent of an individual who appears in the photograph or film, and (b) with the intention of causing that individual distress.”<sup>430</sup>

Outside of the legislative realm, what does so-called revenge pornography actually mean? What are its societal and personal effects? And how does it fit within contemporary understandings of domestic abuse in the United Kingdom, specifically England and Wales? To begin, the term itself is contested. Some prefer to call revenge pornography ‘non-consensual pornography’ or the ‘non-consensual sharing of intimate media.’<sup>431</sup> As Mary Anne Franks specifies, the term itself is abusive; it shows how perpetrators “want to do harm by getting ‘revenge’ and [have] others join in.”<sup>432</sup> Even calling this non-consensual practice ‘pornography’ is problematic, as the photos or videos do not have to be overtly sexual. As pointed out by Erika Rackley and Clare McGlynn, the photo could be of the perpetrator’s ex-partner changing clothes, and by grouping this type of non-consensual activity in with other forms of pornography, remedies aimed at combatting this issue fail to get at the heart of what ‘revenge pornography’ is really about.<sup>433</sup> It is specifically about the

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<sup>426</sup> “Have Your Say on the Criminal Justice and Courts Bill.”

<sup>427</sup> This thesis refers to this behaviour as ‘revenge pornography’ because it is the language that is most widely accepted and used by the government in England and Wales. Its actual definition will be addressed below.

<sup>428</sup> The reasons for this will be detailed at a later point in the chapter.

<sup>429</sup> HM Government, “The Criminal Justice and Courts Act 2015,” (2015): 2.

<sup>430</sup> HM Government, “The Criminal Justice and Courts Act 2015,” 34-35.

<sup>431</sup> “RightsUp Podcast: Old Problems, New Media: Revenge Porn and the Law,” last modified May 8, 2015, <http://ohrh.law.ox.ac.uk/rightsup-podcast-ep1-old-problems-new-media-revenge-porn-and-the-law/>; Scottish Women’s Aid, “Non-Consensual Sharing of Intimate Media: A Report,” (2015).

<sup>432</sup> “RightsUp Podcast: Old Problems, New Media: Revenge Porn and the Law.”

<sup>433</sup> “RightsUp Podcast: Old Problems, New Media: Revenge Porn and the Law.”

*sharing* of this private content, and a breach of trust and privacy, not about the content itself.<sup>434</sup>

At the heart of revenge pornography is the destruction of the inner-self and one's outer life. For example, victims express feelings of depression, post-traumatic stress disorder (PTSD), anxiety, inability to sleep, nightmares, and the inability to leave the house. This breach of trust and privacy can also affect a victim's professional life, where they could be fired or are unable to get an interview in the first place.<sup>435</sup> It could also affect their social interactions with their family, current partners, and friendships due to the victim blaming that often comes with the offence.<sup>436</sup> This is exemplified in a 2015 report by Scottish Women's Aid where victims experienced 'far reaching and long-lasting' suffering. One victim stated: "During my marriage we took pics and videos. I left because he was abusing me and raping me. Every day I worry that he has put those images on the net, every day I regret ever doing this with him."<sup>437</sup> Further harassment can occur if perpetrators link these photos to a victim's social media profiles when revenge pornography websites attempt to extort a fee from victims who wish to have their photos removed.<sup>438</sup>

On a societal level, revenge pornography is about violence and misogyny, the 'perpetuation of harm to women in public spaces,' the 'inter-relatedness of online and offline spaces,' and power relationships.<sup>439</sup> In the same report by Scottish Women's Aid mentioned above, 35 percent of respondents were between the ages of 19-25, 83 percent identified as female, and over 80 percent of perpetrators were current or ex-partners.<sup>440</sup> The fact that the overwhelming majority of victims were women, and the perpetrators were current or ex-partners shows that this type of violence is an intrinsic part of domestic abuse, controlling behaviour, and a distinctive breach of trust.<sup>441</sup>

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<sup>434</sup> "RightsUp Podcast: Old Problems, New Media: Revenge Porn and the Law."

<sup>435</sup> "RightsUp Podcast: Old Problems, New Media: Revenge Porn and the Law."; the remainder of this chapter will use the term 'victim' as it is how individuals or those who experience violence are referred under the law in England and Wales.

<sup>436</sup> "RightsUp Podcast: Old Problems, New Media: Revenge Porn and the Law."

<sup>437</sup> Scottish Women's Aid, "Non-Consensual Sharing of Intimate Media: A Report," 3.

<sup>438</sup> "Revenge Porn: California Legislators Go After Troubling New Trend," last modified June 5, 2013, [http://www.huffingtonpost.com/2013/06/05/revenge-porn-california\\_n\\_3391638.html](http://www.huffingtonpost.com/2013/06/05/revenge-porn-california_n_3391638.html).

<sup>439</sup> "RightsUp Podcast: Old Problems, New Media: Revenge Porn and the Law."

<sup>440</sup> Scottish Women's Aid, "Non-Consensual Sharing of Intimate Media: A Report," 1.

<sup>441</sup> Women's Aid, "He's Watching You: Exploring the Impact of Revenge Pornography and Online Domestic Abuse" (conference notes, London, February 26, 2015).

As already stated and described, the issue of revenge pornography is a complicated one. Because we live in the age of the internet, questions surrounding privacy, free speech, online safety, and internet regulations are often raised.<sup>442</sup> For example: how widespread is this problem? Who is responsible? Is it the responsibility of the perpetrators who upload the photos, those who host the website, internet service providers (ISPs), search engines, or those who view and disseminate the content? The issue is rather new, as far as wide scale media coverage of it, and also the laws surrounding it, because of the increased use and spread of the internet and social media. Examples of revenge pornography, however, existed before the widespread use of the internet and especially before the rise of Twitter, Facebook, and Snapchat. An example of this is the stolen and leaked video of Pamela Anderson and then-partner Tommy Lee engaged in various sexual acts in 1995, or the leaked video of Paris Hilton and then-partner Rick Salomon in 2003. More recently, we have seen the hacking of various celebrity personal web accounts for purposes of stealing personal photos and information. Examples of this include Rihanna (2009), Tulisa Contostavlos (2012), Jennifer Lawrence and Kate Upton (2014), among countless others. At the time of these celebrity ‘leaks,’ revenge pornography may not be what came to the minds of the wider public, but today, these examples are considered revenge pornography, specifically because of the motives behind the stealing and releasing of the content.

Another question often asked is why did the offence of revenge pornography need introducing in the English and Welsh context? In addition to celebrity instances of revenge pornography, the first-known website ‘dedicated’ to revenge pornography, IsAnyoneUp.com, was noticed in 2010. While the website was shut down in 2012, the UK Safer Internet Centre says there are now 20-30 of these websites operating in the United Kingdom.<sup>443</sup> The rise of these websites in only a few short years shows the increased prevalence of this type of violence. In just one year, the Revenge Porn Helpline, established by the government after the passing of the Criminal Justice and Courts Act 2015, received 3,500 calls from 635 individuals.<sup>444</sup> 79 percent of these individuals were women.<sup>445</sup> Apart from the selection of celebrity cases presented above, there were also high-profile cases which garnered an immense amount of media coverage, including the

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<sup>442</sup> United Nations, “Cyber Violence against Women and Girls: A World-Wide Wake-Up Call,” (2015): 2.

<sup>443</sup> “Maria Miller MP: Update the Law to Deal with Revenge Pornography,” last modified June 19, 2014, <https://www.politicshome.com/news/uk/home-affairs/opinion/70530/maria-miller-mp-update-law-deal-revenge-pornography>.

<sup>444</sup> “He’s Watching You: Exploring the Impact of Revenge Pornography and Online Domestic Abuse.”

<sup>445</sup> “He’s Watching You: Exploring the Impact of Revenge Pornography and Online Domestic Abuse.”

September 10, 2012 suicide of teenager Audrie Pott in California, the October 10, 2012 suicide of teenager Amanda Todd in Canada, and victims Marianna Taschinger and Hollie Toups from Texas and Holly Jacobs from Florida. These cases led to a growing societal awareness of the impact of revenge pornography. As the UN has specified, these ‘high profile incidences’ that draw a large amount of attention, are catalysts for legal and legislative responses.<sup>446</sup> Despite this, “[r]esponses, however, have yet to fully address the many degrees and impact of violence, trauma and loss that women, girls and children are routinely exposed to and that go unreported.”<sup>447</sup>

Because much of the focus has been United States-centred, the US has been at the forefront of attempting to combat the issue. For example, in 2013, California passed SB-255, banning revenge pornography and gained widespread attention because of it. As of March 20, 2016, 27 states have laws against revenge pornography, and 10 states have legislation pending.<sup>448</sup> Prior to this, only New Jersey had an invasion of privacy law from 2003. According to a UN report in 2015, there are six different types of violence that occur online: hacking, impersonation, surveillance/tracking, harassment/spamming, recruitment, and malicious distribution.<sup>449</sup> Revenge pornography falls under the ‘malicious distribution’ section, where it is detailed that “there is a gendered expectation for girls to provide nude images that draws on already existing social norms and scripts about heterosexuality, male entitlement and female attractiveness.”<sup>450</sup> Because of the inherent gendered nature to violence against women, especially online abuse against women, the UN has stated that “[t]he increasing spread of the Internet frames the urgency for effective legal and social controls on attitudes and criminal behavior online” [sic].<sup>451</sup>

The increased awareness and prevalence brought to light the fact that there was no specific law in the entire United Kingdom outlawing revenge pornography, prior to 2015. For instance, the Malicious Communications Act 1988 only covers rude and threatening letters. The Protection from Harassment Act 1997 covers a ‘course of conduct,’ not one-off incidents, and the Obscene Publications Act 1959 does not cover revenge pornography as

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<sup>446</sup> United Nations, “Cyber Violence against Women and Girls,” 2.

<sup>447</sup> United Nations, “Cyber Violence against Women and Girls,” 2.

<sup>448</sup> “27 States Have Revenge Porn Laws,” accessed September 25, 2017, <http://www.cybercivilrights.org/revenge-porn-laws/>.

<sup>449</sup> United Nations, “Cyber Violence against Women and Girls,” 22.

<sup>450</sup> United Nations, “Cyber Violence against Women and Girls,” 22.

<sup>451</sup> United Nations, “Cyber Violence against Women and Girls,” 2.



the content is not always classified as ‘obscene.’<sup>452</sup> Further, “revenge pornography is not directly considered in the Director of Public Prosecutions’ guidance for prosecutions involving social media communications.”<sup>453</sup> Because revenge pornography had been mostly overlooked in regard to legislation in England and Wales, a new offence targeting this behaviour was introduced during the House of Lords Committee stage on July 21, 2014, and the bill received Royal Assent on February 12, 2015. The detailed critical path framework will be presented in the remainder of this chapter, followed by an analysis of the legislation, and what still needs to be done in terms of revenge pornography.

### Tracing the Critical Path

| <i>Date</i>       | <i>Event</i>  | <i>Path step</i>  |
|-------------------|---|---|
| February 13, 2013 | SB-255 introduced in California to criminalise the ‘non-consensual sharing of photos and videos’  | Critical juncture   |
| June 6, 2013      | Article on revenge pornography published  | Communicative critical action<br><br>Critical actor: Scottish Women’s Aid   |
| July 8, 2013      | Stop Revenge Porn website launch  | Symbolic critical action<br><br>Critical actor: Scottish Women’s Aid; Holly Jacobs of the Cyber Civil Rights Initiative |
| October 1, 2013   | SB-255 was approved in California   | Substantive critical action   |
| June 10, 2014     | 4 <sup>th</sup> day of debate following the Queen’s Speech; Julian Huppert MP (Lib Dem) calls for new criminal sanction (col. 443-444) regarding revenge pornography; mentions Women’s Aid, National Stalking Helpline, and UK Safer Internet Centre as evidence of problem | Symbolic critical action<br><br>Critical actor: Julian Huppert MP (Lib Dem)   |

<sup>452</sup> House of Lords, “Parliamentary Debates, 21 July 2014, Vol. 755, No. 29,” (2014): col. 971

<sup>453</sup> HL Paper 37, 13.

| <i>Date</i>   | <i>Event</i>  | <i>Path step</i>   |
|---------------|---|--|
| June 19, 2014 | Maria Miller MP (Con) calls for a new criminal offence of revenge porn  | Symbolic critical action<br>Critical actor: Maria Miller MP (Con)          |
| June 30, 2014 | Early Day Motion 192 by Julian Huppert MP (Lib Dem) to show concern for the problem of revenge pornography and garner support from fellow MPs           | Substantive critical action<br>Critical actor: Julian Huppert MP (Lib Dem) |
| June 30, 2014 | Lord Marks (Lib Dem) proposed adding a new clause regarding revenge pornography to the legislation during the House of Lords second reading (col. 1549) | Substantive critical action<br>Critical actor: Lord Marks (Lib Dem)        |
| July 1, 2014  | Support from Minister of Justice Chris Grayling (Con) for the revenge pornography offence   | Symbolic critical action<br>Critical actor: Chris Grayling MP (Con)        |
| July 4, 2014  | Support from Yvette Cooper and the Labour Party   | Symbolic critical action<br>Critical actor: Yvette Cooper MP (Lab)         |
| July 9, 2014  | Maria Miller MP (Con) asked about revenge pornography being recognised as a criminal sexual offence during Prime Minister's Questions (col. 285)        | Symbolic critical action<br>Critical actor: Maria Miller MP (Con)          |

| <i>Date</i>       | <i>Event</i>  | <i>Path step</i>   |
|-------------------|---|--|
| July 21, 2014     | House of Lords committee; offence of revenge pornography introduced by Lord Marks (Lib Dem) (col. 968)                                  | Substantive critical action<br><br>Critical actor(s): Lord Marks (Lib Dem); Baroness Berridge (Con); Baroness Bolton (Con); Baroness Grender (Lib Dem); Baroness Thornton (Lab); Baroness Barker (Lib Dem) |
| October 20, 2014  | Lord Marks (Lib Dem) addressed revenge pornography and updated and amended the clause during the House of Lords report phase (col. 518) | Substantive critical action<br><br>Critical actor: Lord Marks (Lib Dem); Baroness Barker (Lib Dem); Baroness Brinton (Lib Dem); Baroness Grender (Lib Dem); Baroness Thornton (Lab); Lord Faulks (Con)     |
| December 1, 2014  | Ping Pong (HC to HL; col. 115); stressed the need for education   | Symbolic critical action<br><br>Critical actor: Julian Huppert MP (Lib Dem); Andrew Selous (Con)   |
| February 12, 2015 | Royal Assent  | Critical act   |

**Table 9:** *The critical path to the passing of the Criminal Justice and Courts Act 2015*

### ***The Critical Juncture***

As has been shown in both Case 1 and Case 2, the critical path has illuminated many more ‘steps’ and actions than would normally be assessed when simply evaluating the Hansard legislative processes, for example when you compare Table 7 and Table 9. The remainder of this chapter will attempt to trace the critical path for the Criminal Justice and Courts Act 2015, beginning with a critical juncture. In this case, the critical juncture is posed as the introduction of SB-255 in California on February 13, 2013. After the suicide of teenager Audrie Pott on September 10, 2012, much of the US took notice of the detrimental effects that social media and revenge pornography could have on an individual’s life. Pott has been cited as the inspiration behind this bill (now law in California), introduced by California State Senator Anthony Cannella (Republican). As Aaron Sankin of the Huffington Post wrote: “The bill was inspired by the death of Audrie Pott, a 15-year old student from Saratoga, Calif. who committed suicide after she was allegedly sexually assaulted by a trio of teenage boys while passed out at a party. Before Pott’s tragic death,

graphic photos of the incident were circulated around her high school.”<sup>454</sup> The bill made the non-consensual sharing of photos and videos a misdemeanour, with the potential to serve up to a month in jail or pay a \$1,000 fine.<sup>455</sup> The introduction (and later passing) of this bill in California helped to draw wider attention to the problem of revenge pornography, and allowed for the conversation surrounding revenge pornography to be discussed more widely in the international and global community. Following the critical juncture where California introduced new revenge pornography legislation, the topic became more discussed than ever. The Everyday Sexism Project targeted Facebook and their acceptance of rape jokes and misogyny on May 28, 2013, the first article on revenge pornography was written on the Scottish Women’s Aid website on June 6, 2013, and the Stop Revenge Porn website was launched on July 8, 2013 by Scottish Women’s Aid and Holly Jacobs of the Cyber Civil Rights Initiative, a US-based website which seeks to criminalise revenge pornography, educate the wider public, and provide support to victims.<sup>456</sup> On October 1, 2013, SB-255 was approved in California and revenge pornography officially became an illegal practice. In England during this time, Hannah Thompson discovered that her ex-partner had disseminated private photos of her on a public blog.<sup>457</sup> She contacted the police, and after learning that nothing could be done, she began contacting her MP. Her case, and her willingness to come forward has been cited, in addition to SB-255, as the inspiration for the new offence that was introduced in England and Wales to the Criminal Justice and Courts Act 2015.<sup>458</sup>

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<sup>454</sup> “Revenge Porn: California Legislators Go After Troubling New Trend.”

