

## Against a Dark Background: The Prevention of Femicide Act 2023 and the Problem of Legislating for Control

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### Abstract

The plot device at the heart of Jayne Cowie's 2022 novel *After Dark* is the Prevention of Femicide Act 2023, a (fictitious) piece of legislation enacted by Parliament in response to high-profile cases of gender-based violence, and implemented to prevent future occurrences of such crimes. The events of the novel demonstrate that this legislation proves to be flawed in several respects, not least in its failure to prevent the very crime that it was enacted to stop. In this article, I will look at the flaws evident in the legislation as depicted in the novel, and in doing so demonstrate the difficulties inherent in drafting legislation that aims to uphold the rights of one group while at the same time depriving a different group of their rights. I will highlight the formidable obstacles faced by real-world lawmakers in drafting legislation aimed at bringing about radical social change in the face of public hostility to that very change, and will ask whether it is the proper place of the legislature to attempt to effect such changes, or whether society itself ought rightly to be the vehicle for the radical change of mindset necessary to prevent crimes perpetrated by one group in society against another.

### Keywords

Gender-Based Violence, Legislation, Human Rights, Feminism, Discrimination

### ***Introduction: Legislating for Control***

The Prevention of Femicide Act 2023, the plot device at the heart of the novel *After Dark*,<sup>2</sup> while fictitious in nature, is an example of a type of legislation not uncommon in the real world. Since its inception, Parliament has imposed its will by an assertion of control. To quote the satiric, but nonetheless valid, observation of A.P Herbert, the state of the law prior to the

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<sup>2</sup> J Cowie, *After Dark* (Penguin, 2020).

enactment of the Human Rights Act 1998 was such that ‘*prima facie* all actions are illegal’ and that ‘it cannot be too clearly understood that this is *not* a free country’.<sup>3</sup> Save that legislation must now be compatible, or interpreted to be so, with the European Convention on Human Rights,<sup>4</sup> the position holds true today that it is within the gift of Parliament to restrict and remove the liberties of its subjects as it sees fit. This much was clear from the speed with which legislation imposing unprecedented degrees of restriction on individual liberties was implemented in response to the recent Covid-19 pandemic.<sup>5</sup> As has been the case with similar legislative restrictions upon individual liberties imposed since the First World War,<sup>6</sup> the Government’s explanation for bypassing the customary degree of parliamentary scrutiny was the need to take steps to act urgently in the event of an emergency – specifically relating to public health.<sup>7</sup>

Legislation of the type described above is imposed with the intention that it be ‘operational only for a limited period’<sup>8</sup> and is indiscriminate in its stated objective (although inevitably will discriminate in its effect based upon the personal circumstances of its subjects).<sup>9</sup> This type of legislation is to be distinguished from that of the type not imposed with any such time-limited considerations in the mind of the legislator, and which is imposed with the object of asserting control over a specific group in society. It is this type of legislation that drives the plot of *After Dark*.

The term ‘legislating for control’<sup>10</sup> originates in academic discussion of the Trade Union Act 2016, an Act described as ‘a ragbag of different measures, united only by a common theme of placing more controls on trade unions’.<sup>11</sup> The measure that ‘seems to lie at the heart of the Government’s objectives’<sup>12</sup> is the imposition of minimum thresholds on turnout for a ballot on industrial action to be lawful, which resulted in ‘major concerns about freedom of association and compatibility with a number of treaty obligations, including, notably, the European Convention on Human Rights, Article 11’.<sup>13</sup> In a similar vein to the public health

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<sup>3</sup> A P Herbert, ‘Rex v Haddock: Is It A Free Country?’ (1927) in *Uncommon Law* (Methuen & Co, 1948, reprint), 24-29, 28.

<sup>4</sup> Human Rights Act 1998, s 3(1)

<sup>5</sup> See K D Ewing, ‘Covid-19: Government by Decree [2020] 31(1) King’s Law Journal 1-24.

<sup>6</sup> *ibid*, 2-5.

<sup>7</sup> *ibid*, 19, fn 84.

<sup>8</sup> *ibid*, 2.

<sup>9</sup> O L Motta Ferraz, ‘Pandemic Inequality: The Two Worlds of Social Distancing’ (2020) *The Yale Review*. Available at: <https://yalereview.org/article/pandemic-inequality> (last accessed 14 June 2024)

<sup>10</sup> M Ford and T Novitz, ‘Legislating for Control: The Trade Union Act 2016’ (2016) 45(3) *Industrial Law Journal* 277-298.

<sup>11</sup> The term is a reference to S Auerbach, *Legislating for Conflict* (Oxford University Press, 1990), a monograph chronicling the development of the legislation imposed in the 1980s to restrict trade union activities.

<sup>12</sup> Ford and Novitz, ‘Legislating for Control: The Trade Union Act 2016’, n 10 above, 284.

<sup>13</sup> K D Ewing and J Hendy, ‘The Trade Union Act 2016 and the Failure of Human Rights’ (2016) 45 (3) *Industrial Law Journal* 391-422, 391.

reasons later used to justify the restrictions upon civil liberties imposed by the coronavirus legislation, the explanation given by the Government for these measures was that it was necessary 'to protect you (*sic*) from disruptive and undemocratic strike action.'<sup>14</sup> However, as Ford and Novitz comment, '[r]ather, what emerges is a determination to place unprecedented controls on trade union activity for more pragmatic economic reasons, in ways that also smack of the re-emergence of a highly authoritarian state'.<sup>15</sup>

### **Challenges to Control**

The literature on the Trade Union Act explores the ways in which a subject can challenge the control exerted over them by the state through the imposition of law. The ways in which an individual might take action can be categorised into three forms:

*Above the law* – this type of action involves making appeals to entities with the capacity to influence changes in the law, invoking arguments based upon the alleged infringements of higher-order legal rights, or 'to attempt to identify and utilise the loopholes within the new legal environment'.<sup>16</sup> This type of action, however, is inevitably hindered by the form taken by the legislation that it sets out to challenge: specifically, as a product of an authoritarian law-making process, it is more likely than not to have been implemented without the sort of 'transparent debate' containing reasoning that might render it subject to those same challenges<sup>17</sup>.

*Against the law* – the most direct challenge to a state-imposed exercise of control through legislation is to carry out the act prohibited by that legislation regardless. Such a challenge thereby puts to the test the state's confidence in its power to exercise control by goading it into bringing criminal proceedings against the challenger for breaking the law. It carries with it the threat of developing into a breakdown of law and order on a larger scale, and the incumbent accusation that the state will be itself to blame for the consequent harm to persons and property. Such a challenge was vaunted during the passage of the 2016 Act, most notably by Len McCluskey (the-then General Secretary of Unite the Union), who called for trade unions to take industrial action without the support of a ballot under the 2016 Act on the basis that 'if we are pushed outside of the law in such a manner, the moral argument will be with us and the consequences of our actions and any ensuing chaos will be the

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<sup>14</sup> Conservative Party Manifesto: Conservative Party, "Strong Leadership A Clear Economic Plan A Brighter, More Secure Future" (2015), 18.

<sup>15</sup> *ibid*, 291.

<sup>16</sup> *ibid*, 296.

