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NOTE FROM THE EDITOR-IN-CHIEF

The Leicester Student Law Review is an academic journal which has been published in Leicester, United Kingdom for the last eight years to allow students to contribute to the field of legal academic writing. Over the years, the Law Review has allowed students to participate in legal discourse on a variety of topics, challenging the status quo.

I am extremely pleased to present this year's journal to the public. The articles contained were carefully selected for the insight that they provide on a variety of topics. This year's journal includes papers on the lack diversity in the judiciary, gender inequality, ongoing challenges in the European Union, failings of the criminal justice system and medically assisted suicide in Canada. All of the papers are written by current students of law at the University of Leicester.

I am extremely grateful to our talented team of editors who worked tirelessly to ensure that the papers presented to you are of the highest quality. I also owe a great debt of gratitude to our Managing Editor, Rachel Hodgett, who helped lead with strength and grace. For every challenge the Law Review faced, Rachel always remained focused on finding solutions and a way forward. I would also like to thank former Editor-in-Chief, Alanis Ortiz, for helping to provide guidance and mentorship throughout the process. Lastly, I'd like to thank Maryam Ahmad, Hinda Abdi, Adrianna Strzepka and Reda Hussain for all their work behind the scenes.

My personal journey into law was encouraged by great role models who taught me to fight for "the little guy", men like human rights lawyer Burnley "Rocky" Jones and elder Matthew "Emmett" Peters. I hope that I can use the fire that they ignited in me, along with my legal education, to be of service to others. I think they would both be proud to hear the podcast episodes we put out this year. I brought Zach Gladstone several concepts for episodes that I thought would present new and challenging perspectives to the student body. He and the podcast team helped turn these loose concepts into a polished, high quality series of episodes for our subsidiary *Let's Review* podcast.

While we have tried our hardest to present a journal of the highest quality, please forgive any errors in grammar or in judgment made along the way.

Angel Panag
Editor-in-Chief, 2022-2023

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How the Law is **Built Against Women, and the Sluggish Battle for Sexual Equality**

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Disclaimer: The paper includes discussions of sensitive topics such as rape, domestic abuse, and abortion.

It is only recently that women have been recognised and treated somewhat as equal in the eyes of the law. Despite the social and moral shifts seen through the lens of feminism, women continue to face gender-based discrimination. The extent to which they are legally protected is questionable, despite efforts by legal systems to address the issue.

Patriarchy and The Law

It's plausible that if patriarchal systems did not exist, the relationship between women and the law would not be a topic of discourse today. Despite the notion of the law being impartial, its origin is rooted in a discriminatory and unjust history. Some critics argue that the law first came to our society through the bible.[1] Others argue that the law developed from the rise of economies.[2] Some even argue that the law has always been there. They suggest the law stemmed from human nature, and that the legal authority we know today is merely the solidification and development of laws that we inherently know.[3] Whether or not there is a combination of numerous factors is not necessary to discuss. The underlying theme is that of a patriarchy.

Some scientists argue that women are naturally encoded to submit to men.[4] There are numerous biological theories regarding hormones, evolution, brain matter, and physical attributes. The male descendant is seen to be more superior, often described as an heir in the family.[5] This attitude is reflected in legal history, which we will cover shortly. In this context whether the law would have stemmed from a historical perspective which categorically undermines 'females.'

At times, sacred texts of various religious traditions view women as submissive beings.[6] They are seen as a subservient class to a male-dominant society. Most mainstream Gods are addressed as 'He'. In Greek mythology,[7] if there is a female god, they often come across

[1] Lyons E, "The Patriarchal Law" (Apologetics Press, December 31, 2001).

[2] Benson B, "Where Does Law Come from?" (FEE Freeman Article, December 1, 1997).

[3] Guttentag, Michael D. 'Is There a Law Instinct?" (The Free Library, 01 March 2009)

[4] Chodorow NJ, "Heterosexuality as a compromise formation: Reflections on the psychoanalytic theory of sexual development" (Psychoanalysis and Contemporary Thought, 1992, 15(3), 267-304)

[5] Hardy SB, Judge DS, "Darwin and the puzzle of primogeniture" (Human Nature, March 1993, 4(1):1-45)

[6] J A, "Are Women Being 'Suppressed' in Today's World?" (Lost Sheep for Christ, July 5, 2018)

[7] Durham G, "Escaping the Patriarchy: The Depictions of Women and Goddesses in Ancient Greek Art" (Open Access Kent State (OAKS), April 9, 2019)

as less powerful or submissive to another male entity. Even in positions of absolute power, women are still living in a male's shadow. They are also over-sexualised and written from the 'male gaze'.[8] The rise of Roman Catholicism in Europe could be one plausible reason for the elements of religious attitudes in some legal systems.[9]

The economic theory of the law has undertones of both the theories discussed above. The attitude towards women is historically simple: they are the weaker sex. This led to a female dependency on men, who were perceived as builders, warriors, protectors, and leaders. As society developed in population, land, and intelligence, this reliance on men resulted in a significant lack of women in the workforce.[10]

As a result, women have historically lacked equal standing under the law, and this disparity remains evident in modern systems. The law has been infused with patriarchal norms and sexist views. While some legal systems have begun to move away from this, there is still significant development to be made. This development varies in the nature of the laws.

Women and Legal Rights:

In this section, we will be covering specified areas of the law that relate to feminism, and discussing their historical developments, before finally establishing the present standing of the law in these areas.

Marriage and Divorce Law

Marriage within itself has a sexist foundation. As civilization evolved, the institution of marriage is thought to have emerged over 4,000 years ago.[11] In these early societies, men held positions of power and women were relegated to raising their children. Marriage essentially became a way for men to secure offspring – with the woman's father handing her off to another male.[12] Arranged marriages were a common event in relation to this reasoning. Over time, marriage became a rather religious ceremony as religion expanded in society.[13] However, the misogynistic values of marriage are still prevalent in modern-day ceremonies, it is only recently that we can begin to see a shift from the patriarchal norms and gender roles.

In the UK, The *Married Women's Property Act 1882* enabled women to earn their own income and own their own property separate from a husband. Prior to this, marriage was a 'property transaction,' and women had significantly fewer rights than men.[14] In some parts of the Middle East today, the law enforces 'wife obedience.'[15] In Afghanistan for instance, a woman is restricted in her right to leave her home when she is married.[16]

[8] Snow E, "Theorising the male gaze: Some problems" (Representations, 1 January 1989, 25, 30-41)

[9] (Romans 5:20) <https://biblehub.com/romans/5-20.htm&gt>

[10] Wright T, "Women's experience of workplace interactions in male dominated work: The intersections of gender, sexuality and occupational group. Gender, work & organisation" (May 2016, 23(3), 348-62)

[11] Staff, "The Origins of Marriage" (The Week, January 8, 2015)

[12] Harper D, "Etymology of Marriage." (Online Etymology Dictionary)

[13] Lord Nicholls, Bellinger v Bellinger [2003] UKHL 21 - Marriage is 'an institution of relationship deeply embedded in the religious and social culture of this country'

[14] Offen K, "A Brief History of Marriage: Marriage Laws and Women's Financial Independence" (International Museum of Women)

[15] Hegland ME, "Wife abuse and the political system: A Middle Eastern case study" (InSanctions and Sanctuary, 28 May 2019, Routledge, 203-218)

[16] Oppenheim M, "'Prisoners in Homes': The Women in Afghanistan Barred from Leaving Home without a Man" (The Independent, August 17, 2021)

A key demonstration of the misogynistic values embedded in the institution of marriage can be observed in the history of age of consent for marriage and the evolution of the right to consent to sexual activity within marriage. As previously stated, marriage was primarily viewed as a transaction that promised offspring. This attitude still trickles through the cracks of matrimonial law today. According to the case of R v R (1991), martial reliance was a defence to rape until the final appeal in the court.[17] A woman could not make a claim against her husband for rape, because she had consented to sex upon marriage. Martial rape was not criminalised in the UK until after this case in 1992, and in the US in 1993.[18] This raises historical questions about the right of women to consent to marriage in the first place. In the US, girls can still be married as young as 15, but boys under 17, and their consent can be vitiated by the court.[19] There is no federal law restricting the age of marriage, and child marriage remains legal in 43 states.[20]

Furthermore, a brutal reality of marriage is the possibility of divorce. The power of divorce originally rested with the male.[21] Men were favoured by the law in this area, and this may be due to the root of marriage, the sanctity of the ceremony, and its meaning for men. If a woman was unable to bear children for her husband, he could simply 'return' her to her father and find another wife.[22] As society developed, the law remained reluctant to view women on an equal basis to men.

The 1600's is an iconic era for matrimonial rights, predominantly seen in King Henry VIII's marriages, and the transfer of annulment decisions from Roman Catholicism to legal authority.[23] While the Tudors were infamously sexist, the recognition of divorce was, at least, legally accepted.[24] Prior to the 1600's, separation *a mensa et thoro*, or annulment, were the common options – neither of which recognised a marriage ending. Annulment considered the marriage to have never existed, and separation *a mensa et thoro* did not dissolve the marriage.[25] The *Matrimonial Causes Act 1857* solidified the double standard for divorcing couples in British history.[26] Men could seek a divorce on the claim of the woman's adultery alone, whereas women were only permitted a strict fault-based approach. The severe social consequences of a woman seeking divorce from a husband is not of legal concern but can be seen in the famous theatrical literature of the time. Particularly, *A Doll's house,* by Henrik Ibsen, provides insight to the reality of a married woman, and the consequences of divorce.[27]

In the most severe cases, which still occur internationally today, women couldn't even pursue a

[17] R v R [1991] UKHL 12

[18] Geis G, "Rape-in-marriage: Law and law reform in England, the United States, and Sweden" (Adel. L. Rev, 1977, 6, 284)

[19] Migiro G, "10 Modern Countries Where Child Marriage Still Occurs" (WorldAtlas, February 10, 2020)

[20] "Child Marriage in the United States" (Equality Now, November 9, 2022) https://www.equalitynow.org/learn_more_child_marriage_us/

[21] Butler SM, "Divorce in Medieval England: from one to two persons in law" (Routledge, 5 March 2013)

[22] Staff, "The Origins of Marriage" (The Week, January 8, 2015)

[23] Oxley J, "Divorce and Womens Rights: A History" (Vardags, December 13, 2017)

[24] Pruitt S, "Henry VIII Wanted a Divorce so He Sparked a Reformation" (History.com, October 22, 2018)

[25] Jeffers R, "Mensa Et Thoro? How It Differs from Divorce..." (ReginaJeffersBlog, June 11, 2016)

[26] Holmes AS, "The Double Standard in the English Divorce Laws, 1857–1923" (1995) 20 Law & Social Inquiry 601

[27] Isben, H, "A Doll's House" (1897)

divorce.[28] A primary danger of this is the risk of being trapped in an abusive relationship. Whilst women in the UK are somewhat protected by the Matrimonial Causes Act 1973 –which changed the grounds for divorce to make them more accessible –there has been clear favouritism of the husband in English law up until this point.[29] We can see this through the financial provision claims after a divorce is passed. In the case of *Watchel v Watchel*, Lord Denning reaffirms the traditional 'housewife' view of women. He suggests that where an unmarried man would remarry or employ a housekeeper, a woman would do all the work herself.[30] Lord Nicholls in *McFarlane v McFarlane* recognised the risks imposed by the law on women by the 'housewife' standard. He describes a wife's ultimate loss as a 'double loss': a loss in her own earning capacity as well as the financial reliance on her husband's earnings.[31] Although there is some recognition of women who adhere to the role of the traditional wife, there are resolutions provided where this is not the case.[32] Many feminists continue to argue that the neutrality of divorce law is still applied in systematically biassed ways.[33]

More specifically, it is arguable that the current divorce law fails to recognise the financial detriment suffered by women. Women already earn significantly less than men, despite the efforts of the law to enforce otherwise.[34] A married woman who decides to leave her job to focus on raising her children and managing the household is often faced with lower earnings compared to a single woman. On the other hand, a woman who continues to work and simultaneously attends to her familial responsibilities is effectively performing the duties of two jobs for a lower income compared to her spouse.[35] Upon divorce, this is not the priority of the court, in fact, it is the welfare of the children.[36] In addition, it is also the reasonable amount necessary to provide the wife with a life she is used to.[37] In some cases, courts seek to remedy her loss based on what she would have earned, but many feminists argue that this is unquantifiable.[38] Regardless of the amount the courts reward the wife, she will suffer an unfair detriment in either her time, money, effort or assets.