<sup>455</sup> “Revenge Porn: California Legislators Go After Troubling New Trend.”

<sup>456</sup> “The Day the Everyday Sexism Project Won - and Facebook Changed its Image,” last modified May 29, 2013, <http://www.independent.co.uk/voices/comment/the-day-the-everyday-sexism-project-won-and-facebook-changed-its-image-8636661.html>; “Revenge Porn,” last modified June 6, 2013, <http://www.scottishwomensaid.org.uk/blog/revenge-porn?back=node%2F5882%3Ftag%3D15%26sort%3Ddate-asc>; “Stop Revenge Porn Scotland,” last modified July 8, 2013, <http://www.scottishwomensaid.org.uk/node/4485>; “About: Cyber Civil Rights Initiative,” accessed September 25, 2017, <http://www.cybercivilrights.org/welcome/>.

<sup>457</sup> “Revenge Porn Victim Hannah Thompson Demands Helpline to Kill Explicit Online Pictures,” last modified October 20, 2014, <http://www.telegraph.co.uk/news/uknews/crime/11175567/Revenge-porn-victim-Hannah-Thompson-demands-helpline-to-kill-explicit-online-pictures.html>.

<sup>458</sup> “Revenge Porn Victim Hannah Thompson Demands Helpline to Kill Explicit Online Pictures.”

### *Critical Actions*

Following the Queen's Speech on June 4, 2014, Dr. Julian Huppert MP (Lib Dem) called for a new criminal sanction during the fourth day of debate in regard to revenge pornography on June 10, 2014. He stated:

I was approached by someone about the issue of revenge porn, which is happening more and more often. People take naked or indecent images of partners and then, once the relationship ends, they share them online, publishing them very widely—to the great mental torment of the people concerned. It is mostly but not always women who have agreed to have an explicit photo taken, but never agreed for it to be broadcast to all and sundry on the web as a means of revenge. It destroys people's lives because of the psychological effect, the shame and the great humiliation caused when these images can be seen by anyone.<sup>459</sup>

Mr. Huppert went on to state that existing laws did not cover this behaviour and proposed that something needed to be done. To this, he called for a new offence, and left it to the House. During the debate, Huppert also mentioned that those involved, including Women's Aid, the National Stalking Helpline, and the UK Safer Internet Centre accepted that revenge pornography was only getting worse. Despite this call from Huppert, prior to the report and third hearing phase of the bill, the offence was not considered in the House of Commons. Huppert stated on June 17, 2014 during the report and third hearing that he would 'send in [his] ideas' to be deliberated at a later date.<sup>460</sup> During this time, Maria Miller MP (Con) also called for a new criminal offence of revenge pornography. The former Minister for Women and Equalities stated:

Just a few week ago I was contacted by one of my constituents who told me about a new form of online abuse. She described in her email how people, mostly women have nude and sexually explicit pictures of themselves posted online without their knowledge and without their consent, on dedicated websites readily promoted by search engines like Google and Yahoo.<sup>461</sup>

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<sup>459</sup> "MPs Debate 2014 Queen's Speech: Day 4—Home Affairs", last modified June 10, 2014, <http://www.parliament.uk/business/news/2014/june/mps-debate-2014-queens-speech-day-4-home-affairs/>; <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm140610/debtext/140610-0002.htm>.

<sup>460</sup> House of Commons, "Parliamentary Debates, 17 June 2014, Vol. 582, No. 8," (2014): col. 1079.

<sup>461</sup> "Maria Miller MP: Update the Law to Deal with Revenge Pornography."

She went on to state that current legislation pre-dates this problem and referenced the scale of the problem in the US, and pointed to the fact that California, Texas, and Utah had passed new legislation in regard to revenge pornography.<sup>462</sup>

Following this call, Mr. Huppert tabled an EDM, in order to show his concern about the problem of revenge pornography and garner support from fellow MPs to “urge the Government to bring forward legislative proposals to criminally sanction individuals who breach the privacy of others through these vengeful acts.”<sup>463</sup> Sponsors of the EDM included Tim Farron MP (Lib Dem), Sir Peter Bottomley MP (Con), Sir Alan Meale MP (Lab), Greg Mulholland MP (Lib Dem), and Dr Julian Lewis MP (Con), and included 36 additional signatures from MPs.<sup>464</sup> The party breakdown of the signatures included: 15 Liberal Democrats, 12 Labour members, five Conservative members, two Independents, one Alliance member, and 1 Democratic Unionist Party member.<sup>465</sup> The EDM communicates that “this House is deeply concerned at the growth of revenge porn... notes that whilst the images are often taken with full consent, their dissemination is not... [and] understands that there is no specific legislation to deal with the problem.”<sup>466</sup> On the same day that the EDM was posed by Huppert, revenge pornography was mentioned in the House of Lords’ second reading by Lord Marks (Lib Dem).<sup>467</sup> Lord Marks proposed adding a new clause to the legislation to include the criminalising of revenge pornography, and gave thanks to Huppert for suggesting it in ‘the other place’ and to Miller as well.<sup>468</sup> The move received support from Mr. Grayling on July 1, 2014, and also from Ms. Cooper on July 4, 2014.<sup>469</sup> Further, in order to hear the views on revenge pornography from Mr. Cameron, Ms. Miller posed a question during Prime Minister’s Questions (PMQs) on July 9, 2014. She stated: “The Safer Internet Centre estimates that up to 30 websites host [United Kingdom] online revenge pornography images, another form of sexual abuse. Does the Prime Minister agree that posting such material must be recognised for what it

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<sup>462</sup> “Maria Miller MP: Update the Law to Deal with Revenge Pornography.”

<sup>463</sup> “Early Day Motion 192: Revenge Pornography,” last modified June 30, 2014, <http://www.parliament.uk/edm/2014-15/192>.

<sup>464</sup> “Early Day Motion 192: Revenge Pornography.”

<sup>465</sup> “Early Day Motion 192: Revenge Pornography.”

<sup>466</sup> “Early Day Motion 192: Revenge Pornography.”

<sup>467</sup> House of Lords, “Parliamentary Debates, 30 June 2014, Vol. 754, No. 16,” (2014): col. 1549.

<sup>468</sup> House of Lords, “Parliamentary Debates, 30 June 2014,” col. 1549.

<sup>469</sup> “‘Revenge Porn’ Laws: Ministers Urged to Go Further,” last modified July 2, 2014, <http://www.bbc.co.uk/news/uk-28123128>; “Labour Would Appoint Women’s Safety Commissioner, says Yvette Cooper,” last modified July 4, 2014, <http://www.theguardian.com/politics/2014/jul/04/labour-womens-safety-yvette-cooper-fgm-revenge-porn>.

is—a criminal sexual offence against its victims?”<sup>470</sup> Following this question, the PM responded:

My right hon. Friend is right. This is an appalling offence and a dreadful thing for someone to do, and it clearly has criminal intent. I am very glad that she is championing this cause, and I hope that having looked in detail at the amendments she is suggesting, we can take up this cause. Part of what she achieved in government—the very good work that she did in office—is making sure that we do far more to deal with porn and internet porn.<sup>471</sup>

Despite the fact that Mr. Cameron equated ‘porn’ and ‘internet porn’ with the offence of revenge pornography, his answer during PMQs showed his support and willingness to accept an offence of revenge pornography under the law, by exposing the criminal intent of the perpetrator.

With support from MPs and the PM, the offence of revenge pornography was introduced during the House of Lords committee meeting on July 21, 2014. Lord Marks introduced the offence (tabled by Baroness Berridge (Con) and Baroness Morris (Con)) claiming that the offence ‘follows the trauma of relationship breakdown’ and that ‘this practice should be criminalised.’<sup>472</sup> He gave thanks of support from other peers, including Baroness Berridge and Baroness Bolton. Initially, the offence was introduced as an “[o]ffence of publishing a sexually explicit or pornographic image without consent.”<sup>473</sup> However, Lord Marks addressed three concerns with the proposed language of the amendment. For instance, he stated that the offence was about the publication of the photos or videos, and not about a motive of ‘sexual gratification,’ as is implied by the use of the term ‘pornographic.’<sup>474</sup> This concern was echoed by Baroness Greener MBE (Lib Dem), where she indicated “[t]he inflicting of pain and humiliation is the only motive, and the individual who publishes such images should know that when they do it, they are committing a crime.”<sup>475</sup> To this, Baroness Kennedy QC (Lab), Baroness Barker (Lib Dem), and

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<sup>470</sup> “Prime Minister’s Questions: col. 285,” last modified July 9, 2014, <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm140709/debtext/140709-0001.htm#14070955000005>.

<sup>471</sup> “Prime Minister’s Questions: col. 285.”

<sup>472</sup> House of Lords, “Parliamentary Debates, 21 July 2014,” col. 969.

<sup>473</sup> House of Lords, “Parliamentary Debates, 21 July 2014,” col. 968-969.

<sup>474</sup> House of Lords, “Parliamentary Debates, 21 July 2014,” col. 970.

<sup>475</sup> House of Lords, “Parliamentary Debates, 21 July 2014,” col. 972.

Baroness Thornton (Lab) reiterated that the concern of the bill and amendments should be about consent, and not necessarily about the motivation of the perpetrator's actions.<sup>476</sup>

Secondly, Lord Marks specified that the photos or videos did not have to be of the victim engaged in a sexual act, as inferred by the usage of 'sexually explicit.' To this he stated: "For an image to cause real distress, it is not necessary for the subject of the image to be actually engaged in a private act. ... It does not seem to us that a sexual act should have to be portrayed in the image before an offence could be committed."<sup>477</sup> Thirdly, he indicated that using 'exposed' or 'semi-exposed' was also unnecessary, although he added it may be difficult then to identify images as falling within the context of revenge pornography. Ultimately, Lord Marks made an important point: "Long gone are the days when we should regard physical harm as a necessary ingredient of an offence against the person."<sup>478</sup> This is a significant distinction, and as we have seen throughout these three cases, that domestic abuse does not have to entail any physical elements, and is often accompanied by psychological and emotional abuse. The use of so-called revenge pornography, and other online abuses, is another tool that perpetrators can use to abuse and control their partners or ex-partners.

During the meeting, Baroness Berridge addressed revenge pornography not only as a criminal offence, but as a sexual offence, and proposed that it be classified as such.<sup>479</sup> This was echoed by Baroness Morris that revenge pornography should be classified as a sexual offence instead of simply a criminal offence, as it 'fails to recognize the sexual nature of the crime' and also fails to view revenge pornography as a 'virtual form of sexual assault.'<sup>480</sup> Importantly, Baroness Berridge pointed to the work done by Laura Higgins at the UK Safer Internet Centre, and by Women's Aid, Welsh Women's Aid, and Scottish Women's Aid. Citing the UK Safer Internet Centre, revenge pornography has become a 'consumer product,' with 20-30 known revenge pornography websites in the United Kingdom alone.<sup>481</sup> She specified: "Apparently it has become a consumer product on pay-per-view. Many of the websites attract huge volumes of traffic, and the more often an image is looked at, the more likely it is that when you Google search your own name, the

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<sup>476</sup> House of Lords, "Parliamentary Debates, 21 July 2014," col. 974, 976.

<sup>477</sup> House of Lords, "Parliamentary Debates, 21 July 2014," col. 970.

<sup>478</sup> House of Lords, "Parliamentary Debates, 21 July 2014," col. 970-971.

<sup>479</sup> House of Lords, "Parliamentary Debates, 21 July 2014," col. 971.

<sup>480</sup> House of Lords, "Parliamentary Debates, 21 July 2014," col. 974.

<sup>481</sup> House of Lords, "Parliamentary Debates, 21 July 2014," col. 971.



first thing that will come up in connection with your name is these images that have been posted, which is particularly degrading.”<sup>482</sup> This behaviour points to the fact that revenge pornography was (and continues to be) an important problem, where the ‘law has not quite kept pace with the internet.’<sup>483</sup> Legally, there were few resources or mechanisms, as Baroness Berridge described, for victims to even have their photos removed once they discovered them. For inspiration to address this growing problem, she directed her fellow peers to view the legislation in the US, but also in Israel, which made revenge pornography a sexual offence on January 6, 2014.<sup>484</sup>

A further significant point made during the committee meeting was by Baroness Thornton where she detailed that while a specific offence was needed to help combat revenge pornography, so too was a “strong political will to tackle the underlying culture that creates and legitimises sexual violence, abuse and harassment in all its forms. That requires not only a government commitment to headline-making legislative reform but to ensuring effective implementation of any new offence and bringing forward compulsory sex and relationship education in our schools.”<sup>485</sup> For her, what is happening in schools and in society, is not good enough. The problem needs to be combatted in different and more effective ways, such as through education. This was one of the first points within the debate where a wider culture of violence was specifically mentioned.

After the committee meeting, the House of Lords held their reporting stage on October 20, 2014. Again, Lord Marks was the peer to bring up the revenge pornography offence. He named (and thanked) Baroness Greender, Baroness Brinton, and Baroness Barker for their work on the issue, as well as Mr. Huppert for raising the issue in the House of Commons.<sup>486</sup> Given the debate during the committee meeting addressed above, the clause regarding revenge pornography was updated and amended. It read: “Publication of private sexual images (1) [i]t shall be an offence for a person to publish a private sexual image of another identifiable person without their consent where this disclosure causes distress to the person who is the subject of the image.”<sup>487</sup> This new definition adds in the words

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<sup>482</sup> House of Lords, “Parliamentary Debates, 21 July 2014,” col. 971.

<sup>483</sup> House of Lords, “Parliamentary Debates, 21 July 2014,” col. 971.

<sup>484</sup> House of Lords, “Parliamentary Debates, 21 July 2014,” col. 971; “Israeli Law Makes Revenge Porn a Sex Crime,” last modified January 6, 2014, <http://www.timesofisrael.com/israeli-law-labels-revenge-porn-a-sex-crime/>.

<sup>485</sup> House of Lords, “Parliamentary Debates, 21 July 2014,” col. 976.

<sup>486</sup> House of Lords, “Parliamentary Debates, 20 October 2014, Vol. 756, No. 41,” (2014): col. 518.

<sup>487</sup> House of Lords, “Parliamentary Debates, 20 October 2014,” col. 517-518.

‘private’ and ‘distress’ while removing the language of the photo or video having to be ‘pornographic,’ as raised by Lord Marks and others. It also uses the language of ‘sexual images’ versus the previous wording of ‘sexually explicit.’