<sup>17</sup> *ibid*, 295.

responsibility of the government'.<sup>18</sup> However, such actions have not (despite the threats made by McCluskey and others) been taken by trade unions in response to the 2016 Act, possibly due to concerns that the expressed justification for the legislative control, the 'need to preserve 'social order'', might 'provide[...] populist cover for a new and decisive round of repressive and directly coercive measures'.<sup>19</sup>

*Within the law* - the least disruptive action that might be taken in response to state exercise of control is to comply with the measures introduced by the state. At the same time, to continue to promulgate the cause that the exercise of state control was introduced to stifle might be argued to be a *more* subversive response to that exercise of control than acting against the law or appealing to a higher authority. It was noted at the time of the 2016 Act's passage that trade unions might 'adjust their behaviour to the new requirements of the legislation, even turning it to their advantage'<sup>20</sup> in a similar way to how trade union negotiators in the early 1990s reported to have used the show of union members' support indicated by the results of ballots required by the then-new trade union legislation to 'galvanis[e] support for industrial action' and 'lead to an improved offer or withdrawal of proposals in [a] dispute'.<sup>21</sup> Indeed, there has been a scarcity of reports of strike action in contravention of the requirements of the 2016 Act, or of legal attempts to circumvent that Act, and attempts to have its restrictions annulled on human rights grounds do not appear to have been made (possibly with regard to 'recent experience' of European human rights case law with outcomes not in favour of trade unions).<sup>22</sup> Strike action has increased since that time, however, with December 2022 seeing more working days lost to labour disputes than any month since November 2011.<sup>23</sup> It may be, therefore, that in the words of one group of trade union representatives, '[the 2016 Act] has made us look, as a labour movement, [at] how to make ourselves relevant and current [so] that in a hundred years' time, the labour movement will still be here'.<sup>24</sup>

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<sup>18</sup> L McCluskey, 'Can Unions Stay Within The Law Any Longer?' (2015) 44(3) *Industrial Law Journal* 439-449, 449.

<sup>19</sup> A Bogg, 'Beyond Neo-Liberalism: the Trade Union Act 2016 and the Authoritarian State' (2016) 45(3) *Industrial Law Journal* 299-336, 333.

<sup>20</sup> *ibid*, 331.

<sup>21</sup> J Elgar and R Simpson, 'Union Negotiators, Industrial Action and the Law: Report of a Survey of Negotiators in Twenty Five Unions 1991-1992' (CEPDP 171, Centre for Economic Performance London School of Economics and Political Science, October 1993), 14. Available at: [http://eprints.lse.ac.uk/20931/1/Union\\_Negotiators.pdf](http://eprints.lse.ac.uk/20931/1/Union_Negotiators.pdf) (last accessed 14 June 2024).

<sup>22</sup> C Barrow, "The Trade Union Act 2016, the European Court of Human Rights, and the 'Right to Strike' under Article 11 of the European Convention" [2018] (2) *European Human Rights Law Review* 158-167, 167.

<sup>23</sup> D Clark, 'Number of Working Days Lost due to Labour Disputes in the UK 2010-2023' (Office for National Statistics (UK), 2023). Available at: <https://www.statista.com/statistics/1350908/uk-industrial-action-working-days-lost/> (last accessed 14 June 2024).

<sup>24</sup> PCS union focus group, 4<sup>th</sup> June 2016 (quoted at F Porter, H Blakey, M Chater, G Chesters, M Hannam, and I Manborde, 'Voices from the Movement: What can the Trade Union Act (2016) Tell us about Trade Union Organising?' (2017) 25(2) *Renewal: A Journal of Social Democracy* 59-73, 67).

### **The Prevention of Femicide Act 2023**

The plot of *After Dark* is driven by an attempt by Parliament to impose legislation by control upon its subjects. The events of *After Dark* take place in either 2038 or 2039, sixteen years<sup>25</sup> after the enactment of the Prevention of Femicide Act 2023, legislation 'brought in'<sup>26</sup> in response to the violent killings of five women (including a Member of Parliament named Susan Lang) 'over the course of five awful months'.<sup>27</sup> The legislation is a form of legislation by control, specifically directed at men, and controls them by imposing the requirement that they remain 'in their houses overnight' (between 7pm and 7am) and wear an electronic tag<sup>28</sup> which alerts the police to their having breached 'curfew' so that they might be arrested (there are seemingly no exceptions to this restriction). This is not dissimilar to real-world legislation allowing a court the power to impose an electronic monitoring requirement upon a person against whom a 'domestic abuse prevention order' has been made.<sup>29</sup> Unlike the curfew restrictions in *After Dark*, however, such an order can only be made following proof that a person has been abusive towards another person, and that the order is necessary and proportionate to protect that person.<sup>30</sup> Also, an electronic monitoring requirement may not be made without the consent of any person 'without whose cooperation it would be impracticable to secure the monitoring in question',<sup>31</sup> the absence of which qualification in respect of the measures imposed in *After Dark* proves significant to the plot of the novel.

A striking passage in the first chapter of the novel describes how the Act was itself precipitated by a response to a challenge to control in the form of an instruction by the-then Government that 'Women were told to stay indoors until the killer was caught',<sup>32</sup> advice not dissimilar to that reported to have been given by police in London (in the real world) to women<sup>33</sup> during the events surrounding the rape and murder of Sarah Everard.<sup>34</sup> The events in *After*

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<sup>25</sup> Cowie, *After Dark*, n 2 above, 4.

<sup>26</sup> *ibid*, 16.

<sup>27</sup> *ibid*, 4.

<sup>28</sup> *ibid*.

<sup>29</sup> Domestic Abuse Act 2021 s 37.

<sup>30</sup> *ibid*, s 32.

<sup>31</sup> *ibid*, s32(3).

<sup>32</sup> Cowie, *After Dark*, n 2 above, 4.

<sup>33</sup> '...women living in the area revealed police urged them to be vigilant after the mysterious disappearance. One said cops knocked on her door last night and warned her 'not to go out alone' as they desperately try to piece together what happened. Another woman, aged in her 30s, told The Sun Online: 'I was told to be more careful because I live on my own. 'The police came round yesterday and said to be careful. 'I don't want to leave the house at the moment. You don't know what happened.' H Christodoulou, 'FIND SARAH: Sarah Everard Missing-CCTV from Near 33-year-old's Home Shows No Sign of her Returning to Flat on Night she Vanished' The Sun Online, 9<sup>th</sup> March 2021. Available at: <https://www.thesun.co.uk/news/14282089/sarah-everard-missing-cctv-home-brixton/> (last accessed 14 June 2024).

<sup>34</sup> From a contemporary perspective, it is likely that for most readers of *After Dark* the events described in the first chapter of the novel will evoke uncomfortable reflections on this crime (committed on 3<sup>rd</sup> March 2021 by an on-duty police officer, who was subsequently given a 'whole life' custodial sentence under s321 of the Sentencing

*Dark* took the form of women ‘organising online’, ‘march[ing] in the streets’, and ultimately a ‘strike’ against ‘doing all the unpaid domestic labour that kept society going’.<sup>35</sup> This passage provides the only information given in the novel in respect of the implementation of the Act – while the blurb to the novel states that it is set in ‘...a world where women hold the power. They dominate...government’,<sup>36</sup> no elaboration upon this is given in the novel itself. The societal and economic impact of this action must have been of the most extreme severity, given that it provoked the passing of legislation that would impose upon the majority of the legislature itself (as of this writing, only 226 out of the 650 Members of the House of Commons are women<sup>37</sup>) indefinite and irreducible curtailments upon their liberties.