It is understandable in this regard then, why marriage has historically been viewed as a business transaction for women.[39] Marriage should ideally be an expression of unity and love, and a promise of a future. It should not be a financial agreement where women must try to protect themselves, or a promise to the man for offspring and a housemaid.[40] The changes in marriage and divorce law

[28] Oxley J, "Divorce and Womens Rights: A History" (Vardags, December 13, 2017)

[29] Butler SM, "Divorce in Medieval England: from one to two persons in law" (Routledge, 5 March 2013)

[30] Watchel v Watchel [1973] Fam 72

[31] McFarlane v McFarlane [2006] UKHL 24, [2006] 2 AC 618

[32] Scott ES, "Rehabilitating liberalism in modern divorce law" (Utah L. Rev, 1994, 687)

[33] Sisterhood and After Research Team, "Marriage and Civil Partnership" (British Library, March 8, 2013) <https://www.bl.uk/sisterhood/articles/marriage-and-civil-partnership>

[34] The Sex Discrimination Act 1975

[35] Myrdal A, Klein V, "Women's two roles: Home and work" (Psychology Press, 1956)

[36] The Matrimonial Causes Act 1973, s25

[37] Thorpe J in F v F (Ancillary Relief: Substantial Assets) [1995] 2 FLR 45

[38] Carbone JR, "A Feminist Perspective on Divorce" (The Future of Children, 4(1), 183 – 209, 1994) <https://pubmed.ncbi.nlm.nih.gov/7922279/>

[39] Bossen L, "Toward a theory of marriage: the economic anthropology of marriage transactions" (Ethnology. 1 April 1988, 27(2):127-44)

[40] Nicholson V, "Perfect wives in ideal homes: The story of women in the 1950s" (Penguin UK, 5 March 2015)

are only recent, however, change is not happening quickly enough to protect the women of the 21st century.[41]

Women and Motherhood

Traditionally, women have been deemed to be more nurturing, emotional, and sensitive than men.[42] Societally, they were expected to raise children and care for the home. As mentioned earlier, breakdowns of relationships and state intervention already fail women who sacrifice numerous areas of their lives to raise children, and do not necessarily provide a subsequent remedy for such a loss. However, the law continues to have a biassed tendency towards women regarding children, and whether this is a benefit for a woman in some countries is up for debate.

Initially, the law viewed children as belonging to the husband.[43] This attitude, again, is extremely profound in historical literature, which provides great insight into the practical impacts of patriarchal laws.[44] The social implications of such a bias is not necessarily an argument in a legal debate, but it is worth mentioning in this context because it provides further insight into the consequences of the laws' reluctance to recognise women as equal to men.

The best perception of the rights of women in relation to their children can be seen in divorce law – particularly of couples who have children. The first case recognising the discriminatory assumption that children belonged to the father was the case between Caroline and George Norton in the early 1800's.[45] From this publicly controversial case stemmed the *Custody of Children's Act 1839*, *The Matrimonial Causes Act 1857* and the *Married Women's Property Act 1870*, the latter two of which we have already discussed. Caroline Norton, an under-recognised feminist icon in law, kickstarted the change in the assumption that all property, including children, belonged to the husband.

Today, the progress of this law is substantial. Over 90 percent of cases result in the mother receiving custody of the children.[46] This undoubtedly created a debate as to the discrimination against fathers in modern law. It is evident in the arguments in this context that the reason behind the majority result of these cases is due to the assumption that women are the primary caregivers of children.[47] It is arguable that this bias, whether intended to discriminate against men or not, is a consequence of the patriarchal norms society has adhered to for centuries.

Initially, the law viewed all property as belonging to the husband, but this notion did not align with the core values of marriage when it emerged. Historically, women were expected to care for and raise a man's children, while the law often failed to acknowledge wives as equals to men. Despite progress, the judicial system still faces challenges in recognizing the nurturing capabilities of men in regard to the well-being of children.[48] This could, in some ways, be beneficial to women today who seek to keep custody of their children in the process of a divorce.

[41] Carbone JR, "A Feminist Perspective on Divorce" (The Future of Children, 4(1), 183 – 209, 1994)

[42] Held V and Noddings N, "Caring (1984)," Justice and care: Essential readings in feminist ethics (1st edn, Routledge 1995)

[43] Lorber J., "The variety of feminisms and their contributions to gender equality" (BIS Verlag; 1997)

[44] Isben, H, "A Doll's House" (1897), Alcott, LM "Little Women" (1868-69)

[45] Atkinson D, "Caroline Norton and the Custody Battle That Changed the Law" (Daily Mail Online, July 14, 2012)

[46] "Why Do Women Get Child Custody in 90 Percent of All Cases? Isn't It Gender Discrimination?" (EMY A. Cordano, Attorney at Law, June 28, 2018)

[47] Reynard C, "Women Still Primary Carer in Most Households" (Your Money, April 4, 2018)

[48] "Are the Courts Gender Biased in Custody Cases?" (Weinman & Associates, PC, December 23, 2020)

Those that believe there is sexual discrimination towards men, they have actually experienced a faster development of law than women historically.[49] Lawyers have immediately begun to rally around 'struggling fathers', and it is not unfathomable to suggest that the male dominance in law will provoke rapid changes.[50] Therefore, even if it can be said that women have a small benefit deriving from patriarchal values, this benefit is vulnerable to change, and a woman's 'inverse' right in this regard is not protected. Despite laws failing to acknowledge women as equal to men in terms of work, sex, marriage, and inheritance, there remains a hesitation to break from this unequal pattern in regards to custody rights. This indicates that the law is not easily swayed towards change, it reduces one of the few rights given to women stemming from the patriarchy, contrasting with their standing to reduce men's rights as a positive step towards feminism.

Criminal and Human Rights Law: Abortion and Rape

Crucially, these areas are seen to have undergone the most prominent shift regarding feminism. Whether this is due to the changing attitudes towards women, or human life in general, is up for debate.

A well-known example of women's rights in current news would be the US Supreme Court's decision to overturn Roe v Wade, which had provided citizens of America a constitutional right to abortion.[51] Shortly after this decision, the UK Parliament removed references to abortion rights for women in an international human rights statement, resulting in Malta – an anti-abortion country – signing the statement.[52] Abortion has been a controversial debate for generations, widely known as the 'pro-life' or 'pro-choice debate'. There are arguments as to when a foetus is considered a baby, and whether a woman should be allowed to abort a child for any reason. Currently, abortion rights are not very profound. Even in the England, where abortion has been legal since 1967,[53] women must follow a strict set of procedures to legally access abortion services.[54] It is important to note that abortion at a national level for the UK has only been legal since 2019. Particularly, in Northern Ireland, it was only 1945 where the only exception applied to an 1861 law that illegalised procuring a miscarriage was given to women, and that was to preserve her life.[55] Up until 2019, rape, incest or fatal foetal abnormality were not sufficient to allow an abortion in Northern Ireland. The reasoning behind this overturned decision was the breach of Human Rights Law enacted in 1998, which seems like an extremely delayed response to such a significant breach.

This, to me, is absurd. Since 1992, martial rape has been recognised as a criminal offence.[56] A recent study suggests that the majority of adolescent pregnancies stem from sexual abuse, and this is without the consideration of rape within adult relationships, marriages, or in social circumstances.[57] This is an apparent failure on the laws behalf to protect women and girls from abuse and rape. The

[49] Network LFLN, "The Patriarchy of Rape Laws – Need for Gender Neutrality" (LexForti, June 12, 2020)

[50] Center TML, "Women and Divorce: The New Reality of Child Custody" (The Men's Legal Center, October 20, 2022)

[51] Most D and Bouranova A, "Supreme Court Overturns Roe v. Wade, Ending 50 Years of Abortion Rights" (Boston University, June 24, 2022)

[52] "UK Government Deletes Abortion from International Human Rights Statement" (Politics.co.uk, July 19, 2022)

[53] The Abortion Act 1967

[54] "What Are the UK's Laws on Abortion?" (*BBC News,* October 22, 2019)

[55] Connolly M-L, "Northern Ireland Abortion Law Changes: What Do They Mean?" (BBC News, October 22, 2019)

[56] The Sexual Offences (Amendment) Act 1992

[57] Boyer, D, and D Fine, "Sexual abuse as a factor in adolescent pregnancy and child maltreatment." (Family planning perspectives, vol. 24, 1, 1992, 4-11, 19)

law fails victims of sexual and domestic violence by not allowing them the right to what is arguably their own bodily autonomy if they end up pregnant. Moreover, the debates surrounding motherhood and the gender pay gap between genders further emphasises the judicial system's failure to fully acknowledge and address discrimination faced by women in both their careers and in the domestic sphere.[58]

As previously mentioned, women must go through an unyielding process to obtain abortions even where they are accessible, regardless as to whether they are a victim or not. The current law in the UK suggests that two doctors must approve of the abortion on any of three grounds: the mother's life being endangered, high physical or mental health risk or if there is a risk of severe abnormality in the baby.[59] Not only is there an essence of ableism here.[60] The fact that a woman must present a reason to two doctors as to why she does not want a child, beyond the explanation that she simply does not want one, is relatively outdated.[61]

The age of consent to sex is 16 years old.[62] Girls in other countries can be married at an even younger age.[63] Martial rape has only recently been recognised, whereas the reported occurrences of rape continue to increase.[64] The law is obviously failing at protecting women's autonomy when it comes to sex, marriage, and relationships. Instead of trying to further protect them, the law has instead taken the approach to disregard the consequences of their failures and essentially hold women accountable for their own fertility. Women are expected to resolve a problem before it even occurs.

More crucially, the current laws in the UK and other western countries are what we consider to be 'modern'.[65] Countries such as Afghanistan do not recognise legal abortions, or martial rape, reasoning that a wife should obey her husband.[66] The current crisis in Ukraine has gone under the radar, where citizens are being raped by Russian soldiers.[67] Approximately 46 countries are failing to meet the minimum requirements set forth by the Trafficking Victims Protection Act 2000 and have not demonstrated any meaningful efforts towards compliance. These countries include Russia, North Korea, and Equatorial Guinea.[68] There is a worldwide crisis relating to women's bodily autonomy, and yet we've only come as far as an uncertain debate.[69] This, evidently, is not enough.

Women in the Line to Succession

This element of law relates directly to the House of Lords. Only 28% members of the chamber are women.[70]

[58] Smith R, "Gender Pay Gap in the UK: 2020" (Gender pay gap in the UK - Office for National Statistics, November 3, 2020)

[59] The Abortion Act 1967

[60] R. (on the application of Crowter) v Secretary of State for Health and Social Care [2022] EWCA Civ 1559

[61] Regan L, Glasier A, "The British 1967 Abortion Act-still fit for purpose?" (Lancet, 26 October 2017, 390, 1936-7.)