Following the introduction of the clause by Lord Marks, Baroness Brinton again used the opportunity to describe how revenge pornography fits within a web of other types of online abuse, citing its potential long-term damage.<sup>488</sup> While she stated that only eight police forces out of 43 collected data regarding revenge pornography complaints, there were some figures. For instance, in 2012 there were 35 complaints; 58 complaints for 2013, and 53 complaints for the first half of 2014.<sup>489</sup> These figures not only show the growth of the problem in these eight areas, but the growth that is undoubtedly occurring throughout the rest of England and Wales and beyond. It shows how necessary this legislation is, but also how important it is to understand and combat domestic abuse in general. As Baroness Brinton reiterated, “[i]t is an abuse of power designed to cause distress, and with the nature of social media today, the perpetrator can hand it on and on to others, including professional revenge porn sites whose participants often then choose to troll the original victim, their family and their work colleagues.”<sup>490</sup> Baroness Thornton also echoed this position by stating that the legislation was a positive step, but not necessarily the only or last step that needs to be taken to eradicate domestic abuse, and specifically revenge pornography.<sup>491</sup>

In addition, Baroness Thornton brought up whether this offence would be classed as a sexual offence versus simply being categorised as a criminal offence. Lord Faulks QC (Con) addressed questions about this. He stated: “Research in previous cases has shown that revenge porn—the emphasis here being on ‘revenge’—is perpetrated with the intention of making a victim feel humiliated and distressed rather than to obtain sexual gratification, which is what defines an offence as sexual.”<sup>492</sup> Therefore, because of that reasoning, the offence would not be classified as a sexual offence, such as voyeurism. Although, it could be argued, and was argued by those in the House of Lords that revenge pornography is a sexual offence, and should be categorised as one. It is important to point out that during the meeting, Baroness Berridge spoke of the agreement among both the

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<sup>488</sup> House of Lords, “Parliamentary Debates, 20 October 2014,” col. 519.

<sup>489</sup> House of Lords, “Parliamentary Debates, 20 October 2014,” col. 520.

<sup>490</sup> House of Lords, “Parliamentary Debates, 20 October 2014,” col. 519.

<sup>491</sup> House of Lords, “Parliamentary Debates, 20 October 2014,” col. 521.

<sup>492</sup> House of Lords, “Parliamentary Debates, 20 October 2014,” col. 523.

government benches, and the back benches on this issue, in addition to mentioning Women's Aid, Ms. Miller, and academics who advised the MPs over the course of the bill process.<sup>493</sup> Lord Faulks also showed appreciation to 'stakeholders' such as the National Society for the Prevention of Cruelty to Children (NSPCC) and Victim Support.<sup>494</sup>

Following the report in the House of Lords, the bill then went to the House of Commons for a series of 'ping pong' sessions for consideration of the various amendments. The offence of revenge pornography was dealt with during the December 1, 2014 hearing. There was much agreement that the offence was a good move forward for the government, and for England and Wales. Andrew Selous MP (Con) and Mr. Huppert welcomed the offence that was introduced in the House of Lords, but stressed the need for education so that individuals do not commit these offences in the first place.<sup>495</sup> Mr. Huppert stated: "We need a system where, particularly through education, we get people to understand what consent is about: what can be agreed to and what cannot be agreed."<sup>496</sup> This is especially crucial, yet interesting, that the government has decided that sex and relationship education is not statutory, and students can be withdrawn if their parents choose.<sup>497</sup> This is quite the opposite of what many MPs have declared, as well as various organisations and charities in the United Kingdom, that this type of education is essential if the issue of domestic abuse, and violence against women and girls more widely, is to be combated.<sup>498</sup>

### ***The Critical Act***

Unlike other issues that may be more contentious within the ping pong sessions of debate, such as the National Health Service (NHS) or defence spending, the consideration of the revenge pornography offence was rather straightforward, with MPs mostly showing appreciation for those who had helped push the issue along. For instance, Ms. Miller expressed that she had campaigned on behalf of victims who had contacted her for help.<sup>499</sup> In addition, she thanked Baroness Morris and Baroness Berridge from the House of Lords,

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<sup>493</sup> House of Lords, "Parliamentary Debates, 20 October 2014," col. 521.

<sup>494</sup> House of Lords, "Parliamentary Debates, 20 October 2014," col. 523.

<sup>495</sup> House of Commons, "Parliamentary Debates, 1 December 2014, Vol. 589, No. 71," (2014): col. 115, 119.

<sup>496</sup> House of Commons, "Parliamentary Debates, 1 December 2014," col. 123.

<sup>497</sup> "The National Curriculum," last modified March 16, 2016, <https://www.gov.uk/national-curriculum/other-compulsory-subjects>.

<sup>498</sup> "Young People Deserve Sex and Relationships Education," last modified December 21, 2014, [http://www.huffingtonpost.co.uk/polly-neate/sex-education\\_b\\_6019630.html](http://www.huffingtonpost.co.uk/polly-neate/sex-education_b_6019630.html).

<sup>499</sup> House of Commons, "Parliamentary Debates, 1 December 2014," col. 119.

Women’s Aid, the UK Safer Internet Centre, and Ban Revenge Porn. Mr. Huppert thanked Baroness Grender, Baroness Brinton, Baroness Barker, and Lord Marks for their help in tabling the amendments to include revenge pornography in the bill. Huppert paid appreciation to victims as well, especially Ms. Thompson, where he stated: “I pay tribute to the victims. I have spoken to many of them, but in particular I pay tribute to Hannah Thompson who has played a very key role in speaking out publicly. That was a very brave thing to do about something that feels very shaming. We should remember her work and pay tribute to her.”<sup>500</sup> After the other ping pong stages, the bill was approved and received Royal Assent on February 12, 2015. In regard to the new legislation, Mr. Selous detailed that “[p]arliament needs to be relevant. It needs to deal with the issues presented to us, and this is a good example of Parliament and the Government doing exactly that.”<sup>501</sup>

While many, such as Dr. Ann Olivarius of McAllister Olivarius law firm, hailed the new offence as a victory in the fight against domestic violence and violence against women, the legislation was not perfect.<sup>502</sup> For example, the offence was not approved as a sexual offence, as was suggested. There was to be no independent review of the legislation and its implementation, as was inquired about. Although the Revenge Porn Helpline was established by the government, the current law has no stipulations for websites to remove these images; it simply provides a means of punishment for the perpetrator.<sup>503</sup> Further, there is no onus on social media companies such as Facebook and Twitter to combat the issue, nor is there a civil remedy for damages.<sup>504</sup> Additionally, victims of revenge pornography have to be able to prove that the offence was committed out of ‘revenge’ with intent to cause distress; perpetrators cannot be punished if the photos were intended to show a ‘good time.’<sup>505</sup> As stated in a blog on contemporary United Kingdom feminism, “[a]s it stands, the law fails to capture the objectification of women’s bodies for the mere purpose of entertainment and mockery. This is problematic, because it is this form of

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<sup>500</sup> House of Commons, “Parliamentary Debates, 1 December 2014,” col. 122.

<sup>501</sup> House of Commons, “Parliamentary Debates, 1 December 2014,” col. 124.

<sup>502</sup> “Criminalising Revenge Porn in the UK: A Good Step, But Just the First,” last modified November 11, 2014, [http://www.mcolaw.com/blog/2014/11/11/revenge-porn-to-be-illegal-in-the-uk-a-good-step-but-just-the-first#.VxTuG\\_kwiUn](http://www.mcolaw.com/blog/2014/11/11/revenge-porn-to-be-illegal-in-the-uk-a-good-step-but-just-the-first#.VxTuG_kwiUn).

<sup>503</sup> “Revenge Porn is Finally Illegal: Who Are the Victims and Perpetrators of This Growing Phenomenon,” last modified April 12, 2015, [http://www.huffingtonpost.co.uk/2015/04/12/revenge-porn-law\\_n\\_6630730.html](http://www.huffingtonpost.co.uk/2015/04/12/revenge-porn-law_n_6630730.html).

<sup>504</sup> “What is the Law on Revenge Porn,” last modified April 13, 2015, <http://www.telegraph.co.uk/news/uknews/law-and-order/11531954/What-is-the-law-on-revenge-porn.html>.

<sup>505</sup> “Revenge Porn Law Puts Perpetrators First,” last modified January 31, 2016, <https://www.thefword.org.uk/2016/01/revenge-porn-law-puts-perpetrators-first/>.

everyday sexism in the domain of speech about sex that constitutes the very core of revenge porn.”<sup>506</sup> Lastly, as Scottish Women’s Aid points out, the *threat* of distributing these images and videos needs to be covered as well.<sup>507</sup>

In terms of change, Women’s Aid has continued to fight for compulsory sex and relationship education, as many MPs and peers have suggested, as it is important to combat the culture of violence in the United Kingdom. There also needs to be more support for survivors. As outlined in the problems with the legislation, we can see that it continues to be perpetrator-centred, with little recourse for victims. Victims and survivors are represented during the parliamentary debates, but provisional services are sometimes forgotten when it comes to actually drafting the legislation. Further, as can be seen from the critical juncture in this case, it is important to have international collaboration in terms of the perpetrators and the websites which post these photos and videos. For example, someone’s photos could have been posted on a website hosted outside of England and Wales, and there is an increased difficulty in getting those pictures removed, because the law does not apply outside of England and Wales. Therefore, some form of collaboration could be effective, however that is outside the scope of this research.

### **Findings: Case 3**

Overall, while the Criminal Justice and Courts bill became an act under the law, it is important to look more closely at how the process connects to the wider framework. In terms of naming critical actors, MPs played an obvious large role in the passing of the Criminal Justice and Courts Act 2015. There were actors from the Liberal Democrat party (five), Conservative party (five), and the Labour party (two). There was also a mixture of representation by sex as well. Four of these actors were men, and eight were women. Interestingly, the issue of revenge pornography was raised in the House of Commons by Mr. Huppert, and the offence itself was introduced in the House of Lords by Lord Marks. Other than MPs, there were also various organisations involved in bringing this issue to attention, including Scottish Women’s Aid, the National Stalking Helpline, UK Safer Internet Centre, and Women’s Aid. Victim-survivors of so-called revenge pornography

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<sup>506</sup> “Revenge Porn Law Puts Perpetrators First.”

<sup>507</sup> Scottish Women’s Aid, “Non-Consensual Sharing of Intimate Media: A Report,” 4.

helped to create various initiatives including Stop Revenge Porn and the Cyber Civil Rights Initiative. Because of their action, victim-survivors are regarded as critical actors. This helped bring attention and awareness to the issue of revenge pornography. Would this issue have been brought up at all if representatives were not contacted by victims and asked for help, for instance, in regard to Ms. Miller and Mr. Huppert? This leads to the sites of representation which included both houses of parliament. There was also international influence by way of the critical juncture in California, and also influence from political forums, such as the organisations mentioned above.

This legislation was introduced and the critical juncture took place simply because it was not covered under then-legislation. The issue was framed as being important to women, both victims and potential victims. While ‘women’ were often spoken of, they were presented as an undifferentiated group. In terms of practical gendered interests, awareness-raising helped to initiate the strategic gendered interests, where legislation became the solution. Further, from the evaluation of the parliamentary debates, EDMs, surveys, reports, and news articles, it is evident that legislators felt an obligation or responsibility to propose legislation, and were not solely motivated from personal experience or opportunity. Regarding this obligation, the representation can be seen as effective for the most obvious reason that the legislation received Royal Assent and was passed into law. However, looking more deeply, we can see that party differences were also bridged, even if all suggestions for the new legislation were not taken into account. As stated above, the Liberal Democrat party were responsible for introducing the legislation, but the Conservative party and members of the Labour party also aided in moving the legislation forward. It was an issue where there was nearly universal consensus.

## Case 4: The Serious Crime Act 2015

| <i>Stage</i>                              | <i>Date</i>   | <i>Hansard Reference</i>  |
|---|---|---|
| <b>House of Lords</b>                     |   |   |
| Introduction                              | 5 June 2014   | Vol. 754 Col. 21  |
| Second reading                            | 16 June 2014  | Vol. 754 Col. 643-699   |
| Committee                                 | 2 July 2014<br>8 July 2014<br>15 July 2014  | Vol. 754 Col. 1721-1770<br>Vol. 755 Col. 119-189<br>Vol. 755 Col. 511-563 |
| Report                                    | 14 October 2014<br>28 October 2014  | Vol. 756 Col. 119-165<br>Vol. 756 Col. 1069-1171                          |
| Third reading                             | 5 November 2014   | Vol. 756 Col. 1621-1641   |
| <b>House of Commons</b>                   |   |   |
| Introduction                              | 6 November 2014   |   |
| Second reading                            | 5 January 2015  | Vol. 590 Col. 54-124  |
| Committee                                 | 13 January 2015<br>15 January 2015<br>20 January 2015<br>22 January 2015                            | Official Report, Public Bill Committee                                    |
| Report and Third reading                  | 23 February 2015  | Vol. 593 Col. 50-162  |
| <b>Ping Pong</b>                          |   |   |
| Lords Consideration of Commons Amendments | 2 March 2015  | Vol. 760 Col. 44-86   |
| <b>Royal Assent – 3 March 2015</b>        | <b>House of Lords Hansard Vol. 760 Col. 87</b><br><b>House of Commons Hansard Vol. 593 Col. 811</b> |   |

*Table 10: Hansard references for the Serious Crime Act 2015*

### ***The Serious Crime Act 2015***

The Serious Crime Bill was introduced on June 5, 2014 and became the Serious Crime Act on March 3, 2015. As stated in the legislation notes, “[t]he principle objective of the Act is to ensure that law enforcement agencies have effective legal powers to deal with the threat from serious and organised crime.”<sup>508</sup> The six parts of the act include the following: 1.

<sup>508</sup> HM Government, “Serious Crime Act 2015 Explanatory Notes” (2015): 1.

Proceeds of Crime, 2. Computer Misuse, 3. Organised, Serious and Gang-Related Crime, 4. Seizure and Forfeiture of Drug-Cutting Agents, 5. Protection of Children and Others, and 6. Miscellaneous and General.<sup>509</sup> Part five, ‘Protection of Children and Others,’ is the part of the act that is focused upon for this case. Part five specifically amends “the criminal law in relation to the offence of child cruelty, provides for new offences in respect of sexual communication with a child and the possession of ‘paedophile manuals,’ amends the Sexual Offences Act 2003 to remove references to child prostitution and child pornography, makes further provision for combating female genital mutilation and provides for a new offence in respect of domestic abuse.”<sup>510</sup> The new offence in reference to domestic abuse is the criminalisation of ‘controlling or coercive behaviour.’ This behaviour applies to both intimate relationships (previous or current) and family relationships (in reference to parents and children). This case will be specifically focused on the intimate relationships aspect. Under the Serious Crime Act, an offence is committed if behaviour is repetitive or continuous, is controlling or coercive in nature, and has a ‘serious effect’ on the victim where “(a) it causes B to fear, on at least two occasions, that violence will be used against B, or (b) it causes B serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day activities.”<sup>511</sup> As will be described in further detail below, coercive control in reference to domestic violence was first mentioned during parliamentary hearings in reference to children and how parents use coercive and controlling behaviour to exercise dominance over children.<sup>512</sup> It has been recognised that this type of coercive and controlling behaviour can lead to ‘risky or anti-social behaviour,’ which is why this specific offense was added to the Serious Crime Bill. It was women’s groups, such as Women’s Aid, that drew attention to the legislative gap where this controlling behaviour was not criminalised, specifically regarding intimate relationships. The focus on intimate relationships however, was not added to the bill until after the committee phase of the legislation on January 20, 2015. These steps will be discussed further during the discussion of the critical path; however, it is important to present these explanations from the onset.

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<sup>509</sup> HM Government, “Serious Crime Act 2015 Explanatory Notes,” 1.

<sup>510</sup> HM Government, “Serious Crime Act 2015 Explanatory Notes,” 2.

<sup>511</sup> HM Government, “Serious Crime Act 2015,” (2015): 81; in this instance, ‘B’ is either the victim or the other person in question. ‘A’ is the perpetrator, or the person committing the offence.

<sup>512</sup> House of Lords, “Parliamentary Debates, 16 June 2014, Vol. 754, No. 7,” (2014): col. 646.