In the ‘Author’s Note’ to *After Dark*, Cowie comments that the restrictions imposed by the United Kingdom government in 2020 in response to the COVID-19 pandemic demonstrated ‘just how easily our freedoms could be curtailed, and how willing we were to accept restrictions that would previously be unthinkable’.<sup>38</sup> The incursions made into the right to a private life under the European Convention on Human Rights<sup>39</sup> by this legislation were the subject of a legal challenge, which was unsuccessful on the basis that the undoubted Article 8 infringement was justified in the interest of the protection of health (a qualification made to the Article 8 right by the Article itself).<sup>40</sup>

Similar challenges would undoubtedly be brought in respect of any legislation akin to the Prevention of Femicide Act 2023. As Cowie notes, it may ‘seem[...] unrealistic’<sup>41</sup> to suppose that legislation imposing such extreme restrictions would be enacted in fact. However, such a development was indeed proposed during the Parliamentary debate on the Domestic Abuse Bill around the time of Sarah Everard’s rape and murder, in terms even more restrictive (imposing a curfew starting at 6pm) than those in the fictitious Act.<sup>42</sup> While the author of this proposal would subsequently state that she was not serious in her intention,<sup>43</sup> it has been argued elsewhere that such a measure would be a necessary and proportionate step to tackle

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Act 2020, a sentence upheld on appeal (*R v Stewart* [2022] 4 W.L.R 86). However, according to an ‘Author’s Note’ (*After Dark*, 393), the novel was written in 2019).

<sup>35</sup> Cowie, *After Dark*, n 2 above, 4.

<sup>36</sup> *ibid*, back cover print.

<sup>37</sup> Pannell, J, & Baker, F “Gender balance in politics” Institute for Government, 7<sup>th</sup> May 2021. Available at: <https://www.instituteforgovernment.org.uk/explainer/gender-balance-politics> (last accessed 14 June 2024).

<sup>38</sup> Cowie, *After Dark*, n 2 above, 393.

<sup>39</sup> Human Rights Act 1998, Schedule 1 Part 1, Article 8.

<sup>40</sup> *R (Dolan and others) v Secretary of State for Health and Social Care and another* [2021] 1 W.L.R 2326, 2545 per Burnett LCJ, King and Singh LJ.

<sup>41</sup> Cowie, *After Dark*, n 2 above, 395.

<sup>42</sup> Baroness Jones of Moulsecoomb, HL Deb 10<sup>th</sup> March 2021 Vol 810 Col 1750.

<sup>43</sup> M Goodfellow ‘Peer who Suggested 6pm Curfew for Men Staggered by ‘Misogynistic Hissy Fit’ Reaction’ LBC, 12<sup>th</sup> March 2021. Available at: (<https://www.lbc.co.uk/radio/presenters/andrew-pierce/peer-curfew-men-staggered-misogynistic-hissy-fit-reaction/>) (last accessed 14 June 2024).

the problem of gender-based violence, and that it would not contravene the Article 8 right to a private life.<sup>44</sup> However, it would be a difficult task indeed to attempt to convince a court that a restriction on the basis of biological sex of the type envisioned in *After Dark* is ‘necessary in a democratic society’ so as not to contravene Article 8, or the right to enjoy Convention rights without discrimination on the basis of sex contrary to Article 14. Far more likely, in the political climate as of this writing, is that legislation imposing restrictions of this kind would be actuated by the United Kingdom’s withdrawing from the European Convention on Human Rights – a course of action championed openly by the last U.K Home Secretary.<sup>45</sup> As such, any legislation comparable to the Act would be subject from its inception to challenge on the basis that it is predicated upon the removal of rights previously granted to its subjects. In the next section of this article, I will explore the other problems with the Act that are demonstrated in the events of *After Dark*, and which would bedevil any comparable real-world legislation with the likely outcome that – as with the 2023 Act in *After Dark* – it would fail to fulfil its objective of preventing gender-based violence.

**(The rest of this article contains ‘spoilers’ in respect of the plot of *After Dark*: therefore, anyone intending to read the novel without foreknowledge of its plot developments should pause their reading of this article until after having read the novel in full).**

### ***The Defects in the 2023 Act***

It stands to reason that for a system of legislation by control to function effectively, that system must be robust, must be respected, and must apply a measure of control sufficient to obtain the desired result. The narrative of *After Dark* depicts the failure of such a system due to its defects in all three characteristics.

The plot of *After Dark* unravels in an asynchronous structure, and begins with the discovery by the (all-female) police of the body of a murdered woman. The identity of the victim is later revealed to be Helen Taylor, from whose (third person) point of view several of the chapters are written, and who is the schoolteacher of Cass Johnson (aged seventeen at the start of the novel: she becomes eighteen during its course), another point-of-view character. Cass’s mother Sarah Wallace, who works as a ‘tagger’ overseeing the system of monitoring

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<sup>44</sup> J Herring, ‘The Right to a Male Curfew’ (2024) 3 *International Journal of Gender, Sexuality and Law* 10.

<sup>45</sup> D Hughes, ‘Braverman says UK should leave European Convention on Human Rights’ *The Independent*, October 4<sup>th</sup> 2022. Available at: <https://www.independent.co.uk/news/uk/suella-braverman-home-secretary-government-policy-government-channel-b2195625.html> (last accessed 14 June 2024)

men by use of electronic tags, is a third point-of-view character. The final point-of-view character is Pamela (no last name is given), the detective in charge of the murder investigation, although chapters from her point of view are written in the first person. Pamela's investigation is bedevilled throughout by the refusal of her superior officer, Rachel (again, no last name given) to concede that the murder could have been committed by a man, so absolute is her faith in the security for women afforded by the curfew-plus-tagging system. The murderer is revealed to be Tom Roberts, Helen's domestic partner, who (under the alias 'Bertie') had been conducting a clandestine affair with Cass.

Throughout the novel, much emphasis is placed upon the propensity of men to commit acts of violence against women. Important aspects of this theme seem to be that even an apparently compassionate and unthreatening man of the kind that Tom appears to be at the start of the novel may without warning carry out an act of gender-based violence (the actual act of Helen's murder by Tom is not described, but it is implied to have been a product of his becoming enraged upon learning that she has taken 'abortion pills',<sup>46</sup> despite his having earlier in the novel demonstrated hostility to the prospect of having children with her<sup>47</sup>), and the potentially severe consequences of that violence due to the greater physical strength of men compared to women (a point strikingly demonstrated by Helen coercing Cass and her (male) friend and classmate Billy to engage in an arm-wrestling match<sup>48</sup>). With these factors in mind, it is apparent that the curfew system depicted in *After Dark* is an ineffective method of control; relying as it does on the application of control by women over men, which the events of the novel demonstrate cannot be exercised with the necessary degree of rigour due to the greater physical strength of men and their propensity to use that strength to carry out acts of violence against women in circumstances that cannot be predicted.