[62] The Sexual Offences (Amendment) Act 2000

[63] "Discriminatory Marriage Laws Are Putting Women and Girls at Risk of Child Marriage, Rape, and Abuse" (Equality Now, October 11, 2022)

[64] Jones P, "Crime in England and Wales: Year Ending June 2022" (Crime in England and Wales - Office for National Statistics, October 26, 2022)

[65] Buss D and Manji A, "International Law: Modern Feminist Approaches" (The Consortium on Gender, Security and Human Rights, 2005)

[66] The Shia Personal Status Law, Article 134 (2)

[67] Sleigh S, "Russian Soldiers Rape Children and Brand Women with Swastikas, Ukraine MP Claims" (HuffPost UK, April 4, 2022)

[68] Misachi J, "Worst Countries for Human Trafficking Today" (WorldAtlas, January 17, 2019)

[69] "Legal Rights to Access Abortion to Be Debated by MPs - Committees - UK Parliament" (UK Parliament, November 23, 2022)

[70] Haves E, "Representation of Women in the House of Lords" (Lords Library, February 24, 2021)

Most of these women were accepted into Parliament under the Life Peerages Act 1958.[71] In essence, they had an inherited right. Due to the misogynistic attitudes and the human nature theory, sons were often treated as the heirs of the family and women were seen as an element of trade. Sons were pressured to become well-respected and successful, whereas women were pressured to marry into a well-respected and successful family.[72] This pattern is well represented through the history of succession to the throne. The Succession to the Crown Act 2013 only recently abolished the preference of males succeeding the crown, but this attitude remains in the legal system.

Prior to 1958, women were completely excluded from the House of Lords, despite them being a hereditary peer. Even now, there is a significant domination of men in the chamber, and this is due to the Life Peerages Act 1958, which enables numerous seats in the chamber to be an inherited right. Much like the crown, this right was typically reserved for the eldest son, regardless of any elder daughters. Since 2013, numerous Bills regarding the equality of female succession have been discussed in Parliament, but none so far have been passed.[73] Furthermore, the Daughter's Rights campaign seeks to bring awareness, as well as a case, to Parliament regarding the sexual discrimination of daughters of peers. There is an outstanding majority of seats saved for men in the chamber, and much like Susan B Anthony states, "There never will be complete equality until women themselves help to make laws and elect lawmakers". The Daughters Rights movement argues that Parliament is in breach of Article 3 of the ECHR, read in line with Article 14.[74]

Despite this, there has been a failure on the law's behalf to recognise its own misogynistic structure. The failure of passing bills regarding equality, and the fact that no change has been made to the accessibility of seats, or that the gender pay gap has not yet been neutralised, suggests that the UK legislature is passing laws faster than it is adapting to them. The legal authority of the UK is predominantly male, and it is arguable that, due to this, feminist law is moving at a much slower pace than it potentially could. This therefore creates a risk for women in the UK, as their rights do not accommodate their current position in society. Women who seek to address this issue within the governing body are severely limited by a male-dominated majority.[75]

Another important fact to consider is that UK law currently represents a modernised version of feminist law, and in some countries, particularly in the Middle East or Africa, are substantially behind in allowing women to work in high professions.[76]

Today's Law and Women

With consideration to the development of law in certain areas, we will now review whether these more recent changes in law effectively provide remedial protection to the modern-day women more sufficiently than amended patriarchal law.

Women in Law and the Working World

[71] The Life Peerages Act 1958

[72] Eisenmann L, "The Impact of Historical Expectations on Women's Higher Education" (InForum on Public Policy Online 2007, Vol. 2007, No. 3, p. n3)

[73] Evennett H, "Women, Hereditary Peerages and Gender Inequality in the Line of Succession" (House of Lords Library, October 3, 2022)

[74] Daughters Rights, "The Case" (Daughters Rights Movement, September 7, 2018) <https://daughtersrights.co.uk/>

[75] Watkins MB, Smith AN, "Importance of women's political skill in male-dominated organizations" (Journal of Managerial Psychology, 4 Feb 2014)

[76] Shelley J, "Women's Rights-Why the West Shouldn't Abandon the Middle East" (The Washington Institute, August 31, 2022)

The significance of the legal advancement of feminist ideals can be argued to be deeply ingrained in this text. Women, just 100 years ago, were not able to work in the legal sector in the US and UK.[77] The 'The First 100 Years' campaign sheds additional light on this issue.[78] Legal Feminism, therefore, cannot even be said to have existed for more than a hundred years, let alone be capable of review or a source of prediction and reference.[79] Women would arguably have had less understanding of the law, and even today, remain in men's shadow considering respectability within the sector.[80]

It was only 1993 when the US legalised women being able to wear trousers in the Senate,[81] whereas it was only 2013 where France overturned a rule that banned women from wearing trousers.[82] Despite feminism becoming somewhat mainstream in the generations before us, the shift in equality has been slow. Modern law has failed to reconcile with the shifts towards sexual equality with any expression of acceptance or enthusiasm. Hand in hand with this, the law, being outdated and somewhat incompatible with the modern woman, has shown how it also fails to respect and represent women in today's world.

Women in the Home: Domestic Abuse Law

Domestic abuse has been around for as long as the patriarchal norm.[83] The assault on women in the home goes hand in hand with archaic attitudes previously discussed. It was accepted and expected by courts in the 18th Century with a 'rule of thumb'.[84] As the law developed, domestic abuse was slowly recognised in a legal sense, however, only recently has there been legislation that covers all areas of domestic abuse.[85] Before this, victims of domestic abuse would need to rely on numerous sources for their claim.[86]

Domestic Abuse has only now been wholly recognised in the 21st century, and ultimately demonstrates the slowest area of law to change.[87] The reluctance mainly stemmed from the worry of invading the privacy of the 'traditional home', however, the rise of Women's Aid helped change that.[88] The accessibility of legal aid in relation to family law (which has since been 'scrapped') has also contributed.[89] Therefore leading to domestic abuse claims

[77] Blacklaws C, "One Hundred Years since Women Became People" (The Law Society, November 1, 2017)

[78] Malekpour-Augustin J, "100 Years of Women in Law" (The Women in Law Initiative, April 23, 2020)

[79] Proudman C, "I'm a Barrister and I Know the Law Doesn't Protect Women and Girls – Five Areas Need to Change" (The Independent, November 27, 2022)

[80] Randall C-A, "100 Years of Women in Law: A Timeline of Sexism and Equality" (Law Gazette, November 8, 2019)

[81] Sears J, "Why Women Couldn't Wear Pants on the Senate Floor until 1993" (Mental Floss, March 22, 2017)

[82] Lichfield J, "At Last, Women of Paris Can Wear the Trousers (Legally) after 200-Year-Old Law Is Declared Null and Void" (The Independent, February 4, 2013)

[83] Proudman C, "I'm a Barrister and I Know the Law Doesn't Protect Women and Girls – Five Areas Need to Change" (The Independent, November 27, 2022)

[84] Shaw N, "The Devon Judge and His 'Rule of Thumb' on Beating Your Wife" (DevonLive, November 3, 2017)

[85] The Domestic Abuse Act 2021

[86] "History of Domestic Violence and Legislation in the UK" (UK Essays, November 2018)

[87] Godfrey B, Richardson J and Walklate S, "Domestic Abuse in England and Wales 1770-2020 Working Paper No. 2. Domestic Abuse: Responding to the Shadow Pandemic" (University of Liverpool, July 11, 2020)

[88] "Women's Aid Federation of England" (Women's Aid, 1974) <https://www.womensaid.org.uk/>

[89] "Legal Aid Reforms Scrapped by Michael Gove" (BBC News, January 28, 2016) <https://www.bbc.co.uk/news/uk-354325812>

becoming more common.[90] While it could be argued that the legal response to domestic abuse has been most clarifying, and one of the most effectively developed areas of feminist law thus far, it is worth noting that the consistent reluctance to acknowledge domestic abuse towards women has resulted in numerous abusers and victims falling under the law's radar.[91] What the law sees as abuse now was still the same abuse not considered prior to enactment.[92] Moreover, the 2020 act includes gender neutral terms. While this is most certainly positive, it should be worth noting how rapidly the court accepted the idea of protecting men in the home in comparison to abused women.

This contrast speaks volumes. Not only has the judicial system failed to defend the rights of women in the past, but even today, the law appears to exhibit a clear bias in favour of men, who have had to put forth less effort for their rights to be acknowledged by the legal system.

Intersectional Feminism

Intersectionality is based on the concept of a person's life being affected because of the meeting of more than one form of discrimination (the intersection of one's identities).[93] This is an essential element to feminism. Marie Anna Jaimes Guerrero states, "Any feminism that does not address land rights, sovereignty, and the state's systemic erasure of the cultural practices of native people is limited in vision and exclusionary in practice."[94]

To this extent then, the fact that social issues such as LGBTQ+ rights and racism are still in a similar fight for equality to feminism, shows the importance of recognising that all forms of discrimination operate in a cog-like system that enables intersectionality, due to their shared opposition to colonial norms.[95] The Equality Act arguably is as effective as the Sex Discrimination Act, which we have already discussed is not enough. Therefore, it is not unreasonable to suggest that until all discriminated minorities reach absolute equality, it is unlikely that any single one will.[96]

International Women and Current Affairs

We have established that the current relationship between women and the law is not a positive one for women. Some nations have made the impression of effort towards sexual equality.[97] However, there is still a significant way to go internationally. As mentioned previously, the current crisis in Ukraine involving women's safety, has gone significantly under the radar in comparison to the Ukrainian war's impact on international trade.[98] However, beyond just the news on

[90] Jones P, "Crime in England and Wales: Year Ending June 2022" (Crime in England and Wales - Office for National Statistics, October 26, 2022)

[91] Proudman C, "I'm a Barrister and I Know the Law Doesn't Protect Women and Girls – Five Areas Need to Change" (The Independent, November 27, 2022)

[92] Cooper Y, "The Law Is Failing Domestic Abuse Victims in England and Wales. but We Can Change It" (The Guardian, November 19, 2021)

[93] Coleman AL, "What Is Intersectionality? A Brief History of the Theory" (*Time,* March 28, 2019)

[94] Alexander MJ and Mohanty CT, Feminist Genealogies, Colonial Legacies, Democratic Futures (Routledge 2012)

[95] Strange G, "Intersectionality and 21st Century Colonialism" (Presbyterian Mission Agency, January 11, 2018)

[96] "Intersectional Feminism: What It Means and Why It Matters Right Now" (UN Women – Headquarters, July 1, 2020)

[97] "World Conferences on Women" (UN Women – Headquarters) https://www.unwomen.org/en/how-we-work/intergovernmental-support/world-conferences-on-women#beijing

[98] "In Focus: War in Ukraine Is a Crisis for Women and Girls" (UN Women – Headquarters, September 22, 2022) <https://www.unwomen.org/en/news-stories/in-focus/2022/03/in-focus-war-in-ukraine-is-a-crisis-for-women-and-girls>

Russia and Ukraine, there are numerous countries experiencing protest and violence in response to feminist related events.

The US and UK are currently experiencing numerous strikes due to abortion laws within their country.[99] Short of that, in 2021 Poland had protests for the very same reasons.[100] Iranian women are cutting their hair publicly and causing riots in response to the death of Mahsa Amini, who was taken to a "re-education centre" for lessons in modesty.[101] Meanwhile, in India, Muslim women are fighting for their right to wear their scarves.[102] Both have relations to Islamic tradition. This therefore highlights how the law is not oppressing women in a binary way.[103] Instead, law internationally is being used to oppress women in any direction possible. Even more so, sexist discrimination is being disguised by the veil of Islamophobia or Islamic conflict.

It's arguable then, that the law is somehow going backwards in its development in feminism.[104] While some countries are viewed as having acknowledged and amended patriarchal values, these countries are not doing enough to encourage feminism worldwide.[105] The laws in these countries are slow and reluctant to reform, which could be, in an alternate light, encouraging countries further behind in development not to do so.[106] While the law of a State should not oppose one another, there have been instances where the law of other States have been considered when legislative authorities enact national State law. Moreover, international law is seen to have had an impact on State law for other minorities for example, the LGBTQ+ community in the case Fitzpatrick v. Sterling Housing Association Ltd. [107] In addition, Ghaidan v. Godin-Mendoza also had an impact. [108] There is no reason as to why 'developed' states could not encourage feminism on an international scale.