It is important for the purpose of this case study to further explain what constitutes coercive and controlling behaviour in a domestic violence context. In terms of coercive control, it has been an academic concern since at least 1996. There is little to no evidence that coercive control, as such, was regarded as a serious academic or public policy concern prior to 1996. For instance, the UN referenced ‘coercion’ in their Declaration on the Elimination of Violence Against Women plenary meeting in 1993, it was not widely considered in the same light that coercive and controlling behaviour is referred to today. While the concept of coercive control has been written about for decades, it has only recently become a policy concern for many countries around the world, including the United States. Similar to the way that domestic violence in general has been slow to ‘catch-on’ as far as being a central policy concern for national governments, so too has the specific notion of coercive control. It has however gained importance within the last 10 years, particularly in the United Kingdom, due to the work of various organisations and campaigns, such as Women’s Aid and Refuge.

Evan Stark is often credited as one of the academic and practical starting points regarding coercive control. In a 1996 article, Stark and Anne Flitcraft stated: “Physical abuse is almost always embedded in a pattern of coercion characterized by the use of threats, intimidation, isolation, and emotional abuse, as well as a pattern of control over sexuality and social life, including a woman’s relationships with family and friends; material resources... and various facets of everyday life.”<sup>513</sup> Control tactics, as described by Michael Johnson, include the use of children as leverage, punishment, threats, isolation, emotional abuse, and sexual and economic control.<sup>514</sup> Stark further classifies these tactics into three categories: intimidation, isolation, and control.<sup>515</sup> Significantly, “[t]he main means used to establish control is the microregulation of everyday behaviors associated with stereotypic female roles, such as how women dress, cook, clean, socialize, care for their children, or perform sexually [sic].”<sup>516</sup> According to Stark, this microregulation is what distinguishes coercive and controlling behaviour from most other crimes of sexual

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<sup>513</sup> Evan Stark and Anne Flitcraft, “Personal Power and Institutional Victimization: Treating the Dual Trauma of Woman Battering,” in *Women at Risk: Domestic Violence and Women’s Health*, ed. Evan Stark and Anne Flitcraft (Thousand Oaks: SAGE Publications, Inc., 1996), 9.

<sup>514</sup> Michael P. Johnson, “Conflict and Control: Gender Symmetry and Asymmetry in Domestic Violence,” *Violence Against Women* (2006): 1007-1009.

<sup>515</sup> Evan Stark, *Coercive Control: The Entrapment of Women in Personal Life* (New York: Oxford University Press, 2007), 5.

<sup>516</sup> Stark, *Coercive Control*, 5.

violence and abuse (although he does acknowledge that this control relies on societal sexual inequality and the vulnerability that accompanies this inequality, and in that way it is similar to other forms of violence and abuse).<sup>517</sup> Additionally, “[t]he most important anomalous evidence indicates that violence in abusive relationships is ongoing rather than episodic, that its effects are cumulative rather than incident-specific, and that the harms it causes are more readily explained by these factors than by its severity.”<sup>518</sup> Further, coercive control is identified as being ‘gendered’ because it is influenced and underpinned by traditional gender stereotypes, specifically surrounding what is associated with the stereotypic female roles mentioned above, and also male privilege and the relationship between subordination and domination within relationships.<sup>519</sup> This refers to “both the power/privilege exerted through coercive control in individual relationships and to the political power created when men as a group use their oppressive tactics to reinforce persistent sexual inequalities in the larger society.”<sup>520</sup> This reference to political power is important because it shows how coercive control, while exercised in individual relationships, aids in the overall sexual inequalities that continue to be present within society. These inequalities can be observed whether you focus on the wage gap, representation in local and national government, or access to justice, among other issues. Therefore, it can be argued that if coercive and controlling behaviour were able to be prevented or protected against, other forms of violence against women and domestic violence could be lessened or eradicated, and this could lead to the reduction in overall sexual inequality within society.

Prior to the incorporation of coercive control into government policy on domestic violence and abuse, Stark stated that the “policy, legal, and criminal justice response to partner abuse is based on a ‘violent incident model’ that equates abuse with discrete assaults and gauges severity by the degree of injury inflicted or threatened.”<sup>521</sup> This focus on physical assault and severity, according to Stark, undermined the effectiveness of the response to domestic violence in general, where it is now mostly understood that domestic abuse is a pattern of coercion.<sup>522</sup> A critique of the reliance on the criminal justice response to

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<sup>517</sup> Stark, *Coercive Control*, 5.

<sup>518</sup> Stark, *Coercive Control*, 12.

<sup>519</sup> Stark, *Coercive Control*, 8.

<sup>520</sup> Stark, *Coercive Control*, 8.

<sup>521</sup> Evan Stark, “Looking Beyond Domestic Violence: Policing Coercive Control,” *Journal of Police Crisis Negotiations* (2012): 199.

<sup>522</sup> Stark, “Looking Beyond Domestic Violence,” 199.

domestic violence is understood because of its dependence on punishment, where courts were moved to the “center of the societal response to partner abuse.”<sup>523</sup> Rather, this response is focused on “its frequency and duration, not its severity. Thus, when the response is gauged to severe violent acts, most abuse goes either unrecognized or unpunished.”<sup>524</sup> It is for this reason that the incorporation of coercive control is important in furthering the understanding of domestic violence within the context of coercion and control. It moves the conversation away from focusing on primarily physical violence, and towards a holistic understanding of domestic abuse. Prior to this incorporation, “most of the tactics abusers use in coercive control [had] no legal standing, [were] rarely identified with abuse, and [were] almost never targeted by police or the courts.”<sup>525</sup> The detailed critical path will be explored below, followed by an analysis of the legislation, and the preliminary findings from the four cases presented in this chapter.

### Tracing the Critical Path

| <i>Date</i>   | <i>Event</i>   | <i>Path step</i>   |
|---------------|--|--|
| December 2007 | Scotland: Violence against women definition to include coercive and controlling behaviour                                | Critical juncture  |
| June 2008     | House of Commons Home Affairs Select Committee report on domestic violence, ‘honour’-based violence, and forced marriage | Communicative critical action  |
| March 2011    | Violence Against Women Action Plan released by government  | Communicative critical action  |
| December 2011 | Home Office consultation on government definition of domestic abuse; consider reference to ‘coercive control’            | Communicative critical action<br>Critical actor: Nick Clegg MP (Lib Dem); Theresa May MP (Con) |

<sup>523</sup> Stark, “Looking Beyond Domestic Violence,” 200.

<sup>524</sup> Stark, “Looking Beyond Domestic Violence,” 201.

<sup>525</sup> Stark, “Looking Beyond Domestic Violence,” 201.

| <i>Date</i>       | <i>Event</i>  | <i>Path step</i>  |
|-------------------|---|---|
| September 2012    | Then-Shadow Home Secretary Yvette Cooper MP (Lab) raised the issue of coercive control during speech  | Symbolic critical action<br>Critical actor: Yvette Cooper MP (Lab)  |
| September 2012    | Government expanded definition to include coercive control; not legally binding   | Substantive critical action   |
| March 2013        | New government definition in effect; not legally binding  | Substantive critical action   |
| February 26, 2014 | Standing Order No. 23 (DV: Legal Framework) introduced to specifically criminalise domestic violence and include coercive and controlling behaviour | Substantive critical action<br>Critical actor: Elfyn Llwyd (PC)   |
| June 16, 2014     | Raised issue of coercive control during second reading in the House of Lords  | Substantive critical action<br>Critical actor: Lord Paddick (Lib Dem)   |
| June 18, 2014     | First Early Day Motion on coercive control (EDM 142) introduced by Elfyn Llwyd MP (PC)  | Substantive critical action<br>Critical actor: Elfyn Llwyd MP (PC)  |
| August 20, 2014   | Home Office consultation on whether to strengthen the law on domestic abuse (757 responses)   | Communicative critical action   |
| October 28, 2014  | House of Lords report phase; tabled amendment regarding coercive and controlling behaviour due to results of the consultation                       | Symbolic critical action<br>Critical actor: Lord Wigley (PC); Baroness Howe (CB); Lord Rosser (Lab); Baroness Stedman-Scott (Con); Lord Bates (Con) |
| December 18, 2014 | New offence of coercive and controlling behaviour detailed in ministerial statement   | Communicative critical action<br>Critical actor: Theresa May (Con); Elfyn Llwyd (PC)  |

| <i>Date</i>         | <i>Event</i>   | <i>Path step</i>  |
|---------------------|--|---|
| January 5, 2015     | Confirmed the tabling of amendments during the House of Commons second reading | Symbolic critical action<br>Critical actor: Theresa May (Con); Elfyn Llwyd (PC); Fiona Mactaggart (Lab); Maria Miller (Con) |
| January 20/22, 2015 | House of Commons Committee (6 <sup>th</sup> and 7 <sup>th</sup> Sittings)      | Symbolic critical action<br>Critical actor: Robert Buckland (Con); Elfyn Llwyd (PC); Seema Malhotra (Lab)                   |
| January 20, 2015    | Clause 9 added to the bill   | Substantive critical action   |
| January 23, 2015    | House of Commons Bill 160 (Clause 73 introduced)                               | Substantive critical action   |
| February 25, 2015   | House of Lords Bill 96   | Substantive critical action   |
| March 2, 2015       | Ping Pong (Lords Consideration of Commons Amendments)                          | Symbolic critical action<br>Critical actor: Lord Bates (Con); Baroness Smith (Lab)  |
| March 3, 2015       | Royal Assent   | Critical act  |

*Table 11: The critical path to the passing of the Serious Crime Act 2015*

### ***The Critical Juncture***

Prior to the inclusion of an offence of coercive control in the Serious Crime Act 2015 in England and Wales, the devolved parliament of Scotland was working to improve their own stance and action on violence against women and domestic violence. For instance, in 2007 the Women’s Coalition in Scotland, comprised of the Women’s Support Project, the Zero Tolerance Trust, Engender, Rape Crisis Scotland, and Scottish Women’s Aid, appealed to the Scottish government to “pledge its commitment to addressing violence against women over the next four years.”<sup>526</sup> This pledge, introduced via Shirley-Anne Somerville MSP (SNP), “call[ed] on the Scottish government to adopt a broad definition of violence against women, which makes the link between domestic abuse, rape and commercial sexual exploitation, and to continue provision of funding to violence against women projects.”<sup>527</sup> In December 2007, then-First Minister of Scotland, Alex Salmond

<sup>526</sup> “Stop Violence Against Women—Show Your Support in 3 Simple Steps!,” last modified 2007, <http://www.unison-scotland.org.uk/women/stopviolence.html>.

<sup>527</sup> “Stop Violence Against Women—Show Your Support in 3 Simple Steps!”

(SNP), signed the Statement of Intent put forward by the Women’s Coalition to show the Scottish government’s commitment to confronting violence against women in Scotland. In a report by End Violence Against Women in 2007, Scotland was found to be the ‘best story to be told.’<sup>528</sup> This conclusion was drawn because “the Scottish government [was] developing a strategic approach to addressing violence against women and had allocated... funding for services.”<sup>529</sup>

Following the signing of the Statement of Intent in 2007, the Scottish government expanded its definition, as proposed by the Women’s Coalition, to include ‘coercion’ into its definition on violence against women in 2009. In its published approach on tackling violence against women, the Scottish government defined violence against women as “actions which harm or cause suffering or indignity to women and children... The different forms of violence against women—including emotional, psychological, sexual and physical abuse, coercion and constraints—are interlinked.”<sup>530</sup> Prior to the Scottish government listing coercion in its official definition, it was considered to be a characteristic of psychological abuse by the government in 2007. For instance, in a review of effective interventions, the government stated: “Psychological abuse may include emotional abuse, harassment, humiliation, blaming, controlling or coercion, intimidation, threats of violence or abandonment, deprivation of contact, verbal abuse, and/or isolation or withdrawal from services or other supportive networks.”<sup>531</sup> The definition in England and Wales was updated in 2004, but made no mention of coercion. While it did include psychological abuse, coercion was not specifically referenced until the government ran a consultation in December 2011. Therefore, from 2004-2012, the definition of domestic violence in England and Wales included the following: “any incident of threatening behaviour, violence or abuse [psychological, physical, sexual, financial, or emotional] between adults who are or have been intimate partners or family members, regardless of gender or sexuality.”<sup>532</sup> The 2013 government update to the definition, initiated by the 2011 government consultation, will be discussed in more detail, as it is part of the critical

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<sup>528</sup> End Violence Against Women, “Map of Gaps: The Postcode Lottery of Violence Against Women Support Services,” (2007): 5.

<sup>529</sup> End Violence Against Women, “Map of Gaps,” 5.

<sup>530</sup> The Scottish Government, “Safer Lives: Changed Lives: A Shared Approach to Tackling Violence Against Women in Scotland,” (2009): 7.

<sup>531</sup> The Scottish Government, “A Review of Literature on Effective Interventions that Prevent and Respond to Harm Against Adults,” (2007): 10.

<sup>532</sup> Home Office, “Cross-Government Definition of Domestic Violence: A Consultation,” (2011): 6.

path, however it is important to point out that the consideration in Scotland of coercive and controlling behaviour is what this thesis identifies as the critical juncture for the inclusion of a specific offense of coercive and controlling behaviour in England and Wales, as shown in Table 12.

### ***Critical Actions***

Following the critical juncture described above, the House of Commons Home Affairs Select Committee released a report in June 2008 on domestic violence, ‘honour’-based violence, and forced marriage. In addition, the committee focused on domestic violence prevention, emergency interventions, resettlement and post-separation support, prosecution, perpetrators, partnerships, funding, and legislation. The committee “set out to hear at first hand from agencies and organisations working with victims, and with victims and survivors themselves. [They] were especially keen to involve individuals and groups who might not normally be reached by select committee enquiries.”<sup>533</sup> In order to do this, the committee held a seminar and conferences, visited various refuges and organisations, heard oral evidence regarding domestic violence, initiated an online consultation for those who experienced domestic violence and received written submissions from various government bodies and agencies.<sup>534</sup> One of the various conclusions and recommendations drawn from the committee report the committee recommended a revised definition of domestic violence due to the fact that 16-18 year olds were excluded from the government definition of domestic violence.<sup>535</sup> To this, the committee found that there was “little support for under-18s in abusive relationships. The existence of abuse in teenage relationships further underlines the urgent need for effective early education on domestic violence and relationships. ... We recommend that the Government consider amending its definition of domestic violence to include under-18s.”<sup>536</sup> While coercive control was not specifically mentioned in this recommendation, the report aided in widening the discussion on how domestic violence was defined during that time in England and Wales and presented the opportunity to widely discuss the topic with those who normally would not be heard in a parliamentary committee meeting or report, as mentioned above. In addition

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<sup>533</sup> House of Commons Home Affairs Committee, “Sixth Report of Session 2007-08,” 9.

<sup>534</sup> House of Commons Home Affairs Committee, “Sixth Report of Session 2007-08,” 9-10.

<sup>535</sup> House of Commons Home Affairs Committee, “Sixth Report of Session 2007-08” 137-138.

<sup>536</sup> House of Commons Home Affairs Committee, “Sixth Report of Session 2007-08,” 137-138.

to widening the discussion on the definition of domestic violence, it underpins the idea and the “urgent need for effective early education on domestic violence and relationships.”<sup>537</sup> Not only has this need been expressed throughout this case study, but this specific educational need is vital to the understanding of coercive control among young people but also between adults, as specified by Stark and other academics mentioned above.