The circumstances of the murder by Tom of Helen – carried out as it is in a domestic setting – demonstrate a further failure of the system of control imposed by the 2023 Act to attain the desired result of preventing acts of gender-based violence. As with the defect discussed previously, this failure is an inevitable consequence of the system itself. The 'cohab certificate' procedure introduced in 2026<sup>49</sup> requires that a heterosexual couple obtain the permission of a medical practitioner before cohabiting. The process is described as originating due to concerns that 'If you're prosecuting a man for battery or coercive control, the damage has already been done. We needed to prevent these things from happening in the first place'.<sup>50</sup>

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<sup>46</sup> Cowie, *After Dark*, n 2 above, 336-7.

<sup>47</sup> *ibid*, 138.

<sup>48</sup> *ibid*, 21-2.

<sup>49</sup> *ibid*, 269.

<sup>50</sup> *ibid*.



A cohab certificate is in fact granted to Tom and Helen, however, due to the (female) doctor in charge apparently being strongly influenced by Helen to make this decision,<sup>51</sup> a desire on Helen's part apparently driven by Tom's tacit exercise of control over her (his use of control increases as the novel progresses) to induce feelings of jealousy towards him. The propensity of a partner in a relationship to induce such emotions, in place from the outset of their relationship (Tom was already in a relationship with another woman when he began his relationship with Helen<sup>52</sup>) are exacerbated by Tom's apparent physical attractiveness,<sup>53</sup> and have been noted as characteristics of a relationship involving gender-based violence.<sup>54</sup> As such, Tom is able to abuse and exploit the system of control imposed upon him in order to commit gender-based violence. This is not dissimilar to the circumstances surrounding the rape and murder of Sarah Everard, wherein crimes were precipitated by the perpetrator restraining her on the pretence that she had contravened the COVID-19 'lockdown' legislation.<sup>55</sup>

The events of the novel demonstrate a further flaw in relation to the measures introduced by the 2023 Act. This is manifest through the absence of respect demonstrated by the novel's principal actors for the control mechanisms introduced by those measures. This is in contrast with the measures introduced by the Trade Union Act 2016 to impose restrictions on the ability of trade unions to carry out lawful industrial action; given that acts of gender-based violence were already unlawful prior to the implementation of the 2023 Act, to attempt to eliminate gender-based violence by the imposition of a system reliant upon obedience and respect for the law upon a class of persons demonstrably lacking in these characteristics seems doomed from the outset. A comparison can be drawn here with the criticisms levelled at the conception of a legal system as understood by 'a bad man, who cares only for the material consequences'<sup>56</sup> of his breaking the law. This is specifically the case in the context of such a conception of the legal boundaries for regulating behaviour being drawn with a view to the principle that 'even Justice Holmes's 'bad man' can look ahead with some ability to know what the stakes are in choosing one course of action or another'.<sup>57</sup> Such a conception of Holmes' theory has been criticised as 'ignoring the internal point of view that the theory was designed to serve....[that of] deterring and reforming the bad man for the sake and protection of the good'.<sup>58</sup> The legislation introduced in *After Dark*, however, in imposing such stringent

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<sup>51</sup> *ibid*, 144-5.

<sup>52</sup> *ibid*, 76.

<sup>53</sup> This attribute of Tom's is referenced multiple times throughout the novel.

<sup>54</sup> A M Kaufman-Parks, M A Longmore, P Giordano and W D Manning, 'Inducing Jealousy and Intimate Partner Violence Among Young Adults' 3 (2019) 6(9) *Journal of Social and Personal Relationships* 2802-2823.

<sup>55</sup> *R v Stewart*, n 34 above, [53], [55], per Lord Burnett CJ.

<sup>56</sup> O W Holmes, 'The Path of the Law' (1897) 10 *Harvard Law Review* 457, 459

<sup>57</sup> *Exxon Shipping Co. v Baker* (2008) 128 S.Ct. 2605, 2627 (citing *ibid*)

<sup>58</sup> M Jimenez, 'Finding the Good in Holmes' Bad Man' (2011) 79(5) *Fordham Law Review* 2069, 2127.

regulations upon the behaviour of 'bad men' (indeed, predicated on the assumption that all men are 'bad') 'allows [the 'bad man'] to predict, with a fair degree of accuracy, how a court would rule, and thereby provides him with external guidance (via the threat of possible sanctions) regarding the appropriate precautions to take'.<sup>59</sup> Such calculations are, indeed, embarked upon by the principal 'bad' male actors in *After Dark* – the primary antagonist Tom, and Cass's father Greg, who like Tom takes advantage of her affection towards him to find a flaw in the curfew system so as to carry on a sexual relationship with a married woman (Scarlet Caldwell, with whom his adulterous relationship had brought about the end of his marriage to Sarah) – resulting in the inevitable infliction of the harm that the legislation was presumably intended to prevent.

If the desired result of the system of control imposed in *After Dark* is the eradication of gender-based violence, it is clear from the events of the novel that the restrictions imposed by this system are not sufficient to obtain the desired result. This appears to be partly due to these restrictions being focused entirely on preventing men from committing acts of violence against women as opposed to the more pressing problem of why this particular crime exists in the first place: in other words, the result rather than the cause of the problem. Although the novel describes several social improvements that have been introduced by legal reforms following the 2023 Act,<sup>60</sup> these are focused upon minimising the risk of harm that might arise from gender-based violence, as opposed to removing that risk. *A fortiori*, as the risk of men committing acts of violence against women remains operative, women living with men under curfew remain under threat of violence. The increased risk of gender-based violence in a situation where the victim and the perpetrator have been in one another's company for lengthy periods of time has been noted in the context of the rise in reported incidents of gender-based violence in many countries during periods of time when those same countries' governments had imposed restrictions on movement to prevent the spread of Covid-19.<sup>61</sup> In the 'Author's Note' to *After Dark*, Cowie comments that the widespread compliance in the United Kingdom with these restrictions showed 'how willing we were to accept restrictions that would previously have been unthinkable'.<sup>62</sup> It is doubtful that the victims of gender-based violence attributable to these restrictions (an increase in 25% was reported<sup>63</sup>) would regard themselves as having 'accepted' the system against the background of which they were subjected to that violence,

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<sup>59</sup> *ibid*, 2102.

<sup>60</sup> Cowie, *After Dark*, n 2 above, 20.

<sup>61</sup> A Sharma and S B Borah, 'Covid-19 and Domestic Violence: an Indirect Path to Social and Economic Crisis' (2022) 37 *Journal of Family Violence* 759, 761.

<sup>62</sup> Cowie, *After Dark*, n 2 above, 393.

<sup>63</sup> J Kelly and T Morgan, 'Coronavirus: Domestic Abuse Calls up 25% Since Lockdown, Charity Says' BBC News, 6<sup>th</sup> April 2020. Available at: <https://www.bbc.co.uk/news/uk-52157620> (last accessed 14 June 2024) (cited in Sharma and Borah, n 61 above, fn 8).

or that they would be likely to champion the introduction of a system that serves to place women permanently at a heightened risk of violence from men with whom they live.