Furthermore, the scattered directions of laws that have not developed in feminism in relation to Islam only solidifies the uncertainty of the permanence of such developments in other states. The lack of progress in certain countries, the lack of discouragement of such from other States, as well as the States own reluctance to develop, only provides a fear of the capability of such developments being reversed. We have already seen this exemplified in the repeal of Roe v Wade. Therefore, it is not unreasonable to suggest that the law today is also seen to fail to succinctly protect women of the present and the future.

Conclusion

It could not be clearer that women today are still being failed by the legal systems that proclaim to support equality. Even more so, there are still numerous countries that openly oppress women, contrary to international human rights, yet receive no outstanding repercussions for doing so.

[99] Reporters PA and Clark D, "Protestors in the UK Gathered after the USA's Decision to Scrap Abortion Rights" (The Mirror, June 25, 2022)

[100] "Poland Abortion Ban: Thousands Protest for Third Day" (BBC News, January 29, 2021)

[101] Alkhaldi C and Ebrahim N, "Grief, Protest and Power: Why Iranian Women Are Cutting Their Hair" (CNN, September 28, 2022)

[102] Tamer R, "Burned in Iran, Banned in France: Why Women Are Fighting for Choice on Wearing the Hijab" (*SBS News,* September 28, 2022)

[103] Stacey A, "Does Islam Oppress Women?" (The Religion of Islam, January 18, 2010)

[104] Berns S, "Women Going Backwards: Law and change in a family unfriendly society" (Routledge, 8 May 2018)

[105] "'Sexism and Misogyny' Heightened; Women's Freedoms Supressed" (United Nations, October 18, 2021)

[106] Mudgway C, "Smashing the Patriarchy: Why International Law Should Be Doing More" (LSE Women, Peace and Security blog, October 7, 2019)

[107] [1999] UKHL 42

[108] [2004] UKHL 30

The law today has its words speaking far louder than its actions, but this does not cover up the fact that women today remain vulnerable and subject to discrimination in numerous areas. Although modern legal systems have enacted certain legislation to encourage gender equality, the law itself is not doing enough to enforce this legislation as a fundamental human right beyond simply enactment. Patriarchal values are still being debated in validity, even though it can be argued that the norms of such a society are extremely outdated. The fight for gender equality is not complete, regardless of what national legislation may say in writing. The practical reality of modern law, and the discrimination suffered by women at an international scale, is too significant. As such, the world requires reformation to renew gender equality, and to embed it into the very nature of legal systems on a global scale.

Acknowledgements

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NOTE: For the purposes of this essay, there has been a use of sources that do not concern legal systems, legislation, or law practices directly. This is because feminism exists in more than just law, and sexual discrimination comes in many forms. When talking about the law, it's important to

understand the implications the law has on other elements of society. This is best seen in non-legal related sources.

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Perspectives on Canada's Revision to the Medical Assistance in Dying Legislation **to Include Mental Disorder as the Sole Underlying Condition**

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The Parliament of Canada released an AMAD Committee Report summarising the future of Medical Assistance in Dying (MAiD), which will enable mental disorders to be a sole underlying condition for seeking MAiD.[1] The report discusses that on April 16, 2016, Bill C-14, which details medical assistance in dying, was brought forth to the House of Commons, which regarded medical assistance in dying, and received Royal Assent two months later.[2] Bill C-14 made amendments to the Criminal Code of Canada by allowing medical practitioners and nurse practitioners to administer or help self-administer a substance that ends the patient's life. This Bill came with an extensive eligibility criterion that was soon disputed in *Truchon c. Procureur general du Canada* (2019)[3], which led to Bill C-7 being passed in return to the decision held. Bill C-7 essentially struck down the requirement that natural death must be reasonably foreseeable in order for an individual to access MAiD, on the grounds of infringing on the Canadian Charter of Rights and Freedoms.[4] Bill C-7 also featured a sunset clause on the exclusion of mental illness from the "grievous and irremediable medical condition" criteria.[5] This means that unless the clause was amended, the mental illness exclusion would be revoked. Fast forward to March 17, 2023, and mental disorder could be considered in place of a "serious and incurable illness, disease or disability" within the eligibility criteria. While the specific MAiD practice standards are still being developed by the Government of Canada's appointed Task Group of experts, these standards will be ready country-wide by February 2023.[6]

It is important to note that Canada was not always this liberal with medical assistance in dying. The Supreme Court of Canada's decision in *Rodriguez v British Columbia* (1993)[7] banned physician-assisted suicide and continued to decline any bills seeking to decriminalize physician assisted suicide for two decades more to come. Fast forward 6 years, and it is now legal, (with the help of *Truchon c. Procureur general du Canada* (2019) and *Carter v Canada (Attorney General)* (2015).[8]

[1] "Committee Report No. 1 - Amad (44-1) - Parliament of Canada" (*Committee Report No. 1 - AMAD (44-1) - Parliament of Canada*) <https://www.parl.ca/DocumentViewer/en/44-1/AMAD/report-1/page-48#10> Accessed 26 January, 2023
[2] Ibid.
[3] [2019] QCCS 3792
[4] The Canadian Charter of Rights and Freedoms 1982
[5] AMAD (44-1) No.1
[6] Canada Dof Justice, "Statement by Ministers Lametti, Duclos and Bennett on Medical Assistance in Dying in Canada" (15 December, 2022) Canada.ca <https://www.canada.ca/en/department-justice/news/2022/12/statement-by-ministers-lametti-duclos-and-bennett-on-medical-assistance-in-dying-in-canada.html> Accessed 26 January, 2023
[7] [1993] 3 SCR 519
[8] [2015] SCC 5

Why is it on hold?

This new law was scheduled to come into effect on March 17, 2023, however, on December 15, 2022, the Government of Canada released a statement regarding an update on the implementation timeline. The Honourable David Lametti, Attorney General of Canada, the Honourable Jean-Yves Duclos, Minister of Health, and the Honourable Carolyn Bennett, Minister of Mental Health and Addictions and Associate Minister of Health held discussions with subject matter experts and Canadians and came to the decision that the March 17 date needs to be temporarily delayed.[9] The delay is to allow more time for "dissemination" and discussion before the submission of the final report in February 2023.

The Government of Canada is essentially taking the time to ensure this next legislation is thoroughly considered. Allowing for patients solely suffering with mental illness is a challenging subject as Canada will become one of the very few countries that allow for this treatment. More discussion is taking place as medical professionals and citizens have voiced their concerns regarding this legislation, and the bioethical complications it presents.

What are the bioethical complications?

The original legalization of MAiD for physical disorders has sparked numerous debates and controversies regarding the right to life and right to death, patient autonomy, the implications on medical professionals, power of the state, and so forth. It is expected that adding mental disorder to be the sole underlying condition for requesting MAiD to the mix would spark conversation and bring forth bioethical concerns that the Government of Canada must address. The bioethical concerns this new condition brings involves questioning the autonomy a patient with a mental disorder has, and how to assess whether they are autonomous enough to make such a decision. It also questions the recovery path in certain mental disorders, all in addition to the concerns MAiD has always brought. Canada is known for being a country filled with rights and freedoms, however the essence of a right is questioned when discussing MAiD and the 'right to die.'

Patient autonomy

Allowing MAiD is viewed as a controversial subject, since there are uncertainties with respect to the level of autonomy a mentally disabled patient holds. It is also argued that there should be more social and medical support for those suffering with unbearable mental disorders, rather than having the option of dying, which can be seen as beneficial, or a 'goal' for many mentally ill patients who generally experience the desire to commit suicide. Many mental disorders still require much more research, and this raises concerns regarding the notion of 'irreversibility' when discussing what qualifies a patient for MAiD.

A research paper published in May 2022 by PubMed Central looked to examine the relationship between patient autonomy and mental disorders.[10] The paper concluded that validated instruments capable of measuring autonomy in psychiatry are needed to explore this area of research.[11] However, their research does suggest that mental disorders compromise one's sincerity and competency, which lowers their ability to self-govern, as an autonomous individual would.[12] Their research also found that the path to regaining autonomy looks different for each patient, as it is linked to many of their pre-existing perspectives, experiences, and social environments.[13] Furthermore, the article suggests that autonomy is linked to personal recovery, such that a patient that is progressing in their personal recovery is increasing their autonomy simultaneously.[14] Thus, it can be inferred that a patient who is struggling with

[9] Canada Dof Justice n6

[10] Bergamin J and others, "Defining Autonomy in Psychiatry" (May 31, 2022) Frontiers in Psychiatry <https://pubmed.ncbi.nlm.nih.gov/35711601/>

[11] Ibid.

[12] Ibid.

[13] Ibid.

[14] Ibid.

their current mental disorder, so much to the point that they request MAiD, may not be making this decision from a fully autonomous position. Recovery for patients with mental disorders looks like someone living with their mental disorder and becoming more familiar with their conditions. Because the patient is requesting MAiD, one can infer they are not living and coping well with their mental disorder.

Another contributing factor to patient autonomy is the ability to have options, in order to determine if one is truly making an autonomous choice, free from external influences.[15] This may be difficult for patients suffering with mental disorders to do, because of external socio-economic influences that may be decreasing their quality of life and feeding into their desire to commit suicide. These external influences can be poverty, lack of food and shelter, difficulty finding work, and so forth. There needs to be better institutions and social programs in place within Canada that assist individuals to rise from these social external influences, otherwise many patients will continue to believe that their sole option is MAiD. Doctors have expressed concern that access to mental health services are still limited, and that MAiD cannot take the place of food, housing, and overall adequate support.[16] A patient recovering from a mental disorder spoke up at a CAMH conference and said "it doesn't make sense to me for physicians, people who are supposed to help, and the system in general to say we're going to help you die, but we're not going to help you to recover and live, because that was my experience with the mental healthcare system".[17] When an affected patient feels their government rather end their life than invest in ways to support and prolong their life, it questions whether this legislation is within the patient's best interest, or the government's.

All in all, it seems reasonable to presume the patients solely suffering from mental disorders are not fully autonomous and may not be capable of making possibly the biggest decision they will ever encounter. This varies case by case, however there will need to be strict standards that healthcare practitioners must follow to determine which patients are truly fit to receive MAiD treatment. According to the Centre for Addiction and Mental Health (CAMH), Canada's largest mental health teaching hospital, there are presently no agreed upon standards used to determine treatment eligibility.[18] CAMH wrote a letter to the Special Joint Committee on MAiD expressing their concerns with increasing MAiD eligibility to patients solely suffering with mental disorders.[19] This letter discusses the lack of agreement CAMH physicians have on whether mental disorders can be considered 'grievous and irremediable' for receiving MAiD.[20] It also discusses the lack of research regarding the trajectory of mental disorders, to be able to label it "irremediable".[21] The point of the letter is to communicate to the government that there is simply not enough research on this topic, and that extending eligibility must be delayed until there is sufficient research.[22] This can take years or possibly decades, however there is intrinsic value found in investing in these streams of research. This all leads to the conclusion that it may be too early for MAiD to be available for patients solely suffering from mental disorders.