Following the Home Affairs Select Committee report, the government ran a consultation in 2009 to generate a ‘national debate on eliminating violence against women and girls,’ and create an ‘integrated strategy to combat violence against women.’<sup>538</sup> Following the consultation, the government enacted a 2010 strategy to eliminate violence against women and girls and in order to do this, worked to introduce their strategic narrative in England and Wales in 2011. In addition to the consultation, strategy, and action plan, the government created a specific offense of stalking (evaluated in Case 1 of this case study). In the Call to End Violence Against Women and Girls strategy, the government described controlling behaviour, and used the term to describe perceptions and attitudes within teenage relationships and ‘honour’-based violence.<sup>539</sup> This association of controlling behaviour with teenage relationships is important, because coercive and controlling behaviour is initially brought up during the Serious Crime Act deliberations in reference to children and their parents, and will be discussed in further detail below.

The Violence Against Women Action Plan, released in March 2011, worked to provide information regarding exactly how the strategy would be carried-out. As stated by the government, “[b]oth the strategic narrative and action plan build on extensive consultation with the statutory sector, voluntary organisations, women and girls and the wider public.”<sup>540</sup> Priorities for the action plan included the prevention of violence, the provision of services, and protection against violence. It is important to reiterate what the government details as prevention, protection, and provision. In 2010/2011, the government specified that one of their priorities was to “prevent violence against women and girls from happening in the first place by challenging attitudes and behaviours which foster it and intervening early where possible to prevent it.”<sup>541</sup> In specific regards to societal attitudes

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<sup>537</sup> House of Commons Home Affairs Committee, “Sixth Report of Session 2007-08,” 33.

<sup>538</sup> HM Government, “Together We Can End Violence Against Women and Girls,” 3; Rights of Women, “Rights of Women’s Response to HM Government’s Consultation Paper,” (2009): 1.

<sup>539</sup> HM Government, “Together We Can End Violence Against Women and Girls,” 23, 68.

<sup>540</sup> HM Government, “Call to End Violence Against Women and Girls: Action Plan,” (2011): 1.

<sup>541</sup> HM Government, “Action Plan,” 3.



towards violence against women and girls, the action plan determined how long-term this process would be, but that it was important to attempt this change, and also set a medium-term goal of increasing the reporting of these incidents and improve confidence among victims and those that work within the sector.<sup>542</sup>

Protection is described in a similar sense, where one of the guiding principles is to “act now to ensure that all members of society are aware of how commonplace violence is, the impact it can have on the lives of women and children, and how everyone has a part to play in challenging violence.”<sup>543</sup> Protection also included early intervention and first responses where “[d]elivering an effective criminal justice system: Investigation; prosecution; victim support and protection; perpetrator programmes” was important to the success of the action plan.<sup>544</sup>

Lastly, the provision of services was mentioned as an important priority where levels of support needed to be adequate to help victim-survivors and those within the domestic violence sector, including frontline services, funding and sustainability and effective practice and training.<sup>545</sup> Interestingly, given the austerity measures currently taking place within England and Wales in 2015/2016, one of the guiding principles was to “send a clear signal to local areas that the provision of support to victims of VAWG [violence against women and girls] is a national priority by continued central funding to frontline services.”<sup>546</sup> Notably, at this time, coercive control was not specifically mentioned, although it was alluded to through various language that was used in reference to controlling behaviour and the provided UN declaration on violence against women definition from 1993. The action plan used this definition to underpin the United Kingdom understanding of violence against women. The definition agreed upon by the UN, as described in Chapter 2, includes “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”<sup>547</sup> The inclusion of ‘coercion’ is an important distinction, as it

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<sup>542</sup> HM Government, “Action Plan,” 2.

<sup>543</sup> HM Government, “Action Plan,” 4.

<sup>544</sup> HM Government, “Action Plan,” 8, 10; HM Government, “Together We Can End Violence Against Women and Girls: A Strategy,” 58.

<sup>545</sup> HM Government, “Action Plan,” 14, 18.

<sup>546</sup> HM Government, “Action Plan,” 14.

<sup>547</sup> HM Government, “Action Plan,” 1.

shows that since at least 1993 the UN viewed coercion as a deprivation of liberty and as acts of violence against women and girls, as described above. Furthermore, the exclusion of coercive and controlling behaviour up to this point is itself important. It shows that while coercion was implicitly considered within the strategy and action plan, it was not widely thought to be an obvious form of violence against women that needed addressing, at least from the viewpoint of the government. Additionally, because of the Home Affairs Committee report, the strategy and action plan, the government held another consultation; this time on the government definition of domestic violence.

According to the December 2011 Home Office Consultation on the cross-government definition of domestic violence, the above action plan helped lead the government initiative on how domestic violence was defined at this time. Ms. May stated: “Effective prevention can only happen when it involves all agencies, working together to common goals and a common understanding. That is why we are now consulting on the definition of domestic violence that all agencies and all parts of government should use.”<sup>548</sup> The consultation presented four options for consideration: 1. whether the government definition should stay the same, 2. whether the definition should be changed to include coercive control, 3. whether the definition should include 16 and 17 year olds, and 4. whether the definition should consider all children under the age of 18.<sup>549</sup> It was stated that the “consultation exercise is essential to enable the government to fully scope and explore the potential impacts of a number of options to widen the definition of domestic violence.”<sup>550</sup>

Moreover, ministers were concerned that the definition was not being applied rigorously enough, and also mentioned the Welsh definition of domestic violence in the consultation, stating: “Domestic abuse can go beyond actual physical violence. It can also involve emotional abuse, the destruction of a spouse’s or partner’s property, their isolation from friends, family or other potential sources of support, threats to others including children, control over access to money, personal items, food, transportation and the telephone, and stalking.”<sup>551</sup> Interestingly, the devolved parliament of Wales was mentioned in regard to their own definition, showing that the motivation to hold the consultation was based

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<sup>548</sup> Home Office, “Cross-Government Definition of Domestic Violence: A Consultation,” 3.

<sup>549</sup> Home Office, “Cross-Government Definition of Domestic Violence: A Consultation,” 5.

<sup>550</sup> Home Office, “Cross-Government Definition of Domestic Violence: A Consultation,” 4.

<sup>551</sup> Home Office, “Cross-Government Definition of Domestic Violence: A Consultation,” 9.

loosely on another territory's definition of domestic violence. This was also observed in the other cases presented in this case study.

In regard to including coercive control, it was stated that “[a]round one in four women will experience domestic abuse in their lifetime, often accompanied by years of psychological abuse.”<sup>552</sup> Psychological abuse is intrinsic to understanding coercive control and its effects on victim-survivors. Furthermore, “[c]oercive control is not currently reflected in the government's definition of domestic violence.”<sup>553</sup> This was one of the first explicit instances where coercive and controlling behaviour were mentioned in reference to actual government policy.

Following the government consultation on the definition of domestic violence, Ms. Cooper raised the issue of coercive control during a speech on September 19, 2012. She addressed the impact of coercive control's effects on teenagers, showing a similar trend of considering coercive and controlling behaviour in the context of young people and their relationships. Importantly, she raised the issue of austerity, and its effects on the sector, including legal aid, refuges, and support services. For instance, she stated: “the Government needs to take action over the scale of cumulative cuts to domestic violence services and their own legal changes which are making things worse.”<sup>554</sup> Notably, she pointed out that the definition is not statutory and essentially “does nothing to reverse this Government's decision to use much narrower criteria and tests for granting legal aid in domestic violence cases. Nor does it address the disproportionate cuts of 31 [percent] to refuges and services supporting women escaping violence.”<sup>555</sup> This message is important to the critical path because it begins to show the gap that was present once the government updated its definition of domestic violence. For instance, the definition attempted to identify domestic violence more broadly and include how domestic violence is ‘underpinned’ by a pattern of coercive control. But because the definition was not a legal one, the gap between theory and law became apparent, in that while coercive control was

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<sup>552</sup> Home Office, “Cross-Government Definition of Domestic Violence: A Consultation,” 3.

<sup>553</sup> Home Office, “Cross-Government Definition of Domestic Violence: A Consultation,” 3.

<sup>554</sup> “Nick Clegg Outlines New Domestic Violence Guidelines,” last modified September 19, 2012, <http://www.independent.co.uk/news/uk/politics/nick-clegg-outlines-new-domestic-violence-guidelines-8156796.html>.

<sup>555</sup> “Labour Party Speeches,” last modified September 19, 2012, <http://labour-speeches.sayit.mysociety.org/speech/596862>.

specifically mentioned as a central aspect of domestic violence, it was not reflected in the law as an explicit offense.

Following the consultation, in addition to the statement by Ms. Cooper, then-Deputy Prime Minister Nick Clegg MP (Lib Dem) released a statement that the government would expand the definition to include coercive control, stating: “These changes are about Government taking a lead to help expose the true face of domestic violence, which is much more complex and much more widespread than people often realise.”<sup>556</sup> This helps move attitudes away from domestic violence being seen as a single act to a pattern, and captures the larger picture of domestic violence. While the consultation called for an ‘overwhelming’ change in regard to the government definition, it was not ‘legally binding.’ In regard to this change, the Minister for Crime Prevention, Jeremy Browne (Lib Dem), cited the change as a way to “raise the profile of domestic violence as an issue.”<sup>557</sup> This is a vital statement as it shows how domestic violence was a priority policy area for the Liberal Democrats, and it demonstrates how this raised profile led to changes in regard to coercive control and how it was reflected under the law. Significantly, prior to the introduction of the Serious Crime Bill in June 2014, the new government definition of domestic violence came into effect in March 2013. Once the new definition came into effect, this paved the way for individuals to question the gap that this new definition left between the definition and the law surrounding coercive control. Because of this gap, Mr. Llwyd introduced Standing Order No. 23 on February 26, 2014 in hopes of creating a legal framework in regard to domestic violence. This legal framework was to include coercive and controlling behaviour, which at that time was neglected under the law. During this parliamentary debate, Mr. Llwyd stated that because of the new cross-government definition, “not all those behaviours are criminal offences, meaning that there are gaps in the current law that are failing victims of domestic violence. ... The principal gap in current legislative provisions is that coercive control is not considered an offence in the law of England and Wales.”<sup>558</sup> Following the introduction of this bill, it “failed to complete its passage through Parliament before the end of the session. This means the Bill will make

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<sup>556</sup> “Press Release: New Definition of Domestic Violence and Abuse to Include 16 and 17 Year Olds,” last modified September 19, 2012, <https://www.gov.uk/government/news/new-definition-of-domestic-violence-and-abuse-to-include-16-and-17-year-olds--2>.

<sup>557</sup> “Nick Clegg Outlines New Domestic Violence Guidelines.”

<sup>558</sup> House of Commons, “Parliamentary Debate, 26 February 2014, Vol. 576,” (2014): col. 283.

no further progress.”<sup>559</sup> While the bill did not make progress, it was an important symbolic move in terms addressing the gap that was exposed once the government updated their definition of domestic violence. Interestingly, the gap between this bill and the Serious Crime Bill was only four months.

During the second reading in the House of Lords on June 16, 2014, Lord Paddick (Lib Dem) raised the issue of coercive control in relation to children and physical child neglect.<sup>560</sup> He mentioned that many women had been convicted of neglect, not because they were perpetrators of neglect, but because they did not prevent the abuse perpetrated by their partner who “was exercising coercive control over them as well as abusing the child.”<sup>561</sup> Regarding this, Lord Paddick questioned why the government was taking the initiative to mention coercive control in relation to children, but not in relation to women and domestic violence.<sup>562</sup> To this, Lord Paddick stated that the government had not yet “taken the opportunity in this Bill to address what many women’s groups believe to be a legislative gap in domestic violence law to deal with psychological abuse and coercive control. Indeed, psychological abuse and coercive control, not individual incidents of physical violence, are the essence of domestic violence [sic].”<sup>563</sup> The gap mentioned demonstrates how the new government definition of domestic violence left a void between the legal definition and the law. While coercive control was mentioned as an aspect of domestic violence, it was not reflected in the law as a specific offense, similar to stalking and harassment legislation in Case 1.

Baroness Brinton echoed the same sentiments and agreed with Lord Paddick on this issue, especially in regard to ‘vulnerable’ young people, children, and women. This vulnerability was revealed during the Queen’s Speech debate which defined cruelty as both psychological and physical, and the effects of this vulnerability could lead to ‘risky’ or ‘anti-social behaviour’ in the future.<sup>564</sup> This is why coercive control fit within the Serious Crime Act in the first place. To this, Lord Taylor (Con) stated: “It is why we are amending the 1933 Act [referencing the Children and Young Persons Act 1933] to make it absolutely

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<sup>559</sup> “Domestic Violence (Legal Framework) Bill 2013-14,” last modified February 26, 2014, <http://services.parliament.uk/bills/2013-14/domesticviolencelegalframework.html>.

<sup>560</sup> House of Lords, “Parliamentary Debates, 16 June 2014,” col. 670.

<sup>561</sup> House of Lords, “Parliamentary Debates, 16 June 2014,” col. 670.

<sup>562</sup> House of Lords, “Parliamentary Debates, 16 June 2014,” col. 670.

<sup>563</sup> House of Lords, “Parliamentary Debates, 16 June 2014,” col. 670.

<sup>564</sup> “MPs Debate the 2014 Queen’s Speech,” last modified June 4, 2014, <http://www.parliament.uk/business/news/2014/may1/mps-debate-the-2014-queens-speech/>.

clear that children subject to cruelty likely to cause psychological suffering or injury are to be protected by law.”<sup>565</sup> It is because of this that Lord Paddick made his comment regarding why they were eager to amend the Children and Young Persons Act 1933 in relation to children, but not in regard to women and domestic violence. Supplementary to this, Baroness Brinton also mentioned stalking and harassment (evaluated in Case 2) stating: “As we did with the stalking legislation, it is very important to look at the behaviour of the perpetrator and to make sure that all the victims... are appropriately looked after.”<sup>566</sup>

While the Serious Crime Bill was being debated in the House of Lords, Mr. Llwyd introduced the first EDM on coercive control.<sup>567</sup> The motion was sponsored by fellow Labour and PC members John McDonnell, Jeremy Corbyn, Jonathan Edwards, Ian Lavery, and Kelvin Hopkins and garnered 68 signatures in total.<sup>568</sup> The motion read: “That this House believes that domestic violence is a serious crime; is concerned at the under-reporting of domestic abuse by victims and the low numbers of prosecutions; and support efforts to criminalise coercive control and violence in a domestic setting.”<sup>569</sup> In terms of the demographics of the signatories, only one Conservative member signed the EDM. The majority of signatories were members of the Labour party and Liberal Democrats, of which 15 were women. It is argued here that the increased profile surrounding domestic violence up to this point helped initiate the August 20, 2014 consultation on strengthening the law on domestic abuse. This increased profile included the new government strategy and action plan regarding violence against women and girls, an update to the definition, Standing Order No. 23, the second reading of the Serious Crime Bill, and EDM 142.

Because of this increased profile, the government again conducted a consultation regarding domestic violence. Beginning on August 20, 2014, the government stated: “This targeted consultation exercise is essential to enable the Government to fully scope and explore the potential impacts of strengthening the law on domestic abuse.”<sup>570</sup> This consultation follows what was identified above as a gap in the law by the Shadow Home Secretary, various

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<sup>565</sup> House of Lords, “Parliamentary Debates, 16 June 2014,” col. 695.

<sup>566</sup> House of Lords, “Parliamentary Debates, 16 June 2014,” col. 686.

<sup>567</sup> “Early Day Motion 142: Domestic Violence,” last modified June 18, 2014, <https://www.parliament.uk/edm/2014-15/142>.

<sup>568</sup> “Early Day Motion 142: Domestic Violence.”

<sup>569</sup> “Early Day Motion 142: Domestic Violence.”