The events of *After Dark* depict also the lack of respect for the system of control introduced by the 2023 legislation arising out of its economic and social consequences. In Chapter Three of the novel, the collapse of Sarah and Greg's marriage is described as having been precipitated by Greg's assuming primary responsibility for childcare while Sarah is required to change her working hours 'from a part-time job to working more hours than she ever had before',<sup>64</sup> and the resultant conflict culminating in Greg's breaking curfew and imprisonment. This makes it clear that, despite the (apparent) shift in the balance of societal power from women to men, the world of *After Dark* perpetuates the pressure imposed upon women by the male-driven 20<sup>th</sup> century neoliberal capitalist system that 'reif[ies] an essentialist conception of women's maternal role'<sup>65</sup> and as such requires that they struggle to balance caring responsibilities with the need to make money to a degree not expected of men. While Greg is not described as having committed acts of gender-based physical violence, his attempts to justify his actions to Sarah as having been a consequence of her not being 'cut out to be a wife, and...certainly [not] cut out to be a mother'<sup>66</sup> amount to psychological manipulation and emotional abuse.<sup>67</sup> Cass, who grew up in this environment and believed her father's treatment of her mother to have been justified ('Everything was fine!' she yelled. 'We were happy! We were a family! And you ruined it!'<sup>68</sup>), openly expresses disdain for the system of control imposed upon men and colludes with both Greg and Tom to allow them to circumvent it, and herself enters into an emotionally abusive relationship with Tom (he lies to her about the nature of his relationship with Helen so as to seduce her into having sex with him, then ends the relationship with Cass and calls her a 'stupid little tart'<sup>69</sup>). This is reflective of the acknowledged long-term effect upon children brought up in an environment of domestic abuse that they are more likely to become victims of abuse from their partner in a relationship during adult life.<sup>70</sup> The significance of household income in relationships involving gender-based violence has also been noted. Although no one factor has been identified as causative of gender-based violence, such is its prevalence across a very broad range of

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<sup>64</sup> Cowie, *After Dark*, n 2 above, 25.

<sup>65</sup> H McCarthy, 'I Don't Know How She Does It!' Feminism, Family and Work in 'Neoliberal' Britain' in A Davies, B Jackson and F Sutcliffe-Braithwaite (eds), *The Neoliberal Age: Britain since the 1970s* (UCL Press, 2020), 135-154, 151.

<sup>66</sup> Cowie, *After Dark*, n 2 above, 14.

<sup>67</sup> 'Emotional abuse' in "Domestic violence and abuse" National Health Service, 30<sup>th</sup> December 2022. Available at: <https://www.nhs.uk/live-well/getting-help-for-domestic-violence/> (last accessed 14 June 2024)

<sup>68</sup> Cowie, *After Dark*, n 2 above, 176.

<sup>69</sup> *ibid*, 321.

<sup>70</sup> L Vargas, J Cataldo and S Dickson, 'Domestic Violence and Children' in G R Walz and R K Yep (eds), *VISTAS: Compelling Perspectives on Counselling* (American Counselling Association, 2005), 67-69, 67.

characteristics,<sup>71</sup> research has shown a greater tendency for women with a lower socio-economic status to be affected by gender-based violence<sup>72</sup>, and reported incidents of gender-based violence to be at their highest in neighbourhoods with the lowest household income.<sup>73</sup> With these factors in mind, it is evident that the system of control imposed in *After Dark* engenders a lack of respect that not only results in a failure to impose effective control upon men, but also heightens the risk of harm to women.

A further way in which the system of control in *After Dark* fails to instil respect is through its increasing perceptions of stereotypical gender roles. The restrictions imposed in *After Dark* are focused upon men, and designed with the purpose of preventing and deterring men from using violence against women, predicated on the assumption that all men are predisposed to commit violence against women. The notion of a man using physical violence against his female domestic partner has existed for so long as to create a stereotype, borne of the folk belief that men were legally permitted to use violence in this way (although it is almost certain that there is no reliable legal authority in support of this belief).<sup>74</sup>

As such, the legislation by control exacted in *After Dark* is likely to have the effect of strengthening the perception of this stereotype of men as perpetrators of violence upon women – an effect depicted by the perceptions demonstrated by the language used by, and the actions of, the female characters in *After Dark*. The only characters who do not demonstrate views to this effect are Helen, who despite her inculcating such perceptions in her students, refuses to adopt them in the context of her own relationship with Tom and (the novel implies) pays the ultimate price for doing so, and Cass – at least until the novel's closing chapters (a point discussed later in this article). Although the novel does not devote any attention to examining the perceptions of its male characters, the principal male characters (Tom and Greg) act in ways that do not suggest anything other than a belief in conformity to these stereotypes – specifically, in lying to, being unfaithful to, and (in Tom's case) violently murdering the women with whom they share a close relationship.

Research into relationships where gender-based violence has taken place has recognised the important role played (to a more significant effect than socio-economic factors)

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<sup>71</sup> A Barbier, P Chariot and T Lefèvre, 'Intimate Partner Violence Against Ever-Partnered Women in Europe: Prevalence and Associated Factors – Results from the Violence Against Women EU-Wide Survey' (2022) 10 *Frontiers In Public Health* 1033465, 01.

<sup>72</sup> D Reichel, 'Determinants of Intimate Partner Violence in Europe: The Role of Socioeconomic Status, Inequality, and Partner Behaviour' (2017) 32(12) *Journal of Interpersonal Violence* 1853, 1864 (cited *ibid*, 12).

<sup>73</sup> A E Bonomi, B Trabert, M L Anderson, M A Kernic and V Holt, 'Intimate Partner Violence and Neighbourhood Income: A Longitudinal Analysis' (2014) 20(1) *Violence Against Women* 42.

<sup>74</sup> H A Kelly, 'Rule of Thumb' and the Folklaw of the Husband's Stick' (1994) 44(3) *Journal of Legal Education* 341.

by 'partner behaviour linked to traditional notions of manhood such as having multiple partners, drunkenness and controlling female behaviour', and has recommended that one way to attempt to prevent gender-based violence is to challenge 'social norms that hinder gender equity and foster violence'.<sup>75</sup> As depicted in *After Dark*, it is likely that legislation of the kind introduced in that novel would not only fail to challenge, but would in fact uphold, reinforce, and perhaps even suggest approval of such norms, with (literally) harmful consequences.

The events of *After Dark* depict the failure of the 2023 Act due in part because of the acts of a person (Cass) belonging to the class of persons (women) that the Act was introduced to protect. This demonstrates the importance of respect for the law in the context of legislation by control, and how if the very people that the legislation is supposed to protect do not regard it with respect, it is doomed to failure. One of the effects of the 2023 Act is that, in acknowledging that all men are presumed to be violent abusers of women and women requiring of protection from them, it separates women from men. Separatism as a method of 'weaken[ing] male control over women, and allow[ing] for women to transform their characters'<sup>76</sup> has been practised by several radical feminist groups, notably the New York City-based group Cell 16, founded by Valerie Solanas. Best known for her attempted assassination of Andy Warhol, Solanas' writings (calling for women to liberate themselves by using violence against men) have until recently been viewed as at best works of 'biting satire'<sup>77</sup> and at worst dismissed as the outpourings of a 'homicidal loon',<sup>78</sup> but are now starting to be taken seriously for raising uncomfortable questions about the extent to which women should challenge male exploitation, and 'the impossibility of women experiencing freedom if they continue to share the world with men'.<sup>79</sup> Viewed through this lens, separatism of the type envisaged in *After Dark* fails to achieve the objective of freeing women from male oppression: so long as women continue to share the world with men, separating women from men 'merely removes women from the shared world, completing the patriarchal project of women's exclusion'.<sup>80</sup>

A further consequence of the form of separatism introduced in *After Dark* is that of increasing the risk of exposure of males to violence at the hands of other males. A consequence of the requirement of the 2023 Act that all males must be 'tagged' and subject

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<sup>75</sup> L Kiss, L B Schraiber, L Heise, C Zimmerman, N Gouveia and C Watts, 'Gender-Based Violence and Socioeconomic Inequalities: Does Living in More Deprived Neighbourhoods Increase Women's Risk of Intimate Partner Violence?' (2012) 74 *Social Science & Medicine* 1172, 1178.