[15] Wertenbroch K and others, "Autonomy in Consumer Choice" *Nature Public Health Emergency Collection* 31(4) (2020): 429-439

[16] "Evidence - AMAD (44-1) - No. 9 - Parliament of Canada" (May 26, 2022) <https://parl.ca/DocumentViewer/en/44-1/AMAD/meeting-9/evidence>

[17] Medical Assistance in Dying (MAiD) and Mental Health (Full) (Directed by CAMHTV YouTube 2017) <https://www.youtube.com/watch?v=rsNQomwa8WE&gt> 18:40-18:59

[18] "Medical Assistance in Dying (Maid) and Mental Illness – Faqs" (CAMH) <https://www.camh.ca/en/camh-news-and-stories/maid-and-mental-illness-faqs#:~:text=On%20February%202%2C%202023%2C%20the,delay%20from%20the%20original%20timeline>

[19] Stergiopoulos V, Rajji T and Simpson A, "Mental Health and Criminal Justice Policy Framework - CAMH" (Accessed May 6, 2022) https://camh.ca/-/media/files/pdfs---public-policy-submissions/mh_criminal_justice_policy_framework-pdf.pdf

[20] Ibid.

[21] Ibid.

[22] Ibid.

Maid or Suicide?

Mental disorders must be seen similar, if not identical, to physical disorders when discussing the amount of attention they deserve and the impact they can have on one's life. Mental health is just as important as physical health. In fact, many people in favour of MAiD for patients solely suffering from mental disorders will argue that it is essential in the de-stigmatization of mental illness that this form of illness is seen as equal to physical illnesses. However, it is difficult to argue the same when trying to compare the suffering of mental illness to the suffering of physical illness. All mental disorders introduce the symptom of suicidal thoughts in those suffering[23], and it is difficult not to see suicide as medical assistance in dying. It's clinical definition, provided by the National Institute of Mental Health, is "death caused by self-directed injurious behaviour with intent to die as a result of the behaviour".[24] A mental health professor at L'Universite du Québec a Trois-Rivières questions the difference between a person who says, "I'm suffering, I want to die" and the person who says "I'm suffering, please help me die".[25] Additionally, Dr. Mishara, a doctor mentioned in Parliament's interim report, expressed concern regarding the lack of fixed rules used for differentiating a suicidal request for MAiD and a rational request for MAiD.[26] It would be assumed that at the least, a diagnostic criterion is provided to better direct medical professionals and limit the number of requests they receive from the public. It seems unsuitable to give a certain group of people suffering with very little will to live the legal opportunity to end their lives, especially while the opposite may have been encouraged most of their lives. It seems illogical to reaffirm suicidal thoughts of patients with mental disorders.

This legislation questions the efforts of the suicide prevention campaigns and hotlines the country runs as it simultaneously hands over the tool to the same group of individuals they are trying to convince not to commit suicide. It appears contradictory that the same nation discouraging suicide is simultaneously allowing suicide, albeit when preformed by a medical professional.

Medical Practitioners & Ethics

Another highly overlooked matter regarding MAiD concerns the trust Canadian doctors and medical professionals have in this form of treatment, and their outlooks toward providing such treatment. The Ontario Medical Association in 2021 surveyed Ontario psychiatrists to understand their perspectives on the law, and 91% of them objected to it.[27] Another study published by PubMed Central in 2017 found that only 29.4% of the 528 psychiatrists surveyed support MAiD for patients suffering only from mental illness.[28] The number of medical professionals that object to MAiD is concerning for its practicality in Canada. As per the ruling in *Christian Medical and Dental Society of Canada v College of Physicians and Surgeons of Ontario* (2019)[29], medical professionals who refuse MAiD as a treatment to their patients, for personal reasons, are obliged to provide a referral to a medical professional who is comfortable with administering medical assistance in death. It is my opinion that denying medical assistance in dying should be permissible and socially accepted. This is because it is a recent requirement that medical professionals established in the workforce or entering the workforce did

[23] Singhal A and others, "Risk of Self-Harm and Suicide in People with Specific Psychiatric and Physical Disorders: Comparisons between Disorders Using English National Record Linkage" *Journal of the Royal Society of Medicine* 107(5) (2014): 194-204

[24] "Suicide" (*National Institute of Mental Health*) <https://www.nimh.nih.gov/health/statistics/suicide>

[25] Dellplain M and others, "The Right to Die: Should Maid Apply to Those Whose Sole Condition Is Mental Illness?" (May 25, 2022) Healthy Debate <https://healthydebate.ca/2022/05/topic/maid-mental-illness/>

[26] AMAD (44-1) No 1

[27] Parliament of Canada (no 16)

[28] Rousseau S and others, "A National Survey of Canadian Psychiatrists' Attitudes toward Medical Assistance in Death" *Canadian journal of psychiatry/Revue canadienne de psychiatrie* 62(11) (2017): 787-794

[29] 2019 ONCA 393

not expect to be obliged to them, and now have a great bioethical weight added onto them. Denying MAiD can be complex in certain situations that medical professionals are faced to work through, such as if you are a long-term family physician that is trusted, and the patient wishes to receive the treatment from you specifically. Another instance is if your practice is the closest one in the vicinity and travelling to another medical professional would impose a large and unnecessary burden on suffering patients. Though it is essential to prioritise the needs of the patient, this is a circumstance wherein the feelings of medical practitioners must be considered, as they are the ones that must live with their conscience and the consequences of their actions.

For religious doctors, it can be a delicate topic to navigate as one chooses between valuing their religion's doctrine against MAID or to grant what their autonomous patient views as the best form of care for them. For nonreligious doctors it can also be something daunting to consider, as they risk the anti-MAiD public labelling them murderers, or they worry that once incurable illnesses will soon have a cure. Furthermore, worries about being convicted rests on their shoulders, as the legislation regarding MAiD is placed in the Criminal Code of Canada. This implies that if a medical professional does not strictly follow the guidelines for performing MAiD, they can be tried for murder.[30] It is no wonder so many doctors and nurse practitioners are reluctant to provide MAiD, as there is always a lot involved in taking someone's life. Should MAiD be available for patients suffering only from mental disorders, it will further the burden medical professionals must face, but their perspectives cannot be left out of the conversation.

What does this mean for the future of Canada?

So, where does Canada stand in comparison to the rest of the world? Trudo Lemmens, a health law specialist at the University of Toronto, argues that "Canada's approach is far more permissive than comparator nations, including Belgium and the Netherlands".[31] When speaking of permissiveness, Lemmens speaks of how Canada's MAiD rates are quickly surpassing those of Belgium and the Netherlands, which is already frightening without the addition of mentally disabled to the list of patients eligible to receive MAiD. This is because patients in Canada can decline treatment and move forward with MAiD, while in Belgium and the Netherlands, it is required for doctors to discuss and pursue mental illness treatment first with their patient. This shows that these countries put effort in having MAiD as an entirely last resort, however with Canada's growing permissiveness regarding MAiD, it may simply be viewed as a treatment option in itself to the patients.

When pondering the future of Canada with its new legislation, the nation must turn to the countries with experience to be guided through what safety precautions are compulsory to ensure maximum purpose and efficiency of MAiD. As mentioned, Belgium and the Netherlands are two countries that have legalised MAiD for physical and mental disorders, along with Luxembourg and Switzerland.[32] It is necessary that the Canadian government analyses how each bioethical threat is handled in each country and follows their safe practice. Much research is needed on how the circumstances are likely to differ in Canada by comparing Canada's mental disorder resources, their rates of mental disorders, population sizes, and so forth, to better predict the likelihood of Canada having similar responses to the legalisation as these countries.

The fact of the matter is that mental disorders are still a relatively new subject. It is certainly on the rise and more awareness is surfacing as the world works towards de-stigmatizing mental disorders. However, there may not be enough research completed to expose the harm this new law

[30] Dellplain (no 17)

[31] Paul Webster, "Worries Grow about Medically Assisted Dying in Canada" *The Lancet* 400 (September 10, 2022): 801-2

[32] van Veen S and others, "Physician Assisted Death for Psychiatric Suffering: Experiences in the Netherlands" (June 20, 2022) Frontiers in Psychiatry <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9251055/>

may be imposing on individuals suffering from mental disorders. More research must be conducted before it is advertised that there is an unnatural way out of the pain and suffering. Furthermore, once MAiD has been approved for mental disorders, it may be difficult to rewind without extensive data to show that it should not have been authorised in the first place. Should this occur, it may have negative impacts on the country's trust in the medical department that falsely portrayed MAiD as a perfectly acceptable method of dealing with mentally ill patients. It can come up in question how many lives we allowed as a country to end because of the lack of information we had, yet still permitted such a choice.

Conclusion

Medical assistance in dying (MAID) has been a highly controversial matter within the medical and bioethical field. It poses many philosophical questions to the patient that one may internally answer, along with medical questions that have no answers. However, it also raises ethical challenges for medical professionals when faced with a patient that wishes to undergo MAiD. Further questions arise when trying to navigate MAiD for mental disorders as Canada usually allows for physical disorders. The reason there are so many worries and questions arising for this legislation is due to the lack of research currently available to support the autonomy of a mentally disordered patient. Some Canadians are calling out for their government to permanently withdraw eligibility for patients only suffering from mental disorders, while others may be wanting to temporarily withdraw eligibility, merely until more consideration and information is available on this subject. This is the ultimate viewpoint of this paper; patients suffering from mental disorders are worth the research and time investment. Canada also owes this patience to its medical practitioners who will be providing medical assistance in dying, as they will be liable under the Criminal Code of Canada, and to their own conscience. The orchestration of this imminent legislation will need to be the product of joined legal and medical forces.

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The Lack of Diversity **in the Judiciary, and its Impact**

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Question for reference:

'The ambition and talent required for a career leading to appointment as a judge is randomly distributed throughout the population. It is not the preserve of any one gender or ethnic group. It follows that selection on merit alone can be expected eventually to produce a diverse judiciary. But it will happen only over a considerable period of time. In the short term accelerated progress towards a diverse judiciary is not going to be achieved under a system of appointment on merit alone.'
Lord Sumption, 'Home Truths About Judicial Diversity' Bar Council Law Reform Lecture, 15 November 2012, p.9

Critically discuss the continuing validity of Lord Sumption's comments.

There lacks a continuing validity to Lord Sumption's comments regarding the infrastructure of the Judiciary and its diversity, as it fails to consider how key demographics have been omitted through discrimination and a lack of accessibility. Lord Sumption does not appear to consider bias against religion, race, sexuality, class and trans identities as potential setbacks for judicial diversity. His comments avoid the conversation of intersectionality, how individuals may not just be discriminated against in one way, but in multiple ways for having dual or multiple identities. And even so, under the guise that only gender and ethnicity remain the only demographics underrepresented; there still exists an alarming gap.

Data analysis in conjunction to Lord Sumption's comments

To consider Lord Sumption's comments in full, we must look at the data available to compare the level of diversity within the judiciary in 2012 compared to now, or in this case, government reports most recently available. The 2012 Judicial Diversity Statistics[1] showed that only 22.6% of women make up the judiciary, excluding tribunals, and only 4.2% of BAME representation (Black, Asian and Minority Ethnic), make up the judiciary. This means only 807 women were part of the judiciary against 2,768 men, and for BAME, they were represented by a microscopic group of 150 people against a 2,768-white majority. This suggests, even at the time of Lord Sumption's comments, his assertion that judges are appointed 'on merit alone' was pragmatic but unrealistic given the farce of meritocracy and very apparent bias. This is further evident with the consideration of current statistics, which suggests only 34% of judges are made up of women. This has shown to have risen by only 12% over 9 years, despite women making up 39% of barristers, 52% of

[1] Courts and Tribunals Judiciary, 'Judicial Diversity and Inclusion Strategy 2020 – 2025' (2020) <https://www.judiciary.uk/announcements/judicial-diversity-and-inclusion-strategy-2020-2025-launched/.> accessed 30 March 2022

solicitors, and 76% of Chartered Legal Executives, but are only represented by one-fifth of the judiciary. However, judicial appointment for BAME is considerably worse, only having risen by 5% of the same 9-year course, despite BAME constituting at least 15% of barristers, 18% of solicitors, and 14% of Chartered Legal Executives.