<sup>570</sup> Home Office, “Strengthening the Law on Domestic Abuse: A Consultation,” (2014): 5.

women's organisations, and by sponsors and signatories of the above EDM. In regard to coercive control, the "consultation is specifically focused on whether we should create a specific offense that captures patterns of coercive and controlling behaviour in intimate relationships, in line with the Government's non-statutory definition of domestic abuse."<sup>571</sup> Following the consultation, there was an overwhelming majority of responses (85 percent of 757 responses) that were in favour of strengthening the law regarding domestic abuse.<sup>572</sup> In addition to this, 70 percent of respondents "felt the current law does not capture the Government's definition of domestic abuse."<sup>573</sup> As a result of the consultation, in addition to the 'raised profile' of domestic violence as an issue, the government was forced to reconsider its stance and legislation regarding domestic violence, especially considering that the respondents to the consultation included police forces, academics, professionals, charities, service providers, victims, and members of the public.<sup>574</sup> The variety of respondents shows that it was not only victims or charities that believed the law should be updated, rather it was members from a variety of backgrounds that believed it should be amended to include coercive and controlling behaviour.

Following the closing of the consultation on October 15, 2014, the House of Lords held the report phase of the Serious Crime Bill. The Lords tabled an amendment regarding domestic violence due to the results of the consultation. Lord Wigley (PC) stated: "The amendment was tabled partly in anticipation of the fact that Members of the other place are likely to table amendments on domestic violence during the Bill's later stages and it was thought that, as a result, this place too should have an opportunity to debate this serious offence."<sup>575</sup> Because of the gravity of coercive control, it was argued that adding this offence was well within the capacity of the Serious Crime Bill.<sup>576</sup> Further to this, Lord Wigley demonstrated how the conversation surrounding domestic violence has mostly been viewed as a non-partisan issue.

Baroness Howe (Cross Bencher) avowed her support of the amendments and followed her support with testimony and quotes from 'Laura.'<sup>577</sup> While describing the abuse that Laura

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<sup>571</sup> Home Office, "Strengthening the Law on Domestic Abuse: A Consultation," 5.

<sup>572</sup> Home Office, "Strengthening the Law on Domestic Abuse Consultation: Summary of Responses," (2014): 6.

<sup>573</sup> Home Office, "Summary of Responses," 5.

<sup>574</sup> Home Office, "Summary of Responses," 5.

<sup>575</sup> House of Lords, "Parliamentary Debates, 28 October 2014, Vol. 756, No. 47," (2014): col. 1145.

<sup>576</sup> House of Lords, "Parliamentary Debates, 28 October 2014," col. 1145.

<sup>577</sup> House of Lords, "Parliamentary Debates, 28 October 2014," col. 1147.

had suffered for three years from her ex-partner, Baroness Howe stated: “Laura’s case highlights why the law must change, to take account of all forms of domestic violence, emotional as well as physical... Her case also serves to show why police and prosecutors should look at the patterns of behaviour in these crimes.”<sup>578</sup> In addition to supporting the criminalisation of coercive control, the baroness stated that the “[t]raining of police and prosecutors must be improved, to take account of all methods of domestic abuse behaviour and to have regard of the impact that this debilitating crime can have on its victims.”<sup>579</sup> The importance of this statement will be discussed below.

In addition to debating the law surrounding domestic violence, the purpose of the amendment, according to Lord Rosser (Lab), was to provide context regarding the government consultation which sought to consider whether coercive control should be criminalised.<sup>580</sup> Further questions asked during the consultation revolved around whether there should be a register that would include ‘serial stalkers’ and ‘domestic violence perpetrators,’ the establishment of a new civil order surrounding ‘serial stalkers’ and ‘domestic violence perpetrators,’ the criminalisation of DVPNs and DVPOs breach, and should DVPNs and DVPOs cover Europe.<sup>581</sup> As stated by Lord Rosser:

The current law does not capture the Government's non-statutory definition of domestic abuse as there is no statutory framework around it. Currently, offenders can be prosecuted only for acts of physical violence, when such violence is often the culmination of psychological and minor physical abuse which constitutes domestic abuse, which is outside the reach of the existing criminal law and does not get reported until it has actually escalated into physical violence.<sup>582</sup>

Further to his point regarding the amendments and the consultation, was the mention of the United States and their introduction of specific domestic violence laws, where there has been a 50 percent increase in reported cases and an increase regarding the conviction of perpetrators.<sup>583</sup>

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<sup>578</sup> House of Lords, “Parliamentary Debates, 28 October 2014,” col. 1147.

<sup>579</sup> House of Lords, “Parliamentary Debates, 28 October 2014,” col. 1148.

<sup>580</sup> House of Lords, “Parliamentary Debates, 28 October 2014,” col. 1149.

<sup>581</sup> House of Lords, “Parliamentary Debates, 28 October 2014,” col. 1149.

<sup>582</sup> House of Lords, “Parliamentary Debates, 28 October 2014,” col. 1149.

<sup>583</sup> House of Lords, “Parliamentary Debates, 28 October 2014,” col. 1149.



Echoing the sentiments of Baroness Howe, Baroness Hamwee stated that in regard to domestic violence, more effort, prosecutions, resources, practice and training all needed to be prioritised.<sup>584</sup> Juxtaposed to Lord Rosser, Baroness Hamwee did not think making domestic violence a separate crime was necessary on the government's part.<sup>585</sup> She presented a different perspective in stating that organisations such as Refuge, believe domestic violence could be treated *less seriously* if domestic violence was made a separate offence, citing the phrase 'It's just a domestic.'<sup>586</sup> While she did not support the move to make domestic violence a separate criminal offence, she did support "legislation to fill any gaps."<sup>587</sup>

Baroness Stedman-Scott (Con) referenced the Victims' Voice Survey stating: "I am very glad to be discussing whether domestic abuse, including psychological abuse, coercive control and a pattern of abuse should be seen in the eyes of the law as a serious crime."<sup>588</sup> Baroness Stedman-Scott brought up 'other countries' that have 'successfully' legislated psychological abuse and coercive control.<sup>589</sup> This brings up the interesting question of whether the United Kingdom government specifically is more willing to legislate if other countries are successful with their own legislation. We saw this in previous cases of this case study above. Lord Bates (Con) supported the amendment, stating: "We want to see more perpetrators brought to justice. We do not want victims to be deterred from reporting by a legal framework or a criminal justice system that does not work for them."<sup>590</sup> Lord Bates further points out how 'operational improvements' can be used to manage both stalking and domestic violence perpetrators.<sup>591</sup> This references what Baroness Hamwee stated above in regard to more and improved resources, effort, practice, and training. Following this, the Serious Crime Bill was then put forth to the House of Commons to consider.

On December 18, 2014, Ms. May announced that the Liberal Democrat/Conservative coalition government would be introducing a new offence of coercive and controlling

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<sup>584</sup> House of Lords, "Parliamentary Debates, 28 October 2014," col. 1151.

<sup>585</sup> House of Lords, "Parliamentary Debates, 28 October 2014," col. 1151.

<sup>586</sup> House of Lords, "Parliamentary Debates, 28 October 2014," col. 1151.

<sup>587</sup> House of Lords, "Parliamentary Debates, 28 October 2014," col. 1151.

<sup>588</sup> House of Lords, "Parliamentary Debates, 28 October 2014," col. 1152.

<sup>589</sup> House of Lords, "Parliamentary Debates, 28 October 2014," col. 1152.

<sup>590</sup> House of Lords, "Parliamentary Debates, 28 October 2014," col. 1152.

<sup>591</sup> House of Lords, "Parliamentary Debates, 28 October 2014," col. 1152.

behaviour.<sup>592</sup> She announced that the offence would carry a maximum penalty of five years' imprisonment and an unlimited fine. As Ms. May demonstrated, the offence must be 'clear and proportionate' and should not interfere with the 'ordinary power dynamics' within relationships. This offence falls under the 'protection' section of the action plan put forth by the United Kingdom government, as described above. To reiterate the responses published by the government, 85 percent of respondents believed that the current law did not provide protection to victims of domestic violence.<sup>593</sup>

Once the amendments to the Serious Crime Bill were agreed upon, they were then sent to the House of Commons. On January 5, 2015 during the second reading of the bill then-Home Secretary Theresa May declared: "I confirm that we will table amendments in Committee to strengthen the protection afforded to the victims of domestic abuse."<sup>594</sup> Following his statement, Mr. Llwyd mentioned Lord Wigley and Baroness Howe in the House of Lords, his Ten Minute Rule Bill from February 2014, and how the updated government definition was not currently a legal one. For example, he stated how "[g]aps in the current legislation allow perpetrators of psychological, emotional and financial abuse to continue their abuse without facing recourse for their actions."<sup>595</sup> Juxtaposed to Baroness Hamwee and her comments during the report stage in the House of Lords about domestic violence being taken less seriously if it was a specific offence, Mr. Llwyd stated: "At present, in the absence of any laws relating specifically to domestic violence, conviction rates in England and Wales are depressingly low, and the crime is still under-reported. ... In American states where specific domestic violence laws have been adopted, conviction rates are impressive."<sup>596</sup> Following this, Fiona Mactaggart (Lab) and Ms. Miller both welcomed the amendments and the proposal to criminalise coercive and controlling behaviour. Ms. Miller specifically mentioned the campaigning that Women's Aid had been conducting in regard to this issue, as well as the campaigning of Ms. May.<sup>597</sup>

During the 6th sitting of the House of Commons committee meeting, Mr. Buckland stated: "Such abuse is hidden behind the closed doors of far too many families. We must bring

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<sup>592</sup> "Government to Create New Domestic Abuse Offence," last modified December 18, 2014, <https://www.gov.uk/government/news/government-to-create-new-domestic-abuse-offence>.

<sup>593</sup> "Government to Create New Domestic Abuse Offence."

<sup>594</sup> House of Commons, "Parliamentary Debates, 5 January 2015, Vol. 590, No. 84," (2015): col. 88

<sup>595</sup> House of Commons, "Parliamentary Debates, 5 January 2015," col. 88.

<sup>596</sup> House of Commons, "Parliamentary Debates, 5 January 2015," col. 88.

<sup>597</sup> House of Commons, "Parliamentary Debates, 5 January 2015," col. 107; 111.

domestic abuse out into the open if we are to end it. The first step is to call it what it is: a crime of the worst kind.”<sup>598</sup> This is important because it names coercive and controlling behaviour for what it is: a crime and a form of domestic violence, and also shows how domestic violence can evoke a sense of secrecy and something shameful. In regard to a question raised about ‘funding barriers’ by Andy McDonald (Lab), Mr. Buckland responded by stating that more refuges and rape crisis centres had been opened, as they are a “vital resource for many women who have nowhere else to turn.”<sup>599</sup> This is an interesting statement given the various austerity measures and cuts to this specific sector that have been mentioned throughout this chapter. Mr. Buckland made the important distinction during the committee meeting of the differences and also similarities between stalking behaviour and coercive control, stating that stalking laws do not sufficiently cover the behaviour that was identified as coercive and controlling behaviour.<sup>600</sup> To this he stated, “[w]e must create a new offence that makes it crystal clear that a pattern of coercion is as serious within a relationship as it is outside one. In many ways worse, because it plays on the trust and affection of the victim. That is why we need a new offence.”<sup>601</sup> Because the crimes are fundamentally different, as Mr. Buckland pointed out, it was essential that the government create this new offence in order to cover behaviour that was not previously covered under other legislation, namely, stalking legislation. Following this acknowledgement, Mr. Buckland introduced the new clause, intended to close a gap that was revealed and exposed due to the update to the government definition of domestic abuse in 2013.<sup>602</sup> As stated by Mr. Buckland, “[t]he new offence seeks to address repeated or continuous behaviour in relationships where incidents viewed in isolation might appear unexceptional but have a significant cumulative impact on the victim's everyday life, causing them fear, alarm or distress.”<sup>603</sup> Importantly, Mr. Buckland reiterated that this legislation, or any, was not a replacement for police training or responses to domestic violence.<sup>604</sup> In order to afford victim-survivors protection and provision, and prevent violence in the future, implementation is a vital aspect to this, and especially to the government's action plan and strategy to ending violence against women and girls.

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<sup>598</sup> House of Commons, “Public Bill Committee, 20 January 2015, Session 2014-15,” (2015): col. 171.

<sup>599</sup> House of Commons, “Public Bill Committee, 20 January 2015,” col. 171.

<sup>600</sup> House of Commons, “Public Bill Committee, 20 January 2015,” col. 171-172.

<sup>601</sup> House of Commons, “Public Bill Committee, 20 January 2015,” col. 172.

<sup>602</sup> House of Commons, “Public Bill Committee, 20 January 2015,” col. 172.

<sup>603</sup> House of Commons, “Public Bill Committee, 20 January 2015,” col. 172.

<sup>604</sup> House of Commons, “Public Bill Committee, 20 January 2015,” col. 173.

Following the statement by Mr. Buckland, Mr. Llwyd presented the new proposed clauses. Clause three offered the offence of coercive control within a domestic violence circumstance; clause four placed no statutory time limits on the coercive control offence; clause five gave the definition of domestic violence, and clause six put forward training, standards, and policies where “every police service in England, Wales, and Northern Ireland [develops] and [adopts] written policies and standards for officers’ responses to coercive control and domestic violence incidents, within one year of the Act coming into force.”<sup>605</sup> This is especially important because training has been identified as a major impediment to effective implementation of legislation by victim-survivors, those working within the sector, and those within the government: “It is absolutely vital that we get the training done as soon as possible.”<sup>606</sup> Mr. Llwyd again mentioned research in the United States, as well as research conducted by Refuge, and testimony and activism by Eve Thomas, the catalyst behind Eve’s Law.<sup>607</sup>

Reiterating support and the importance of criminalising coercive and controlling behaviour, Seema Malhotra (Lab) specified how Labour had previously called for coercive control to be specifically criminalised, citing evidence of Ms. Cooper’s statement in 2012.<sup>608</sup> In addition to showing her support, Ms. Malhotra said that while Labour welcomed the new law, effective usage of the law was important. For example, she stated: “We welcome the change to the law, but with the caveat that it must be used properly and effectively to tackle domestic abuse and give victims the confidence to come forward early.”<sup>609</sup> It is easy to observe the trend specifically within this case when it comes to police training and implementation of the law. For example, Norman Baker (Lib Dem) detailed: “we need a combination of appropriate law and appropriate enforcement. My impression was that a large part of the problem was that the police did not have the correct mindset to take matters forward and were not looking at this issue with the seriousness that

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<sup>605</sup> House of Commons, “Public Bill Committee, 20 January 2015,” col. 174-177.

<sup>606</sup> House of Commons, “Public Bill Committee, 20 January 2015,” col. 178.

<sup>607</sup> House of Commons, “Public Bill Committee, 20 January 2015,” col. 177. Eve Thomas was subjected to violence by her ex-husband for over 20 years. She had refused to reveal her address in court for fear that she would be victimised by her ex-husband. ‘Eve’s Law’ would provide that victim-survivors of domestic violence do not have to give personal details in open court. More information regarding this case can be found at the following webpage: <http://www.bbc.com/news/uk-25420042>.

<sup>608</sup> House of Commons, “Public Bill Committee, 20 January 2015,” col. 179.

<sup>609</sup> House of Commons, “Public Bill Committee, 20 January 2015,” col. 180.

Members of Parliament have been looking at it. It is that, more than anything else, that needs to change.”<sup>610</sup>

While the totality of the conversation and debate regarding coercive and controlling behaviour was in the context of domestic violence, the bill rarely makes reference specifically to ‘domestic violence’ or ‘domestic abuse.’ As Mr. Buckland makes clear, “[t]hat is deliberate. ... Victims would not be assisted by the creation of artificial definitions that could be misused. We did not fall into that trap when it came to the law on stalking and harassment.”<sup>611</sup> Further, does the non-reference to domestic violence specifically, keep it a hidden crime? The new offence clearly concerns situations of domestic violence and relationships yet it is not named within the actual legislation. While it could be argued that this is so that the legislation is not ‘over-prescriptive,’ as Mr. Buckland suggests, it could however also be suggested that this could create confusion and also a downgrade in regard to the seriousness of the coercive and controlling behaviour.<sup>612</sup> It is because of the non-reference to domestic violence in the legislation that Mr. Buckland argues against Mr. Llwyd's causes. He detailed: “We do not want victims to be deterred by a legal framework that does not work for them and that captures circumstances that fall short of the isolation and control they have experienced. I fear, despite the right hon. Gentleman's admirable intentions, that his new clauses could create loopholes and that they would fall short of aspirations that he rightly has.”<sup>613</sup> The original clauses relating to coercive control were added to the bill, with Mr. Llwyd conceding new clauses three to six. Following the committee meeting on January 20, 2015, the House of Commons held another committee meeting where the amendments in regard to the coercive control offence were discussed and agreed upon. As Mr. Llwyd stated: “It is an important Bill in many ways and I am delighted that it was the vehicle for my coercive control change to the law.”<sup>614</sup> It is interesting that Mr. Llwyd is claiming ownership of this legislative success. This could either be because of an element of ‘political party grandstanding’ where he is claiming a moral ground regarding these clauses on behalf of his party’s success on this issue, or his own invocation of the traditional notion of men feeling a responsibility to

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<sup>610</sup> House of Commons, “Public Bill Committee, 20 January 2015,” col. 186-187.