<sup>76</sup> R A Owen, 'A World without Men: Valerie Solanas and the Feminist Uses of Violence' (2022) 44(1) *New Political Science* 105, 114.

<sup>77</sup> M Haut, 'A Salty Tongue: At the Margins of Satire, Comedy and Polemic in the Writing of Valerie Solanas' (2007) 8(1) *Feminist Theory* 27, 39 (cited *ibid*, n18).

<sup>78</sup> D D Rowe and K R Chávez, 'Valerie Solanas and the Queer Performativity of Madness' (2011) 11(3) *Cultural Studies↔Critical Methodologies* 274, 274.

<sup>79</sup> Owen, n 76 above, 120-1.

<sup>80</sup> *ibid*, 106.

to the curfew restrictions upon attaining the age of ten<sup>81</sup> is that young males are at much greater risk of violence from male family members. This is illustrated in *After Dark* through the character of Cass's friend Billy, the only male character in the novel who demonstrates any positive attributes. Billy's observations of his parents' apparently frequent arguments<sup>82</sup> suggest that he is at least a witness to, if not a victim of, domestic violence at the hands of his father. During much of the novel, Cass is sensitive to Billy's predicament, and is complicit in allowing him to remove his tag so as to escape his unpleasant domestic environment. However, by the end of the novel she appears to regard him as no more deserving of pity than any other man inconvenienced by the curfew restrictions<sup>83</sup> - a likely consequence of her seemingly new-found enthusiastic support of gender-based restrictions (to be discussed below) - and responds brusquely to his statement that his mother has moved out of the family home.<sup>84</sup> Abandoned by his mother and his (seemingly, only) friend and left to the mercies of his father, Billy does not appear to have a bright future ahead. Billy's exchange with Cass illustrates also his lack of respect before the law that has been imposed upon him, heightening its inadequacy as a means of control. To this end, not only has the curfew system demonstrably failed to protect women, it has exposed vulnerable men to violence at the hands of other men. The violence that Billy is impeded from evading due to the curfew restrictions is, as has been noted,<sup>85</sup> likely to be more severe in nature due to its being inflicted by a single father - a phenomenon (unlike violence in single-mother families) not solely attributable to economic deprivation<sup>86</sup> - although that factor is likely to be highly significant in respect of Billy's, and all single-father families, in the world of *After Dark* due to the economic opportunities denied men by the curfew restrictions. Further, research into the long-term effects of child abuse upon male survivors prefers an even more damning indictment of the curfew system, in respect of the 'significant association' between male survivors of child abuse and male perpetrators of 'intimate partner violence'.<sup>87</sup> As such, the effect of the curfew restrictions in the (highly unlikely to be isolated) case of Billy is not only to expose young men to violence, but to increase the risk that him and the probable many others like him will in adulthood perpetrate the very harms against women that the curfew restrictions were implemented to prevent.

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<sup>81</sup> Cowie, *After Dark*, n 2 above, 46.

<sup>82</sup> *ibid*, 117, 341.

<sup>83</sup> *ibid*, 387.

<sup>84</sup> *ibid*.

<sup>85</sup> R J Gelles, 'Child Abuse and Violence In Single-Parent Families: Parent Absence and Economic Deprivation' (1989) 59 (4) *American Journal of Orthopsychiatry* 492, 500.

<sup>86</sup> *ibid*, 497.

<sup>87</sup> N Godbout, M Vaillancourt-Morel, N Bigras, J Briere, M Hébert, M Runtz and S Sabourin, 'Intimate Partner Violence in Male Survivors of Child Maltreatment: A Meta-Analysis' (2019) 20 (1) *Trauma Violence & Abuse* 99, 99.

Another problem to be noted in respect of the legislation described in *After Dark* concerns its impact upon LGBT people. As described in the novel, the legislation makes no distinction of the gender identity of those who are subjected to the curfew restrictions. The effect of this is to deny biological males the opportunity to identify as female. This approach is in tune with the views of some radical feminists (including Ti-Grace Atkinson,<sup>88</sup> a prominent supporter of Valerie Solanas<sup>89</sup>). However, it betrays a lack of respect for the experience of persons identifying as trans women. Recent research suggests that LGBT people living in the United Kingdom are more likely to experience violence than Germany or Portugal, and that trans individuals are the group of people most likely to experience violence within that category.<sup>90</sup> Viewed alongside recent research findings that the majority of the UK population regard trans people with 'admiration' or 'respect',<sup>91</sup> this in turn serves to undermine the respect with which the legislation is likely to be regarded. Finally, the legislation of *After Dark* fails to acknowledge male sexuality; given the prominence of heterosexist cultural attitudes towards women as a factor causative of gender-based violence,<sup>92</sup> it is striking to see in *After Dark* no evidence<sup>93</sup> that the legislation does not treat gay men as being equally as likely as heterosexual men to commit acts of violence against women. This in turn has the consequence that gay men are subjected to curfew restrictions that increase their own risk of harm at the hands of their male partners. In the light of research findings that there is a high prevalence of intimate partner violence in same sex male couples,<sup>94</sup> it is difficult to see the legislation imposed in *After Dark* as likely to be viewed by gay men as anything other than an instrument of oppression, in turn increasing likely animus on their part against the potential female victims of male violence who the legislation ostensibly is designed to protect, and further 'remov[ing] women from the shared world'.<sup>95</sup>

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<sup>88</sup> M Goldberg, (2014) 'What Is A Woman?' 90(22) *The New Yorker*. Available at: <https://www.newyorker.com/magazine/2014/08/04/woman-2> (last accessed 14 June 2024)

<sup>89</sup> Owen, n 76 above, 107.

<sup>90</sup> S Bayrakdar and A King, 'LGBT Discrimination, Harassment and Violence in Germany, Portugal and the UK: A Quantitative Comparative Approach' (2023) 71(1) *Current Sociology* 152, 166.

<sup>91</sup> H Morgan, C Lamprinakou, E Fuller and M Albakri, *Research Report: Attitudes to Transgender People* (Equality and Human Rights Commission, 2020). Available at: [https://www.equalityhumanrights.com/sites/default/files/attitudes\\_to\\_transgender\\_people.pdf](https://www.equalityhumanrights.com/sites/default/files/attitudes_to_transgender_people.pdf) (last accessed 14 June 2024)

<sup>92</sup> Council of Europe, 'What Causes Gender-Based Violence?' (2023). Available at: <https://www.coe.int/en/web/gender-matters/what-causes-gender-based-violence> (last accessed 14 June 2024)

<sup>93</sup> There are no gay male characters in *After Dark*: although the female character of Mabel is subjected to a homophobic insult (Cowie, *After Dark*, n 2 above, 308), it is not clear whether she is indeed a gay woman.