The judiciary through the lens of sociological concepts:

Of all points of discrimination, it is largely incomprehensible to discuss 'merit' in terms of meritocracy without the acknowledgement of class barriers. The judiciary cannot be diverse if professional degrees and experience are restricted by socio-economic barriers. This is to suggest that, whilst all children who grow up in Britain may share similarities in upbringing, it is their unique background and characteristics that will define their socialisation[2] and future potential. If a child is brought up in working-class conditions, their cultural capital[3] is significantly smaller and thus will receive less financial support for an education that would start their career. This is further exacerbated when potential working-class lawyers lack the social network, usually afforded to middle-class and upper-class children from the social capital of their parents, to open doors for pupillages or training required to become a lawyer and later, a recommendation for appointment.

The topic of class struggle is particularly important because we must now consider why women and BAME are amongst the lowest earners[4][5], and how this same principle of prejudice prevails in the appointment of judges. If many women and BAME are of a low socio-economic status, it is precedented that the potential talent lost results in a smaller pool of eligible applicants. Additionally, the struggle from current applicants may be a result of an inability to access the same experiences to build their expertise and rapport. This is to say, if there is no shift in women and BAME excelling at lower ranks, there can be no expectation for this to occur further in the hierarchy, and therefore, unlikely to be an increase in a diverse range of eligible applicants for the judiciary.

This because a considerable portion of BAME lawyers will come from low socio-economic backgrounds, mainly having been born to immigrants or emigrating themselves, typically from a former colony; and will therefore lack the same established background and education that white upper-class children have, who will eventually become judges. However, women from low socio-economic statuses do not inherently breed a generation of working-class women, which suggests a cultural relevance in misogyny and the glass ceiling[6] as a dual edge to classism. Women who lack the financial resources and the social capital can only be further deterred by a patriarchy that punishes women for striving to excel in their careers against their presumed maternalistic disposition, and thus creates a hostile workplace. Though it can be argued that women are well represented, comprising 43% of applications and 44%

[2] Mansell et al 'Chapter 2, 'Law, order and reality', in A Critical Introduction to Law (4th ed, 2015). Pg. 24.

[3] Chris Barker, 'Cultural capital' in The Sage Dictionary of Cultural Studies (SAGE Publications, 2004) Pg. 37

[4] Government, 'Socio-economic groups by ethnicity' (22 August 2018) < https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/demographics/socioeconomic-status/latest#ethnic-groups-by-socio-economic-status

[5] Government, 'Ethnic groups by socio-economic status of women' (22 August 2018) < https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/demographics/socioeconomic-status/latest#ethnic-groups-by-socio-economic-status

[6] BBC, '100 Women: 'Why I invented the glass ceiling phrase'', BBC (13 December 2017) < https://www.bbc.co.uk/news/world-42026266.

of recommendations[7], it is still rather dubious that they only make up 34% of the judiciary, this being further strained to 29% for senior roles in the High Courts and above[8]. These invisible barriers extend to BAME candidates where, 'more than half of the judiciary are white men and a third are white women,'[9] and from the eligible pool, 'recommendation rates for Asian, Black and Other ethnic minorities candidate groups were an estimated 36%, 73% and 44% lower respectively compared to white candidates'[10].

The impact of a non-diverse judiciary on the law:

It should come as no surprise when British society often defers violence and discrimination in the forms of misogyny, xenophobia and racism as a notion of the past. However there are cases[11][12] that show the maltreatment of victims and reinforce these ideologies as normal to their white male counterparts. Additionally, they teach women and BAME collectively, that their efforts, their worth and existence alone are not measurable to a white man. One of the cases that solidified this, in terms of the judgement made, was the case of Michael[13]. According to the judgement, the police, who failed to respond to two phone calls from a victim of domestic abuse in time, did not owe her a duty of care under omission, even after the victim had been killed by her partner; in favour of avoiding policy making and creating points of contention. This case created controversy, as despite her plea for help and mention of both having been assaulted and threatened with death, her call was downgraded from an immediate response to a one hour response time. Despite the behaviour of the police, only one judge recognised the severity of the case, being Lady Hale who dissented: 'It is difficult indeed to see how recognising the possibility of such claims could make the task of policing any more difficult than it already is. It might conceivably, however, lead to some much-needed improvements in their response to threats of serious domestic abuse.'

Conclusion:

To conclude, the lack of a diverse judiciary, regardless of whether there will be a diverse judiciary, 'over a considerable period of time', does not matter when the current judiciary's judgments and sentences have shown their deficiencies and have impacted the law considerably. However, the UK has started to acknowledge these deficiencies, as per the Judicial Diversity and Inclusion Strategy 2020 – 2025[14] which sets to: create a more inclusive and respectful culture and working environment within the judiciary, ensuring greater responsibility in making and reporting progress for diversity and inclusion and achieving greater diversity in the pool of applicants for judicial roles. This suggests, despite Lord Sumption's expertise, the validity of his claims are no longer culturally relevant; Lord Chief Justice, with the support of the Crown, believes that judicial diversity cannot be achieved without action and recognises that changes are needed to ensure that, "talented individuals, whatever their personal or professional background, can thrive."[15] This recognises what was 'formerly perceived as

[7] Ministry of Justice, 'Diversity of the judiciary: Legal professions, new appointments and current post-holders – 2021 Statistics' Gov.uk (15 July 2021) < https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2021-statistics/diversity-of-the-judiciary-2021-statistics-report.

[8] Ibid, 1.1 Gender.

[9] Ibid, 1.2 Ethnicity.

[10] Ibid.

[11] R v Dobson and Norris [2012] 1 WLUK 5

[12] R (on the application of Begum) v Secretary of State for the Home Department [2020] UKSC 157;

[13] Michael v Chief Constable of South Wales [2015] UKSC 2

[14] Courts and Tribunals Judiciary, 'Judicial Diversity and Inclusion Strategy 2020 – 2025' (5 November 2020) < https://www.judiciary.uk/announcements/judicial-diversity-and-inclusion-strategy-2020-2025-launched/.

[15] Ibid.

isolated and individual has also characterised the identity politics'[16] in which people are further systemically and socially divided, seeps into the judiciary and even its appointment, despite there being a Judicial Appointments Commission. But these characteristics have also built communities and should be no further excluded, especially when different backgrounds and experiences can improve the quality of justice found today.

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The Failings of the **Criminal Justice System and Proposed Solutions**

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While the definition of justice is the 'upholding of rights, and the punishment of wrongs, by the law'[1], the criminal justice system may be said to be quite far from it. Where the punishment of wrongs is not proportional to the act in question and where the rights of individuals are quashed by the criminal prosecution system, how can there be justice?

This paper will discuss the failings of the criminal justice system and will propose ways in which it could become more just. First, it will consider the role that racial stereotyping plays on crime related statistics, and how a police force which is better representative of the population would create a justice system which effectively treats all individuals equal. Second, it will consider how prison populations are affected by party politics, and its consequent failings in the prioritisation of sentencing aims; no positive impact can be reached unless focus is placed on deterrence in the form of rehabilitation and release day as shown in Norway. It will then look into the success of rehabilitation in the form of education to make prisons more just by providing opportunities for personal growth, which would ultimately amount to a reduction in recidivism.

This paper will then conclude by proposing solutions to the aforementioned failings.

[1] Percy George, in Mick Woodley (ed) *Osborn's Concise Law Dictionary* (12th edn, Sweet & Maxwell 2013).

Race and its Manifestations: Police Stop and Search

Prejudice is manifested by the police due to a stereotyped link between crime and race which can be seen in comparing the number of stop and searches concluded on white and Black people.[2] Section 1 of the Police and Criminal Evidence Act 1984 allows police to 'stop and search' a person only on 'reasonable grounds' as to keep the general population safe; reasonable grounds include suspicion of carrying weapons, stolen property, illegal drugs and if there is suspicion that serious violence could take place and/or you're in a specific location. Lord Scarman's statement in 1981 that Met Police policies are not 'racist' but 'racial prejudice… occasionally' presenting itself supports continuity of these harmful attitudes. The continuity is seen clearly in the 21st century for example in the need for the George Floyd protests in May 2020.[3] A study concluded in June 2020 indicated that 41% of police officers admitted they are more likely to believe stereotypes to be true such as the

[2] Vikram Dodd, 'Black People Nine Times More Likely to Face Stop and Search than White People' (The Guardian, 27 October 2020) <https://www.theguardian.com/uk-news/2020/oct/27/black-people-nine-times-more-likely-to-face-stop-and-search-than-white-people> accessed 14 December 2022.

[3] Leslie Scarman, '*The Scarman Report*' (UK Government 1981) vol 425.

link between racial minorities and crime.[4] These systemic issues have been noted over the decades, as seen in the 1999 Police Journal which confirms that 'predominantly white [police staff]' will develop 'negative racial stereotypes' due to having negative experiences with minority groups.[5] Thus, it may be effective to call for a police force representative of the UK's general population so that what is argued will be regarded in light of whether non-white police officers hold the same opinions.

Between April 2019 and March 2020 there were 6 stop and searches for every 1,000 white people and 54 for every 1,000 Black people. [6] These numbers indicate that the stereotyped link between Black people and crime plays a significant role in contemporary police stop and searches. This is due to the number of stop and searches made for Black people being disproportionate to their white counterparts. Between April 2018 and March 2019 there were 32 arrests for every 1,000 Black people while only 10 arrests were made for every 1,000 white people showing that Black people are 3 times more likely to be arrested.[7] This shows how the criminal justice system is unjust by failing to treat all individuals equal before the law due to the assumed link with crime.

Broader Social Factors and Prejudice

The targeting of racial minorities in the UK leads to their over-representation in prison thus supporting the link between crime and prejudice. Another way to look at this is in the light of broader social factors. A look into employment between April 2020 and March 2021 shows that white staff are more likely to receive a paid bonus with the figure being 46.3% while only 35.1% of Black, Asian and Minority Ethnic (BAME) staff achieved the same bonus[8]. The McGregor-Smith Review of 2017 concludes that there is a gap of 12.8% in the employment rate between BAME workers and white workers[9]. On these facts it can be drawn that there are social inequalities between the white workers and BAME workers. These figures call for greater representation of BAME staff and fairer playing fields. Having a police force more representative of the general population will enable inequalities to be looked at in the light of social factors that impact upon racial disproportion in statistics.

Proposed Solution: BAME representation in the Police Force

The Ministry of Justice's aim in tackling prejudice is to have a more diverse police force to better represent communities[10]. By 2020, BAME officers represented 7% of police service in England and Wales while the total BAME

[4] Beth Mann, ' More Britons Now Unconfident than Confident in the Police to Deal with Crime Locally' (*YouGov*, 6 October 2021) <https://yougov.co.uk/topics/politics/articles-reports/2021/10/06/more-britons-now-unconfident-confident-police-deal> accessed 24 April 2022.

[5] Robin Oakley, 'Institutional Racism and the Police Service' (1999) 72(4) The Police Journal 285-295, 286 <https://journals.sagepub.com/doi/abs/10.1177/0032258X9907200402>

[6] Home Office, 'Stop and Search' (UK Government, 22 February 2021)<https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest> accessed 24 April 2022.

[7] Ibid.

[8] Medicines & Healthcare Products Regulatory Agency, '*Ethnicity Pay Gap Report: April 2020 to March 2021*' (MHRA 2021).

[9] The Chartered Institute of Personnel and Development, 'Race Inclusion in the Workplace' (*CIPD*) <https://www.cipd.co.uk/news-views/viewpoint/race-inclusion-workplace#gref> accessed 12 November 2022.