<sup>611</sup> House of Commons, “Public Bill Committee, 20 January 2015,” col. 188.

<sup>612</sup> House of Commons, “Public Bill Committee, 20 January 2015,” col. 188.

<sup>613</sup> House of Commons, “Public Bill Committee, 20 January 2015,” col. 189.

<sup>614</sup> House of Commons, “Public Bill Committee, 22 January 2015, Session 2014-15,” (2015): col. 232.

protect women. Following this, the Serious Crime Bill was then put forth to the House of Lords for consideration of the Commons amendments.

After the seventh sitting of the House of Commons committee meeting on January 22, 2015, the House of Lords considered any amendments made to the Serious Crime Bill. In reference to the coercive control offence, Lord Bates announced that the House of Lords had accepted the amendments.<sup>615</sup> He stated: “The sad fact is that we are still grappling with a reality where many people think a crime has been committed in a relationship only if violence is involved.”<sup>616</sup> This is an important emphasis because as was already discussed above, it depends how ‘violence’ is defined. Research has shown that psychological abuse and controlling behaviour can be just as destructive as physical violence, and is often accompanied with physical violence. This recognition by the government is an essential step to preventing domestic abuse, as well as for protection and provisions, as outlined in the action plan described above. Delivering another comparison to stalking and harassment, Lord Bates specified: “The new offence makes it clear that abusing someone in a relationship is every bit as serious as stalking or harassing a stranger. It applies to repeated or continuous behaviour in relationships... [which] has a significant cumulative impact on the victim’s everyday life. It causes them to feel fear, alarm or distress.”<sup>617</sup> Following this, Baroness Smith reiterated how passing legislation does not eradicate problems.<sup>618</sup> This is a significant distinction as legislation is often pointed to as only a vehicle for solving these problems, and not completely eliminating them.

### ***The Critical Act***

Following the path through the House of Commons and the House of Lords, the Serious Crime Bill was given Royal Assent on March 3, 2015. The signing of this legislation marked a key moment for English and Welsh law by passing a new offence of coercive and controlling behaviour. Importantly, for the victim-survivors of this violence, the legislation helped further the conversation regarding what ‘counts’ as domestic violence and the various forms it can take. Prior to this, as stated by the Domestic Violence Law Reform Campaign, “The laws used to prosecute domestic violence... do not describe its

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<sup>615</sup> House of Lords, “Parliamentary Debates, 2 March 2015, Vol. 760, No. 110,” (2015): col. 64.

<sup>616</sup> House of Lords, “Parliamentary Debates, 2 March 2015,” col. 65.

<sup>617</sup> House of Lords, “Parliamentary Debates, 2 March 2015,” col. 66.

<sup>618</sup> House of Lords, “Parliamentary Debates, 2 March 2015,” col. 67.

essence. Patterns and power and control are missed. It misses the fact that domestic violence, particularly in intimate relationships, is about fear, coercive control and continuing acts. It is primarily a pattern of abuse, not a single incident.”<sup>619</sup> This legislation attempts to change that feeling and bring about a new, inclusive, and comprehensive law surrounding domestic violence.

Because of the critical act in England and Wales creating a specific offence regarding coercive control, as of October 14, 2016, Northern Ireland is considering legislating against coercive and controlling behaviour, where there is one report of domestic violence in Northern Ireland every 18 minutes.<sup>620</sup> Therefore, not only can policy in other territories influence law in England and Wales, the same can be said for their influence on other territories, in this case Northern Ireland. In terms of the legislation passed in England and Wales regarding coercive and controlling behaviour, the new law was only used 62 times in the first six months of its implementation, with eight out of 22 forces not using the offence once, and only nine out of 22 forces using the offence two or few times.<sup>621</sup>

Increased awareness, understanding of the new legislation, and specialist training have been identified as vital in order for the offence to have any effect. The low number of charges was not due to a low number of incidents. For example, in 2014 Citizens Advice spoke with 3,000 victims of psychological abuse and 900 victims of financial abuse, showing that these types of abuse are common, but that they are either not reported, investigated, or charged by the police.<sup>622</sup> In regard to this, Emma Pearmaine, head of family services at Simpson Millar law firm, stated: “One of the biggest concerns when it comes to coercive control is that victims are not aware that being isolated from friends or family, having access to money and bank accounts restricted, or even having personal medical conditions revealed, is domestic abuse and, now, a criminal offence.”<sup>623</sup> Ms. May reiterated these concerns by stating that the offence was not being used ‘systematically.’ Further evidence that the new law was not being used consistently, appeared in a report by the College of Policing. They identified that police were continuing to overlook various

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<sup>619</sup> Paladin, Sara Charlton Charitable Foundation, and Women’s Aid, “Domestic Violence Law Reform Campaign,” (2014): 2.

<sup>620</sup> “Claire Sugden: Laws Against Coercive Control to be Introduced in NI,” last modified October 14, 2016, <http://www.bbc.com/news/uk-northern-ireland-37652771>.

<sup>621</sup> “Police Failing to Use New Law Against Coercive Domestic Abuse,” last modified August 31, 2016, <https://www.theguardian.com/society/2016/aug/31/police-failing-to-use-new-law-against-coercive-domestic-abuse>.

<sup>622</sup> “Police Failing to Use New Law Against Coercive Domestic Abuse.”

<sup>623</sup> “Police Failing to Use New Law Against Coercive Domestic Abuse.”

risk factors and were too focused on physical violence. Some police officers continued to have ‘negative’ and ‘uninformed’ attitudes where “[a] tendency for the police to focus on physical violence and what has occurred at the current incident can result in them missing abuse which is characterised not by physical violence and injury but by continuous coercion and control in other forms.”<sup>624</sup> Because the offence is not being used to its full capacity, the College of Policing has set up a pilot scheme for officers in order to aid them in recognizing coercive and controlling behaviour.<sup>625</sup>

### **Findings: Case 4**

For the fourth case, the Serious Crime Act 2015, the devolved parliament of Scotland was found as the critical juncture due to their passage of legislation regarding coercive and controlling behaviour. While not directly cited as the sole reason for the update in England and Wales, it was mentioned numerous times in Chapter 4, similar to instances in other cases. In addition to Scotland being identified as the critical juncture, the United States was also mentioned as inspiration and reasoning for the consultation.

Interestingly, the legislation in England and Wales was first, and repeatedly, considered in relation to children. Further, coercive and controlling behaviour was cited as vulnerability following abuse or risky and anti-social behaviour, showing why it was important to the Serious Crime Act. With regard to the representation process described in Chapter 4, the legislation was not wholly conceived of in parliament by MPs. It was instead campaigned for, consulted on, and then addressed in parliament.

Similar to the other three cases in this study, the proposed offence had all-party support and there was anticipation in the House of Commons that ‘the other place’ (the House of Lords) would table amendments because of the updated government definition and the upcoming consultation on whether or not to change the law regarding domestic violence. While the new offence had all-party support, it did not have unanimous support. Many called for operational improvements or a new offence altogether. This was ultimately argued against, because the gap would continue to persist whether operational

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<sup>624</sup> “Police Train to Spot Coercive or Controlling Behaviour,” last modified September 21, 2016, <http://www.bbc.com/news/uk-37425917>.

<sup>625</sup> “Police Train to Spot Coercive or Controlling Behaviour.”



improvements were made or not. Therefore, it was reasoned that there should be improvements but also a new offence. Again, while there was all-party support, there was not unanimous support among male and female representatives. For example, those who welcomed the provisions were men and women from various parties, whereas those who opposed the provisions, or spoke up against them, were mostly men.

Interestingly, ‘The Archers,’ a BBC radio series that features an abusive relationship, was identified as an ‘awakening force’ in bringing more attention and shedding light on coercive and controlling behaviour. This begs the question of the extent of the effect of popular culture on society’s views on issues such as domestic violence. While it is too large a question to fully contemplate in this thesis, it is still worth posing. The storyline of ‘The Archers’ is the ‘systematic undermining of her [Helen’s] personality,’ also referred to as the ‘drip drip effect.’<sup>626</sup> Importantly, the story avoids the “standard depiction of abuse as daily physical violence.”<sup>627</sup> While the story aired, the National Domestic Abuse Helpline received a 20 percent increase in calls from February 2015-February 2016.<sup>628</sup>

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<sup>626</sup> “The Archers: What Effects has the Rob and Helen Story Had?” last modified April 5, 2016, <http://www.bbc.com/news/magazine-35961057>.

<sup>627</sup> “The Archers: What Effects has the Rob and Helen Story Had?”

<sup>628</sup> “The Archers: What Effects has the Rob and Helen Story Had?”

## Chapter 5: Contributions

This chapter will offer the outcomes for this research by considering the following findings relating to SRW in England and Wales, but also regarding the substantive representation more generally, using inferences from this single case study. To reiterate, this thesis attempted to evaluate SRW concerning domestic violence legislation in England and Wales, by conducting a detailed case study using the critical path framework. As stated in Chapter 1, more women entering politics has led to questions regarding so-called ‘women’s issues’ and whether women make a difference in reference to these issues. This thesis sought to move beyond the question of whether women represent women, and instead, focused on the representation process as a whole to find out what SRW in the context of England and Wales actually means. This approach sought to widen the scope and move beyond seeing women as a homogenous group, with uniform interests and unvarying political motivations. Given this, the main aims of this thesis were to: implement a formalised critical path framework surrounding SRW, use this framework to research the impact of SRW on domestic violence legislation in England and Wales, draw conclusions on SRW, and expand future knowledge regarding the political representation of women, as well as its effects on violence against women legislation. To achieve these aims, this thesis considered the following research question: what does SRW mean in England and Wales, regarding domestic violence legislation?

The four cases assessed within the case study were the Crime and Security Act 2010, the Protection of Freedoms Act 2012, the Criminal Justice and Courts Act 2015, and the Serious Crime Act 2015. The critical path framework was used to answer the following seven questions: 1) When does SRW occur; 2) why is SRW attempted; 3) who acts in SRW; 4) how is SRW manifested; 5) where does the substantive representation occur; 6) in relation to which women is substantive representation expressed; and 7) what policies are passed or debated. By using these questions and developing this critical path

framework, I am adding to the conversation around SRW. Further, this critical path framework allows the researcher to see how various actors, sites, and actions interact during the representation process itself. This framework allows a more standardised way to evaluate representation and makes it easier to draw comparisons across case studies, periods of time, or pieces of legislation. This not only expands the representation process, but provides a more systematic and step-by-step means of interrogating the process.

This framework, and the study of substantive representation in general, includes acts and acting for the represented and views representation as a complex structure, rather than a linear course of action. Evaluating substantive representation is important, rather than simply measuring descriptive representation, because numbers do not equal an understanding of behaviour, and why representatives and legislators may attempt to represent one group. For example, the concept of critical actors evaluates who the actors are, and it brings opportunities for other actors to enter the conversation, such as men, non-left, or non-feminist actors who claim to act on behalf of women. Additionally, *how* do these actors claim to act for women? What is the interaction between descriptive representatives, acts, and actors? This thesis has endeavoured to answer these questions. It has also attempted to address various gaps that exist within the literature including how domestic violence specifically is represented, as it is not a specific crime; whether party allegiances are important to substantive representation; the evaluation of men, non-left, and non-feminist actors and the expansion of how sites of representation are explored. Further, because WPAs have moved to diversity agencies in England and Wales, how has this affected their representation within the policymaking process? Are they silent and/or non-existent?

## **Contributions**

These four cases have yielded various findings relating to SRW in England and Wales, as presented above. In general, some questions from the critical path framework provide more insight than others into the representation process. Overall, this thesis contributes to our understanding of democracy and policymaking in various ways. In terms of critical actors, the results are mixed. Men and women were both observed as critical actors. As stated earlier in this thesis, this observation could be because domestic violence has been identified as an issue of importance to all actors previously surveyed therefore, this finding

may not seem significant in terms of men and women as actors. What is significant about this finding however, is the question of what makes SRW different then from other types of representation if actors continue to be mostly men, especially in regards to an issue where they are not the individuals primarily affected? This question comes back to the concern of whether men can substantively represent women, especially on problems where experience matters, such as domestic violence. The large-scale conversation regarding SRW will continue to show both men and women as critical actors due to the fact that currently account for a significantly less amount of MPs than men. This issue could come back to the concept of descriptive representation and how any evaluation of the political representation of women will include men as the majority of representatives, both descriptively and substantively.

While the four cases within the case study were regarding the same policy area, there are further conclusions that can be drawn about substantive representation in England and Wales, as well as the study of substantive representation in general. For example, the literature examined in Chapter 1 almost exclusively focuses on the House of Commons or elected bodies within legislatures and avoids the House of Lords as a representative body. Yet, in these four cases specifically, peers held a representative responsibility although they were not elected by their constituents. For example, in three of the four cases, the amendments for the policies were introduced in the House of Lords, not the House of Commons. The Crime and Security Act 2010 was the only example of the amendments being introduced in the House of Commons. This is an important finding as it shows that while the Commons is often thought of as the representative body, it does not necessarily mean that it is always more representative or the leader with regard to issues of public importance.

As stated in Chapter 2, the concept of political time is often understudied within the body of work on SRW. However, the concept of political time became important within the case study, as legislation was proposed or added in juxtaposition or sequence to either other issues or the dissolving of parliament. The concept of political time functions in conjunction with the parties in power at the time of legislation. For example, legislators pointed to ‘washing up’ as a motivation for passing legislation, showing how parties wish to take a political ‘win’ before the next parliament is elected. This was evidenced most prominently in the evaluation of the Crime and Security Act 2010 where parliament was

dissolving, with the general election to follow a month after the act received Royal Assent. The government was also preparing for their new action plan on combating violence against women and girls and unquestionably wanted to pass this legislation before both events. However, the party in power did not take the lead in initiating these legislative changes in three of the four cases. Therefore, party affiliation does not necessarily indicate who will act on this issue. Additionally, personal experiences seemed to play an important role in either introducing or supporting this legislation, where MPs were contacted by constituents or had personal relationships with victim-survivors of violence. These experiences and relationships were often spoken of during parliamentary debates, but also within speeches and announcements of support for particular legislation.

The discrepancy between descriptive and substantive representatives is sometimes rectified by the party argument where it is argued that while there are differences based on sex, party affiliation can make up for this, for example, Labour party members might be more inclined to act on various issues than Conservative party members and therefore, having Labour members who are men may be more effective than having Conservative members who are women. This was not necessarily true for this case study. In the case of the Crime and Security Act 2010, the Labour party was in power and did propose the 'go' orders. On the other hand, the Conservative party was in power for the remaining three cases and did not propose the legislation evaluated. The Liberal Democrat party actually took the lead, and a member of the Plaid Cymru party, in three of the four cases. There is a suggested degree of consensus on this issue between the various parties, although on occasion there is a sense of parties claiming for themselves a moral ground by taking ownership of key clauses or amendments, such as in the case of Mr. Llwyd during the evaluation of Case 4. Therefore, while violence against women and domestic violence was an issue of importance to all actors in a previous study described in Chapter 1, the Liberal Democrat and Labour parties took the lead in regard to policy development and proposals. While the Conservative party supported the measures in general, they were not behind the push for legislative change, regardless of their majority in the legislature.