<sup>94</sup> M Lui, X Cai, G Hao, W Li, Q Chen, Y Chen and P Xiong, 'Prevalence of Intimate Partner Violence Among Men Who Have Sex With Men: An Updated Systematic Review and Meta-Analysis' (2021) 9(6) *Sexual Medicine* 1, 15.

<sup>95</sup> Owen, n 76 above.

**'Male violence had to be stopped/Whatever it took'<sup>96</sup>**

Helen's murder, seen against the background of the above issues, exposes the failure of legislation by control imposed upon men through the curfew system to provide the desired protection to women. With this in mind, the events of the closing chapters of *After Dark* may come as a surprise to a first-time reader, who would be forgiven for expecting that the characters previously supportive of the curfew system would alter their position.<sup>97</sup> However, the opposite in fact occurs: Cass becomes a whole-hearted supporter of the system, even going so far as to ceremonially burn her stock of pre-curfew woman's magazines,<sup>98</sup> and joins her mother in a march on Parliament by women demanding 'something *more*'.<sup>99</sup>

This invites speculation as to how far the state might go to control men. Having failed to provide the necessary measure of control by restraining potential male aggressors, the logical next step, using 'violence...[as] a lens to examine and critique alternate forms of feminist political organising',<sup>100</sup> is to kill them. This was the position advocated by Valerie Solanas in her *SCUM Manifesto*,<sup>101</sup> wherein male violence is described as the product of envy on the part of men that they are not themselves female<sup>102</sup> (Solanas describes a man as 'an incomplete female, a walking abortion, aborted at the gene stage').<sup>103</sup> Violence thus conceived of as a feminine, rather than masculine, proclivity,<sup>104</sup> is the only proper method whereby women – represented by 'SCUM' – can liberate themselves, by 'kill[ing] all men who are not in the Men's Auxiliary of SCUM. Men in the Men's Auxiliary are those men who are working diligently to eliminate themselves'.<sup>105</sup> Cass's transition from an attitude of apathy towards the threat of gender-based violence, to what is implied to be one of resistance by use of force in retaliation, echoes Solanas' desire that women should not 'drop out' of the male-dominated world, but rather assume control over that world by violent methods.<sup>106</sup> Although interpreted by some as a call for gendercide,<sup>107</sup> Solanas's intention was that the manifesto be taken up

<sup>96</sup> Cowie, *After Dark*, n 2 above, 391.

<sup>97</sup> As did I. I had up to this point read *After Dark* as a dystopian fiction in the mould of *1984* (G Orwell, (Secker & Warburg, 1949)). (I had believed the name of the character of Mrs O'Brian *After Dark* to be an reference by way of homage to the similarly-named character of O'Brien in *1984*) or a gender-inverted take on future-set fictions in which women are subjugated utterly to men, such as *The Handmaid's Tale* (M Atwood, (McClelland and Stewart, 1985) or *Swastika Night* (K Burdekin, (writing as 'Murray Constantine') (Gollancz, 1937). However, the concluding chapters and the 'Author's Note' make it clear that this was not the author's intention.

<sup>98</sup> Cowie, *After Dark*, n 2 above, 385.

<sup>99</sup> *ibid*, 391 (emphasis in original).

<sup>100</sup> Owen, n 76 above, 121.

<sup>101</sup> V Solanas, *S.C.U.M (Society for Cutting Up Men) Manifesto* (Olympia, 1985).

<sup>102</sup> *ibid*, 34.

<sup>103</sup> *ibid*, 3.

<sup>104</sup> Owen, n 76 above, 111.

<sup>105</sup> Solanas n 101 above, 43.

<sup>106</sup> *ibid*, 46-47; Owen, n 76 above, 114.

<sup>107</sup> Owen, n 76 above, 118-9.



by women to use violence against men to enable the destruction of 'the money-work system' by which women are subjugated to men.<sup>108</sup> However, there is no reason (in law, at least) why a state-driven gendercide, proceeding from the starting point that men do not have the right to life<sup>109</sup> might be brought about and yet leave that system in place to be adapted by women as they see fit.

The biological necessity for men to exist in order to facilitate reproduction has been considered in the context of Solanas's work by Adam Sykes,<sup>110</sup> who goes on to discuss innovations in medical science that enable fertilisation of human eggs without the need for a live male sperm donor.<sup>111</sup> This is in the context of a broader discussion of the natural decline of the Y-chromosome and the inevitable extinction of men. As such, it might be argued that the elimination of men by violence is nothing more than the lending of a helping hand to nature, and there ought to be no legal obstacles to prevent this.

Anyone who regards the law as a bulwark against oppression should be appalled by such a notion. However, this is the ultimate end of a system of legislation by control. Once a state begins to regard a class of persons as less deserving of the freedoms afforded to others, the door is opened for all freedoms to be taken not just from that class of persons, but from all persons. As has been pointed out, 'humanity is at all times and in all places (not just the Gestapo and Al Qaeda) fallible [and] liable to slip into cruelty, and that democracy and the rule of law can easily give way to individual fear and state insecurity. As individuals and as states, we then face the threat of being undone'.<sup>112</sup>

### **Conclusion - Light at the End?**

If legislation by control is not, therefore, the solution to the problem of gender-based violence, then the question remains as what is. To say that 'there are no easy answers' would be facile, and an insult to the women who have suffered, and continue to suffer, at the hands of men. However, the literature on this subject has identified what might be described as potential signposts on the long journey out of the shadow cast by male violence. Rather than attempt to prevent gender-based violence by imposing controls upon potential male aggressors, legislative policy might instead be focussed upon eliminating factors associated with gender-

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<sup>108</sup> Solanas n 101 above, 49.

<sup>109</sup> Under Article 2 of the European Convention on Human Rights, the UK having removed itself from the obligation to adhere to that Convention.

<sup>110</sup> A Sykes, *Adam's Curse* (Bantam, 2003), 297.

<sup>111</sup> *ibid*, 297-303.

<sup>112</sup> D Friedman, 'Torture and Modernity' (2013) 5 *European Human Rights Law Review* 494, 509.

based violence. While not attributable to this factor alone, it has been noted that neighbourhoods with a low household income are also likely to have a large number of incidences of domestic violence.<sup>113</sup> A parallel might be drawn here between the 'Mother House' system of female-only communal living in which Sarah and Cass live in *After Dark*, and the real-world announcement of what has been described as a 'women-only tower block' to provide affordable housing for women.<sup>114</sup> While economic factors are the expressed motivation for this development, rather than an otherwise inescapable threat of gender-based violence (male partners and children are to be allowed to reside there also) the society responsible for the development clearly draws the link between financial difficulties and gender-based violence<sup>115</sup> and implicit in their championing of this development is the elimination of the risk of gender-based violence at the hands of a financially-controlling male partner.