[10] Ministry of Justice, '*Transforming the Criminal Justice System: Strategy and Action Plan*' (MOJ 2014) 7.

population is 14%.[11] In October 2021, there has been an 8% drop in ethnic minority Britons trusting the police, indicating that the current BAME police force underrepresents the general BAME population. This is a failing of the criminal justice system to be representative of all individuals and thus treat them equal.[12]

Although the Metropolitan Police Service aims for 40% of its new recruits to represent racial minorities, if this continues at the current rate, it is predicted it will take 90 years for the police service to be representative of the 2050 BAME population. [13] To combat this, it is proposed that the government should agree targets for BAME worker recruitment in each constabulary to reflect local population composition[14]. Along with this, it is proposed for the Home Secretary to establish a Race Equality Steering Group that would effectively oversee the recruitment of BAME officers. [15] The Race Equality Steering Group has been established in major institutions such as UCL, with its main objective being to promote equality across all aspects of the institution. [16]

Commitment to these propositions would mean that the confidence gap that exists concerning the trust of such workforce by the BAME community would be effectively reduced. In workforce diversity being increased and examined, a true trust in police may develop due to justified assumptions being made without prejudice in order to protect the population which would effectively lead to more equal treatment of individuals and lower the over-representation of racial minorities in prisons.

Overpopulation in Prisons

Prison population is constantly increasing with no significant effects on lowering recidivism, which is a significant failing of the criminal justice system. The UK prison population has increased from 44,000 in 1993 to over 80,000 today. [17] This is likely the result of political party policies, such as former Prime Minister Boris Johnson's promise of longer sentences and more funding to increase prison space. The policy is supported by the general public, as 65% believe that courts are not harsh enough on offenders.[18] The policy and its effects can be seen in the average sentence for more serious offences being 57.7 months, which is over 2 years longer than in 2007.[19] In 2019, 56,000 people were sent to prison in England and Wales, of which 67% committed non-violent offences and 46% served

[11] Home Affairs Committee, 'Urgent Action Needed to Tackle Deep Rooted and Persistent Racial Disparities in Policing' (*committees.parliament.uk*, 30 July 2021) <https://committees.parliament.uk/work/347/the-macpherson-report-twentytwo-years-on/news/157006/urgent-action-needed-to-tackle-deep-rooted-and-persistent-racial-disparities-in-policing> accessed 12 November 2022.

[12] Tanya Abraham, 'Trust in the Police had Fallen Amongst Ethnic Minority Britons' (*YouGov*, 15 December 2021) <https://yougov.co.uk/topics/politics/articles-reports/2021/12/15/trust-police-has-fallen-amongst-ethnic-minority-br> accessed 24 April 2022.

[13] Stephen Walcott, 'Radical Reform is Required if the Police Service is to look like the Society it Serves' (*The Police Foundation)* (London, 19 February 2021) < https://www.police-foundation.org.uk/2021/02/radical-reform-is-required-if-the-police-service-is-to-look-like-the-society-it-serves/#:~:text=As%20of%20December%202020%2C%207.5,projected%20at%2017.2%20per%20cent.> accessed 24 April 2022.

[14] Home Affairs Committee (n11).

[15] Home Affairs Committee (n11).

[16] UCL Human Resources, 'Race Equality Steering Group' (UCL) <https://www.ucl.ac.uk/human-resources/race-equality-steering-group> accessed 12 November 2022.

[17] Chris Daw 'Why We Should Close All Prisons' in, *Justice on Trial* (Bloomsbury Publishing Plc 2020) 18.

[18] Ibid.

[19] Ibid 19.

half a year or less. [20] This makes evident of a society focused on locking up citizens without prospects for a positive outcome, as the recidivism rate is at 57.5% for offenders released from custodial sentences of less than 12 months and 59.3% of those released from sentences of less than or equal to 6 months respectively. [21] Therefore, incarceration for non-violent offences often leads to increased recidivism and therefore a negative reintegration into society.[22] These figures showcase a justice system which fails at its aim to deter and ultimately reduce crime.

Although the Prison Rules 1999 and Sentencing Act 2020 make it a legal obligation to promote rehabilitation in order to achieve aims of crime reduction and deterrence, it is clear that the main focus is on punishment, even though the high recidivism rate suggests that punishment on its own does not positively affect deterrence. This focus on punishment leads to a justified estimate by the government that in the next four years, the prison population will rise by more than 20,000 from the current level.[23]

Proposed Solution: Prison Reform

Comparatively, Norway's prison model places focus on the release day rather than deterrence and the incarceration period. It is proven to be successful due to the recidivism rate being barely 20% of the incarceration rate.[24] The recidivism rate in the UK is over 2.5 times higher than the one in Norway suggesting that a focus on punishment and deterrence is not enough to lower reoffending as prisoners continue to be released in the same position as the one in which they were sentenced without any positive growth. Upon release, many prisoners may notice lack of protection in the community such as employment, relationships and housing.[25] By shifting the main focus onto the release day, the sentence proves to be an opportunity for prisoners to reform with the goal of successfully reintegrating into society. This is to be achieved by successful rehabilitation in prison which would ultimately lower the chance of reoffending and give ex-inmates a better start upon release. This would make the criminal justice system more just in terms of creating a visible and positive outcome however there need be an improvement to rehabilitation with focus on education as to achieve this.

Further Proposed Solution: Desistance through Skills Development and Prison Education

Desistance is the process of ending a period of offending behaviour. [26] Desistance can be achieved within the prison[27] by involving a third party influence in the form of tertiary desistance (sense of belonging and recognition by others that one has changed[28]) as well as prison education,

[20] Ibid 18.

[21] Ministry of Justice, 'Proven Reoffending Statistics: January to March 2020' (GOV.UK, 27 January 2022) <https://www.gov.uk/government/statistics/proven-reoffending-statistics-january-to-march-2020/proven-reoffending-statistics-january-to-march-2020#:~:text=The%20overall%20proven%20reoffending%20rate,the%20impact%20of%20the%20pandemic> accessed 24 April 2022.

[22] Daw (n17) 30.

[23] Prison Reform Trust, '*Prison: the Facts, Bromley Briefings Summer 2022*' (PRT 2022) 6.

[24] Daw (n17) 31.

[25] Dr Melissa Hamilton, Dr. Jay Gormley, Dr. Ian Belton, 'The Effectiveness of Sentencing Options' (Sentencing Academy 2021) <https://www.sentencingcouncil.org.uk/wp-content/uploads/Effectiveness-of-Sentencing-Options-Review-FINAL.pdf> accessed January 7th 2022.

[26] Stephen Farrall and Adam Calverley, *Understanding Desistance from Crime: Emerging Theoretical Directions in Resettlement and Rehabilitation* (OUP 2006) 1.

[27] Fergus McNeill and others, *How and Why People Stop Reoffending: Discovering Desistance* (IRISS 2012) 6.

[28] HM Inspectorate of Probation, 'Desistance- General Practice Principles' (*GOV.UK*, 18 December 2020) <https://www.justiceinspectorates.gov.uk/hmiprobation/resea

allowing prisoners to disassociate themselves from delinquent peers. [29] The process amounts to rehabilitation by providing prisoners with opportunities for a better participation in society and a life disassociated from crime. [30]

Dame Sally Coates' Review of Prison Education in 2016 found that positive learning spaces promote rehabilitation. The review contained recommendations to, amongst other goals, raise prisoners' aspirations, encourage educational journey and enable employment opportunities upon release. [31] These goals are imperative, as 42% of adult prisoners have reported being permanently excluded from school, which leaves them with limited opportunities for success.[32] Prison education can 'break the cycle of reoffending' by 'providing qualifications and skills',[33] which is supported by recidivism reduction of between 2 and 8% when enrolled onto an Open University course by the use of Prisoners Education Trust grant.[34] Even though research supports that prison education is linked with desistance and positively impacts recidivism, it is not going far enough to effect a major positive change.[35]

Prison Rules 1999 Section 32(1) states that 'every prisoner' is to be 'able to profit from education facilities at prison' and 'shall be encouraged to do so'. Despite this, in 2020 only 42% of prisons obtained a positive rating for including or making a reasonable attempt at purposeful activity, which shows that neither legal obligations nor reviews have any significant impact.[36] Three-fifths of adult prisoners continue to leave prison without identified employment or education outcome showing that the system is failing to focus on rehabilitation as to achieve its goal of deterrence.[37] The lack of opportunities for prisoners became highlighted even more in the light of Covid-19 and budget cuts. By April 2021, national lockdowns meant that prisoners on average were isolated in their cells for 22.5 hours per day as to reduce risk of infection[38]. The time spent in their cells meant that no rehabilitative opportunities could take place. The Departmental Expenditure Limits budget for prison resources fell by 13% between 2010-11 and 2018-19[39] which supports the fact that many prisons lack adequate learning spaces to provide prisoners with skills. In prioritising education, more

rch/the-evidence-base-probation/models-and-principles/desistance/> accessed 12 November 2022.

[29] McNeill and others (n27).

[30] Nina Champion and James Nobel, *What is Prison Education for? A Theory of Change Exploring the Value of Learning in Prison* (NPC 2016) 2.

[31] Dame Sally Coates, *Unlocking Potential: A Review of Education in Prison* (Ministry of Justice 2016) 4.

[32] Ibid iii.

[33] Anne Pike and Anne Adams, 'Digital Exclusion or Learning Exclusion? An ethnographic study of adult male distance learners in English Prisons' (2012) 20(4) Research in Learning Technology 363.

[34] Justice Data Lab, *Re-Offending Analysis: Prisoners Education Trust Open University Grants* (Ministry of Justice 2013) 1.

[35] Helen Farley and Anne Pike, *'Engaging Prisoners in Education: Reducing Risk and Recidivism'* [2016] Journal of the International Corrections and Prisons Association 1.

[36] HM Chief Inspector of Prisons for England and Wales, *Annual Report 2019-20* (HMIP 2020) 19.

[37] Coates (n31) iii.

[38] Dr Chantal Edge and others, 'Covid-19 and the Prison Population' (*The Health Foundation Working Paper,* November 2021) < accessed January 7th 2022 https://www.health.org.uk/publications/covid-19-and-the-prison-population > accessed 12 November 2022 3.

[39] Labour Shadow Treasury Team, '*The State of Justice in the United Kingdom in 2020*' (Labour, March 2020) 2.

prisoners will be able to leave prison with developed skills and knowledge essential for further positive opportunities such as employment which will be an effective deterrent from their continued engagement in criminal activity.

Conclusion

In conclusion, this paper provided an insight into the failings of the criminal justice system in the UK; under-representation of BAME population in the police force as well as overpopulation in prisons which leads to no positive outcomes. The proposed solutions, which included creating a better representative police force so as to lower prejudice being manifested and prison reform with close regard to sentencing guidelines and a push for effective prison education and rehabilitation, aim to make the criminal justice system more just. While it is unlikely that a police force wholly representative of the general population will emerge any time soon and that sentencing will be strictly looked at in the light of deterrence and rehabilitation through the lens of education, it is essential to make a start and call for changes to be made in order to rightfully call the system one of justice.

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An Analysis of the **European Parliament Voter Turnout**

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Within the European Union (EU), a democratic deficit refers to the perceived lack of accessibility and representation of its over 400 million citizens.[1] It could also be argued that the effect that citizens have on their parliamentary democracy is not the same as the effect they have on EU institutions.[2]

The European Parliament is a core democratic institution of the EU aiming to provide democratic legitimacy to EU decision-making due to being its only directly elected body.[3] The elections are therefore a means for citizens to provide input every five years and have their interests represented at a Union level.[4]

This paper will consider whether the EU is too remote from its citizens by engaging with the lens of general engagement in elections, both national and Union-level, the extent to which citizens feel they are represented, along with factors influencing voter turnout. Examples will be drawn from Member States closest to, and furthest away from the EU (European Parliament in Strasbourg, France and official headquarters in Brussels, Belgium). Furthermore, this paper will discuss propositions for change and concludes with a brief discussion of its findings.