By employing the critical path framework and identifying critical junctures in each of the four cases, regional and international actors were illuminated as important motivations for introducing legislation in England and Wales. England and Wales were not leaders in regard to legislation on domestic violence, especially prior to these four pieces of

legislation. This was evidenced by the UN, representatives, organisations, and individuals who debated each issue. In each of the four cases, legislation was influenced by other territories' action on this issue. In Case 1, the critical juncture was initiated by international precedent on the issue. This was evidenced in Case 2, Case 3, and Case 4.

Similar to how international and regional actors played an important role in the foundation of the policymaking process on this issue, public consultations functioned as a significant step in all four cases, showing the power of public participation in the policymaking process. Importantly, victim-survivors were vital actors in this sense. Notably, they are not usually considered as actors within the policymaking process, yet they contributed greatly to the development of legislation by testifying, campaigning, or participating in government consultations. Another actor that played an important role in the policymaking process was the WNC in Case 1. While WPA's were not observed as having a significant impact in the other three cases, the WNC played a noteworthy role in the passing of the Crime and Security Act 2010. To reiterate, they conducted a series of focus groups in order to inform the cross-government consultation about violence against women and girls. Under the 'protection' theme, one of the recommendations from the WNC was the introduction of 'go' orders into legislation. Not only did the WNC inform the policymaking process, as evaluated as part of the critical path framework, they were able to conduct their focus groups with women of various identities including those who identified as:

Black and minority ethnic (BME) women; Traveller women; older women; girls and young women; disabled women; transgender women; lesbians; bisexual women; asylum seeking women and refugee women; women trafficked into the [United Kingdom]; women offenders including women in prison; women in the sex industry and in prostitution; 'vulnerable' women (survivors of abuse, homeless women, women with mental health and substance misuse problems); women from rural areas; women night-shift and retail workers; women survivors of rape and sexual violence, and women survivors of female genital mutilation.<sup>629</sup>

This is significant as it shows the ability of the WNC to not only influence the process of formal policymaking, but also the ability to interview and take in the views of various

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<sup>629</sup> Women's National Commission, "Still We Rise," 4.

groups of women that may otherwise be silenced. As stated by the WNC, “[w]e were asked by the Home Office to run a series of women-only focus groups across England, in recognition of the importance of women’s participation in the development of a strategy to end violence against women and girls.”<sup>630</sup> As is evidenced throughout this thesis, informal networks of women, specifically victim-survivors of domestic violence, are able to express their positions either online or in person to their respective MPs, in hopes of affecting policy change.

As stated in Chapter 1 of this thesis, WPA’s have transitioned from women’s policy agencies to diversity agencies. There have been few reports published on violence against women since the WNC merged with other government agencies to create the Government Equalities Office (GEO) and there was no mention of WPA’s or diversity agencies after this merger that was observed in the case study. This is an important finding because it shows that when present, WPA’s play a vital role in connecting together women’s movement voices with government. Before their merger with the GEO, the WNC was “the independent advisory body on women’s issues in government. The WNC partnership [included] over 500 stakeholders from across the [United Kingdom] women’s sector... which in turn represents around [eight] million women.”<sup>631</sup> Obviously, if they do not exist, WPA’s do not play this independent advisory role. What I did find in the other three cases without WPA influence was that organisations filled the gap. Therefore, while WPAs were absent, some of the stakeholders from across the women’s sector continued to be influential and help inform the policy process and use women’s movement goals to affect the formal government process.

Moving forward, WPAs will not likely be re-established in England and Wales, and therefore it is important that the women’s sector and various organisations continue to fill this gap. A similarity that all four cases hold is that there was some sort of influence over government actors’ representation. In all cases, actors pointed to either the WNC’s work (in Case 1), or other organisations that had either drawn awareness to an issue, or worked in conjunction with the government to address the policy area of domestic violence. For example, in Case 2, PAS and NAPO helped to conduct research on both victim-survivors and perpetrators regarding stalking and helped to underpin the government’s decision to

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<sup>630</sup> Women’s National Commission, “Still We Rise,” 10.

<sup>631</sup> Women’s National Commission, “Still We Rise,” 9.

move forward on stalking law reform. Similarly, in Case 3, Women's Aid, the National Stalking Helpline, and UK Safer Internet Centre had worked on the issue of revenge pornography and had the same impact as seen above. In Case 4, the Women's Coalition in Scotland helped the Scottish government address violence against women, which eventually led to the critical juncture observed in England and Wales. Interestingly, APPG's also played an important role in perhaps filling the gap left by the transition of WPAs to diversity agencies. Unlike WPAs, APPG's are informal groups within parliament, but they are cross-party groups made up of men and women and help to 'contribute to the development of policy.'<sup>632</sup> Further, there is a specific group for domestic violence, of which Women's Aid participates. Therefore, in cases where a WPA may not exist, or does not operate within a specific policy area, APPG's may be a helpful tool to add to the evaluation of representation. Coalitions and women's organisations and groups cannot be underestimated in their influence prior to and during the policymaking process. This contributes to our understanding of democracy by furthering the idea presented in this case study that the policymaking process is more complex than MPs simply introducing and passing legislation. It encompasses a variety of actions, sites, and actors.

In Chapter 1 of this thesis, feminist theories on violence against women were presented, and later used during the analysis of the case study. Feminist theories on violence against women underpinned my understanding of the issue in the English and Welsh context by carrying the following assumptions, as described in Chapter 1: gender, patriarchy, and power are important features that explain men's violence against women. Matters of difference are important features of feminist theory, where race, class, gender, and sexuality are experienced differently by individuals within society. This was kept in the forefront of my analysis when MPs were specifically discussing victims of violence, and whether they positioned these victims along a spectrum of intersectionality. In Chapter 2 of this thesis, it was detailed how feminist research methods would be used throughout this case study. I was able to conduct feminist research by rejecting the distinction between the public and private spheres and pay attention to unequal power relations, relationships, marginalization, and positioning myself within the research. I was able to do this while still objectively not focusing solely on feminist goals of certain actors. As stated in Chapter 2, some political actors may make claims to act on behalf of women, but those claims may

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<sup>632</sup> "All-Party Parliamentary Groups," accessed September 25, 2017, <http://www.parliament.uk/about/mps-and-lords/members/appg/>.



not be feminist. My research focused on SRW, and included men in that analysis, and therefore the nucleus of analysis concentrated on gender.

By using these theories and research methods to examine the process as well as the actors, I found that while MPs were not always framing the issue of domestic violence in explicitly feminist terms, they do use often use language that can be attributed to feminist theories and that points to feminism as a normative approach to making this issue ‘matter’ to their other colleagues. While Westminster is not a venue where feminist values and legislation are often drafted, the invocation of feminist language into the debate is a significant finding, as it shows the mainstreaming of some feminist ideas, such as coercive and controlling behaviour, that may not have been considered before the women’s movement and network feminism. This points to how the significance of feminism is related to the significance of representation. Both question the status quo, share common experiences, engage in collective action and networks, and politicise issues.

Lastly, in regard to the culture of violence against women described in earlier chapters of this thesis, it seems that this issue specifically intersects with politics and politicians in a way that often does not directly intersect with male politicians’ lives. This is evidenced by way of the murder of Jo Cox in 2016, and how many women MPs became fearful of being attacked within their own constituencies, but also about the fear of violence that accompanies all women throughout their whole lives. As stated by Krook:

The assassination of Jo Cox in June 2016... brought this issue into greater focus—and highlighted that women, in particular, appear to be targeted more often and more viciously than their male colleagues. Although there were calls following Jo Cox’s death for violent threats towards female MPs to be taken more seriously, incidents of online bullying and offline harassment seem—in contrast—to be growing more common. Over the past year, numerous MPs have reported online rape and death threats, including Jess Phillips, Yvette Cooper, and Anna Soubry.<sup>633</sup>

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<sup>633</sup> “Politics as Usual?: Rising Violence against Female Politicians Threatens Democracy Itself,” [http://blogs.lse.ac.uk/politicsandpolicy/politics-as-usual-rising-violence-against-female-politicians-threatens-democracy-itself/?utm\\_content=bufferf9377&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](http://blogs.lse.ac.uk/politicsandpolicy/politics-as-usual-rising-violence-against-female-politicians-threatens-democracy-itself/?utm_content=bufferf9377&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer).

This is also demonstrated through George Osborne’s comments on Ms. May, stating that “he would not rest until [she] was ‘chopped up in bags in my freezer’.”<sup>634</sup> Ms. Creasy, Angela Eagle, Diane Abbott, and Luciana Berger have also encountered this type of harassment.<sup>635</sup> This sort of rhetoric has pressed the Government to conduct a review into abuse and intimidation in elections in the United Kingdom. The Cabinet Office stated: “The independent committee will look at the nature of the problem of intimidation. ... A number of candidates have come forward about abuse they experienced during the campaign for the 2017 General Election.”<sup>636</sup> While the review will not focus solely on women, it will undoubtedly be important in adding to the conversation on sexism and politics in the United Kingdom.

In a recent report by Ofsted on domestic violence in the United Kingdom, they stated that the Government had failed to devise a long-term strategy to confront the issue. In order to combat the issue, a ‘rethink’ must be formulated that acknowledges “sexism and inequality, the ‘root causes’ of domestic abuse, must also be tackled in order to mount an effective response to the issue.”<sup>637</sup> The report further stated that “[p]ower and control are at the heart of domestic abuse. We need to tackle the sexism and inequality that are root causes of domestic abuse and ensure that perpetrators are held solely accountable for their actions.”<sup>638</sup> This shows that representatives continue to pass legislation but the culture surrounding violence against women continues to be a problem in England and Wales and around the world. Representation in this case study may have been generally effective in terms of passing legislation, but the culture of violence against women in the United Kingdom must be addressed and must be more effective in practice.

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<sup>634</sup> “George Osborne Criticised for Gruesome Remarks against Theresa May,” accessed September 25, 2017, [https://www.theguardian.com/politics/2017/sep/13/george-osborne-criticised-for-gruesome-remarks-against-theresa-may?CMP=tw\\_t\\_gu](https://www.theguardian.com/politics/2017/sep/13/george-osborne-criticised-for-gruesome-remarks-against-theresa-may?CMP=tw_t_gu).

<sup>635</sup> “Politics as Usual?: Rising Violence against Female Politicians Threatens Democracy Itself.”

<sup>636</sup> “Review into Abuse and Intimidation in Elections,” accessed September 25, 2017, <https://www.gov.uk/government/news/review-into-abuse-and-intimidation-in-elections>.

<sup>637</sup> “Government Savaged for Doing ‘Far too Little’ to Tackle Domestic Abuse in Major Report,” accessed September 25, 2017, <http://www.independent.co.uk/news/uk/home-news/government-domestic-abuse-report-too-little-key-depts-orgs-mentioned-tackle-men-women-a7954766.html>.

<sup>638</sup> “Government Savaged for Doing ‘Far too Little’ to Tackle Domestic Abuse in Major Report.”

## Conclusion

At the onset of this research, I started with an interest regarding the political representation of women. As I read through the literature regarding the topic, I became interested specifically in SRW, and how women as a category are represented vis-à-vis their representatives. I wanted to move beyond the simple notion of women representing women, and ask questions that would add to the conversation surrounding SRW, as well as how violence against women is legislated through this representative process. I established that the best way to do this was through a comprehensive case study on England and Wales. As I began the case study, I found myself overwhelmed by the various ways that substantive representation has been investigated. In order to reconcile this challenge, I developed a critical path framework as a way to systematically look at the sequence of how things happen within the representation process. Borrowing from the project management field, the critical path framework helps to identify the activities within the representation process that are critical to its success. This framework specifically identifies ‘gendered blind spots’ within the discipline by “expanding the range of comparison, as well as moving beyond exclusive attention to female legislative behavior, [and] presents an opportunity to explore how gendered identities and interests are articulated and advanced in politics.”<sup>639</sup> Furthermore, this thesis contributes to knowledge in the disciplinary and sub-disciplinary areas of: political representation theory and analysis, violence against women, and the expansion of knowledge on the United Kingdom, in terms of moving past gender quota studies.

The critical path shows how the questions within this framework are intrinsically linked. The critical path framework also increases the ability to trace a variety of occurrences of critical junctures, critical actions, critical actors, and critical acts across time periods,

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<sup>639</sup> Krook, “Women’s Representation in Parliament,” 235.

legislatures, or policy areas. This is evidenced by comparing the traditional path tables versus the critical path framework tables by showing the critical actions that may otherwise be missed if only evaluating the Hansard debates. Importantly, this can be expanded to other case studies or countries; it is not specific to England and Wales. It can be applied to other countries' issues or legislatures. For example, when considering one policy issue across various time periods, this critical path can become increasingly important because of the above stated ability to trace this issue, and also bring together a nuanced evaluation of this representation.

This thesis employed a critical path framework to evaluate SRW, regarding domestic violence legislation in England and Wales. The evaluation focused on a case study assessing four key pieces of legislation: The Crime and Security Act 2010, the Protection of Freedoms Act 2012, the Criminal Justice and Courts Act 2015, and the Criminal Justice and Courts Act 2015. Within the critical path framework, I synthesised suggested questions from various authors in order to add to the conversation regarding substantive representation. These questions were: 1) When does SRW occur; 2) why is SRW attempted; 3) who acts in SRW; 4) how is SRW manifested; 5) where does the substantive representation occur; 6) in relation to which women is substantive representation expressed; and 7) what policies are passed or debated. Importantly, the critical path framework, combined with these questions help introduce a way to interrogate any legislative topic or policy area. This critical path framework contributes to the methodological scholarship of SRW by enhancing our ability to do further research and expand the future study of representation. This framework increases the knowledge regarding SRW and allows a bigger picture of research to be presented. This is important because it allows the political and substantive representation of women to be explored from a distinctive angle. The research in general benefits from this expansion by allowing future research to use these methods and questions in this way. In regard to England and Wales, this thesis moves beyond quota studies that have been conducted and identifies the varied development within the process in England and Wales.

Importantly, this framework does not assume who acts on women's issues, or where SRW may occur. Instead, the questions within the framework acknowledge differences between women and include men as potential and actual actors.<sup>640</sup> Therefore, the framework and

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<sup>640</sup> Celis et al., "Rethinking Women's Substantive Representation," 99.

questions address the simple question of whether women represent women and aids in determining why, how, where, etc. SRW takes place by examining several actors, sites, reasons, etc.; not simply what women do (or do not do). In regard to this, “what is missing is the broader theoretical framework that shows how a wide range of representative acts are related to each other.”<sup>641</sup> This thesis sought to do just that by implementing this critical path framework and expanding knowledge on how representative actions are interconnected not only for this case study, but also for future case studies.

Through this critical path framework, important findings emerged from the research into the SRW in England and Wales. First, critical actors were identified as both men and women, from all parties, but organisations, WPAs and APPG’s, and importantly, victim-survivors played incredible roles in the passing of the above legislation via campaigning, activism, and government consultations. Second, the House of Lords played a significant representative role within these four cases, despite the fact that the House of Lords is often not regarded as a representative body within the literature. Third, the sites that were observed during the critical path framework varied greatly as far as representation taking place outside of parliament, and also pointed to international influences in each of the four cases. Lastly, political time emerged as important concept as it was pointed to numerous times throughout the case study. These findings show that when utilising the critical path framework, researchers are able to draw conclusions across various pieces of legislation, as in this case, that would possibly be buried in instances where the critical path is not used. To conclude, the development of this framework contributes to the research and literature surrounding the political representation of women, as well as aiding in the transition from traditional questions to more inclusive questions regarding gender and representation.

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<sup>641</sup> Celis, “Studying Women’s Substantive Representation in Legislatures,” 112.

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