Distance, Engagement and Satisfaction

Voter turnout in European Parliament elections is at an all-time high with 50.66% in 2019; it is over 5% higher than in 2004 and over 8% higher than in 2014. Despite the evident increased interest, half of the potential voters don't provide input.[5] The elections have long been described as 'second order' elections whereby they are viewed as less important than national 'first order' elections.[6]

[1] Eur-Lex, 'Democratic Deficit' (*eur-lex.europa.eu*) <https://eur-lex.europa.eu/EN/legal-content/glossary/democratic-deficit.html> accessed 2 January 2023.

[2] Elspeth Berry and others, 'The Official Institutions of the European Union' in *Complete EU Law: Text, Cases, and Materials* (OUP 2022) 30.

[3] Madeline O Hosli and others, 'Turnout in European Parliament Elections 1979-2019' [2022] *European Politics and Society* <https://www.tandfonline.com/doi/full/10.1080/23745118.2022.2137918> accessed 2 January 2023.

[4] ibid.

[5] European Parliament, 'European Results' (*europarl.europa.eu*, 22 October 2019) <https://www.europarl.europa.eu/election-results-2019/en/turnout/> accessed 2 January 2023.

[6] Francois Briatte, Camille Kelbel and Julien Navarro, 'Participation In European Parliament Elections: Is It All About Timing?' (*Reconnect*, 21 May 2021) <https://reconnect-europe.eu/blog/participation-in-european-

EU institutions being geographically distant, ultimately leads to citizens feeling as though the EU is distant from them and their concerns. This plays a core role in the argument to support the existence of democratic deficit in the EU.[7] National election voter turnout is significantly higher than Union-level turnout. In Member States closest to the EU's core democratic institution, national elections' turnout is on average higher by 10-25% in France, 30% in the Netherlands and 20-40% in Germany. In Member States furthest away, national elections' turnout is on average higher by 30% in Finland, 20-30% in Estonia, 5-15% in Malta and 10-40% in Cyprus. This does not necessarily constitute the basis to argue that remoteness impacts engagement as both types of States engage similarly in elections; viewing national elections as more important.

Subsequently, when asked the question of whether the citizens consider their voice to be of importance within the EU, results prove supportive of the presence of remoteness. Greece disagrees by 85% and both Estonia and Cyprus by 75%. Although States like Germany, France and the Netherlands are divided almost equally on the issue, results which are close to or above 45% showcase a much smaller disagreement degree[8] which validates the argument of the EU being remote from its citizens.

Thus, it may be argued that a democratic deficit is present in the form of remoteness. Both types of States attribute 'second order' status to Union-level elections which can be an indicator of low interest in European matters. However, States furthest away express more dissatisfaction, as compared to closer States, implying the feeling of inability to contribute which in turn might explain low turnout.

Factors Influencing Voter Turnout

There are several factors, other than distance, influencing European Parliament election turnout. The most prominent include the novelty of the experience and rise of Euroscepticism.

'First time boost' is where Member States taking part in elections for the first time experience an increased turnout compared to later elections due to it being a novel experience.[9] The first elections of 1979 saw a first time boost in all the then-integrated States; France's turnout being 60.71% as compared to 2019 where it decreased by roughly 10%.[10] The 2019 turnout in the Netherlands was 17% lower than in 1979 and Malta's first elections following integration in 2004 showed a 10% decrease in 2019 from 82.39%.[11] Cyprus' decrease is the most significant with 2019 elections being 28% lower than in 2004.[12] Estonia is a notable exception where voter turnout has increased since its integration in 2004 by 11% nevertheless the dominant trend is one of decrease.[13]

Euroscepticism exists in 'soft' and 'hard' contexts. 'Hard Euroscepticism' refers to principled opposition to the EU, while 'soft Euroscepticism' refers to the opposition to specific EU policy and national interest being at odds with

parliament-elections-is-it-all-about-timing/> accessed 2 January 2023.

[7] Charles Grant, 'How to Reduce the EU's Democratic Deficit' (*cer.org.uk*, 10 June 2013) <https://www.cer.org.uk/in-the-press/how-reduce-eus-democratic-deficit> accessed 2 January 2023.

[8] Directorate General for Communication, 'Future of Europe Report Special Eurobarometer 394' (European Commission 2012) 29.

[9] O Hosli and others (n 3).

[10] European Parliament (n 5).

[11] ibid.

[12] ibid.

[13] ibid.

the EU's trajectory.[14] Even though it is generally expected for Members of the European Parliament (MEP's) to be supportive of the Union, there are Eurosceptic members. A prominent example is UK's Nigel Farage, MEP since 1999 and the prime mover behind the 2016 Referendum on EU membership, who now heads the Brexit Party.[15] Between 1979 and 2009 a fifth of MEP's were hard or soft Eurosceptics. However, in 2014 this increased to 29% and now 30% showcasing a political gravity shift.[16] Since 1979, left-wing to a far-left presence in the European Parliament decreased by 5% whereas right-wing to far-right presence increased by 13% which is a factor influencing the dissatisfaction with the Union.[17] Due to MEP's being organised by political affiliation rather than nationality,[18] national politics are the driving mechanism behind the shift due to EU elections in a sense being reflective of national political affiliations.

Proposed Solutions

In order to increase engagement, combat the second order status of Union-level elections as well as increase trust and bring the EU closer to its citizens, changes are needed. For this to happen, the timing of elections, mandatory elections, and increased links between the national and EU Parliament must be established.

European Parliament elections are mandatory, although there are no consequences for non-engagement, in five EU Member States including Belgium, Cyprus and Greece. Belgium is the only Member State in which national elections are mandatory. Drawing on the example of Belgium and making voting compulsory, it is estimated that turnout would increase by 11.6%.[19] On the other hand, turnout in the Member States with mandatory European Parliament Voting, isn't significantly higher than in the States without (drawing upon turnout comparison of EU and national elections); however, there are less fluctuations in sequential elections in States with mandatory voting.[20] This leads to more obvious predictions; in the last two elections, 2014 and 2019, the difference in Greece was 1.28% and Cyprus 1.01% while Germany's difference was 13.28% and the Netherland's 4.61%.[21]

It is also expected that by adjusting the electoral calendar, the same turnout increase of 11.6% is expected as when making elections mandatory.[22] European Parliament election timing with the national election cycle plays a role in voter turnout.[23] If the Union-level elections occur shortly after the national election, the voter's attention to the former will be lower than if it would have taken place just before.[24] This is the likely result of domestic politicians placing greater emphasis on EU issues to increase their potential

[14] Drew Desilver, 'Euroskeptics are a Bigger Presence in the European Parliament than in the Past' (*pewresearch.org,* 22 May 2019) <https://www.pewresearch.org/fact-tank/2019/05/22/euroskeptics-are-a-bigger-presence-in-the-european-parliament-than-in-past/> accessed 2 January 2023.

[15] ibid.

[16] ibid.

[17] ibid.

[18] European Parliament, 'The Political Groups of the European Parliament' (*europarl.europa.eu*) <https://www.europarl.europa.eu/about-parliament/en/organisation-and-rules/organisation/political-groups> accessed 2 January 2023.

[19] Briatte, Kelbel and Navarro (n 6).

[20] European Parliament (n 5).

[21] ibid.

[22] Briatte, Kelbel and Navarro (n 6).

[23] O Hosli and others (n 3).

[24] ibid.

electorate as well as the role of media surrounding national elections.[25]

National parties should establish closer links with the European Parliament. An ideal plan of action would be appointing leading national party figures as European Secretaries which would increase national party input in European Parliament caucuses but also ensure national elections deal with European issues.[26] This could increase trust in the EU and combat second order status of elections, thus increasing voter turnout, due to clearer involvement between national and European Parliaments.

Conclusion

In conclusion, this paper provides an insight into the European Parliament voter turnout; impact of distance, first time boost concept and rise of Euroscepticism. Although all Member States view Union-level elections in a dimmer light than national elections, remoteness is seen in cases where states further away do not feel they provide adequate input. Due to the European Parliament being the only directly elected institution, it is necessary for citizens to provide input, yet nearly half don't seize the opportunity which can be attributable to the rise in Eurocentrism when the election is not conducted for the first time. To increase turnout, mandatory voting would provide clearer predictions in consequent elections, shifting the timing of elections would result in greater focus placed on EU issues and appointment of national figures as European Secretaries would establish closer links between the European and national parliaments.

[25] ibid.

[26] Corrado Pirzio-Biroli, 'Five Ways to Fix the EU's Democratic Deficit' (*friendsofeurope.org*, 28 March 2018) <https://www.friendsofeurope.org/insights/five-ways-to-fix-the-eus-democratic-deficit/> accessed 7 January 2023.

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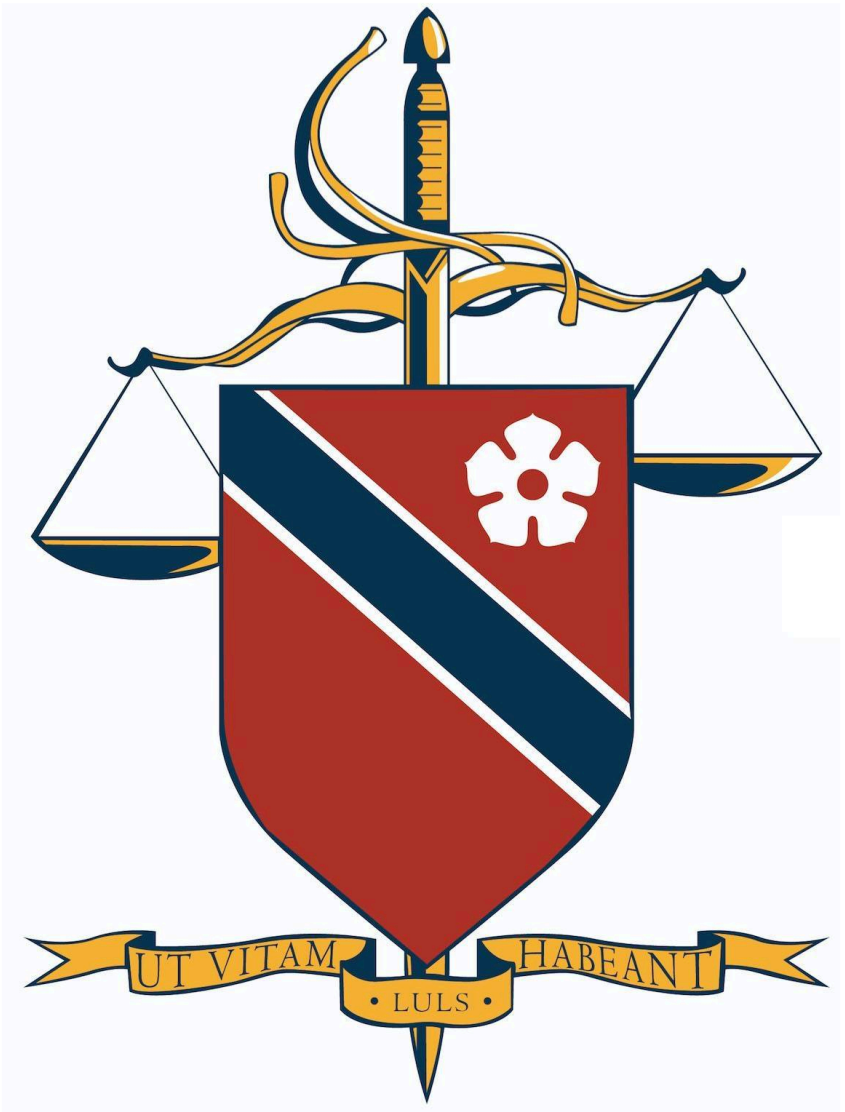
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