Although financial investment in the context of gender-based violence has been recently discussed in the UK Parliament,<sup>116</sup> that discussion has been focussed on the economic investment needed to educate and prevent potential perpetrators of gender-based violence, rather than upon the link between poverty and gender-based violence and what might be needed to address this problem. The particular problem of social inequality in the United Kingdom has recently become part of Government policy (under the slogan 'Levelling Up'),<sup>117</sup> undoubtedly due to the 'political realignment that occurred during the 2019 general election'<sup>118</sup> in which many traditionally working-class constituencies with Labour representation in Parliament returned Conservative candidates. A recent study of a 'relatively poor'<sup>119</sup> town identified a need for 'a radical reworking of higher-level economic development policy away from [gross value added] through growth and jobs....regulation of job quality which goes beyond minimum wage standards; a tax funded programme for creation of good, new jobs in the foundational sectors providing essential services like care; recognition of the absolute limits of any policy of diffusing prosperity by getting people into work without some form of basic income and/ or reduction of housing costs; political leadership rather than

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<sup>113</sup> Bonomi et al, n 73 above, 52.

<sup>114</sup> J Evans, 'Women-only tower block given go-ahead by Ealing Council', BBC News 2<sup>nd</sup> May 2023. Available at: <https://www.bbc.co.uk/news/uk-england-london-65456335> (last accessed 14<sup>th</sup> June 2024).

<sup>115</sup> "Domestic Abuse", Women's Pioneer Housing (n.d) (<https://womenspioneer.co.uk/domestic-abuse/>) (last accessed 14<sup>th</sup> June 2024).

<sup>116</sup> Local Government Association, 'Debate on Violence Against Women and Girls in the UK, House of Lords, 29 June 2023. Available at: <https://www.local.gov.uk/parliament/briefings-and-responses/debate-violence-against-women-and-girls-uk-house-lords-29-june#how-violence-against-women-and-girls-can-be-prevented-and-addressed> (last accessed 14<sup>th</sup> June 2024).

<sup>117</sup> Secretary of State for Levelling Up, Housing, and Communities, *Levelling Up The United Kingdom* (CP 604, 2022).

<sup>118</sup> J Tomaney and A Pike, 'Levelling Up?' (2020) 91(1) *The Political Quarterly* 43, 43.

<sup>119</sup> *ibid*, 45.

evasion and buck-passing on the eco-foundational issues which are crucial to the wellbeing of future generations'.<sup>120</sup> However, the Levelling Up White Paper contains no such proposals, reinforcing the concern that the Government strategy is 'driven, rather nakedly, by political calculation rather than a real concern to address longstanding problems'<sup>121</sup>, and that, as such, the economic factors identified as an indicator of gender-based violence are unlikely to subside.

There is, however, some cause for optimism. The Local Government Association debate identifies the need for the education system to prevent gender-based violence, and for government investment towards this end, to ensure messaging that 'actively tackles harmful gender stereotypes (for men and women), including the impact of media online'.<sup>122</sup> The final proviso is a likely reference to the popularity online of propagators of gender-based violence such as Andrew Tate (who has 6.9 million followers on Twitter<sup>123</sup> and is as of this writing awaiting trial in Romania for charges including rape and sex trafficking).<sup>124</sup> In this respect, the focus upon the potential for violence arising from greater physical strength in males as identified in the 'Curfew Class' described in Chapter 2 of *After Dark* may be drawn upon in the effort to educate males at a young age to exercise respect and restraint (although male-versus-female arm-wrestling is unlikely to be taken up by policy-makers). This is in accordance with research elsewhere highlighting patterns of stereotypical male behaviour in cases of gender-based violence, a factor identified as of greater significance than that of household income.<sup>125</sup> The need for investment in educating men away from the prevalent culture of blaming female victims of gender-based violence has been identified, with particular emphasis upon ensuring that these messages are 'well informed, appropriately targeted, and properly designed'.<sup>126</sup> However, concern has been expressed that this culture persists 'despite years of public awareness and education efforts'.<sup>127</sup> It may be that such strategies are doomed to failure in the absence of a serious effort by policy-makers to adopt them 'along with strategies to fight poverty'.<sup>128</sup> A similar point was made in the last century (in a key text on gender-based

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<sup>120</sup> L Calafati, J Ebrey, J Froud, C Haslam, S Johal and K Williams, *How an Ordinary Place Works: Understanding Morriston*, Foundation Economy, 2019. Available at: (<https://foundationaleconomy.com.files.wordpress.com/2019/05/morriston-report-v6-13-may-2019.pdf>) (cited *ibid*, 46, fn25) (last accessed 14 June 2024).

<sup>121</sup> Tomaney and Pike, n 118 above, 46.

<sup>122</sup> Local Government Association, n 116 above (my emphasis).

<sup>123</sup> A Sinmatz, 'Andrew Tate and his brother to face trial in Romania' 20<sup>th</sup> June 2023, Guardian Online. Available at: (<https://www.theguardian.com/news/2023/jun/20/andrew-tate-romanian-prosecutors-trial>) (last accessed 14 June 2024)

<sup>124</sup> *ibid*.

<sup>125</sup> Kiss et al, n 75 above.

<sup>126</sup> E Gracia, 'Intimate partner violence against women and victim-blaming attitudes among Europeans' (2014) 92 *Bulletin of the World Health Organisation* 380, 381.

<sup>127</sup> *ibid*, 380.

<sup>128</sup> Kiss et al, n 75 above.

violence) that coercive control by men of women 'is social, personal, and political all at once' and an appropriate response must 'combine public law, services attuned to the variety of experiences in abusive relationships, and political action to address the roots of women's oppression in sexual and related inequalities'.<sup>129</sup> An incomplete response, as depicted in the fictional setting of *After Dark*, will be like 'the child who tries to step the incoming tide by carrying water from the ocean in a pail'.<sup>130</sup>

Gender-based violence is a very real social problem, and one that is reported with increasing frequency.<sup>131</sup> In the face of such statistics, and in the absence of coordinated efforts to address its causes, it would be not unreasonable to adopt a pessimistic view of the future and imagine that legislation by control of the type envisaged in *After Dark* is the only likely solution. However, the scale and severity of the problem does appear to be being identified, and some efforts made to take seriously the need to eradicate violence on the part of men, rather than to blame women. The policy debates that resulted in the 2021 Act have come a long way from the 1978 Parliamentary debate on Violence in the Family, wherein the question was put as to whether 'the fact that many women now go to work lead[s] to the neglect of children and lack of discipline'.<sup>132</sup> Similarly, the fact that there are academic journals focused upon gender-based violence containing articles written mostly by women academics marks that the world of academic debate that might inform future policy development on this issue is a very different one from that of 1972, when the Journal of the Society of Public Teachers of Law reported that its Annual Meeting was attended by '[s]ome 300 members of the society and their wives'.<sup>133</sup> With this in mind, it may be appropriate to adopt a degree of optimism that the future may not be as bleak as that in envisaged in *After Dark*. It has been suggested that the concept of 'psychological capital'<sup>134</sup> 'including hope, resilience, optimism, and self-efficacy...is vital for creating a positive future'<sup>135</sup> may be of significance in the effort to eradicate gender-based violence. This is a bold and potentially offensive statement if taken at face value, particularly given the face-value suggestion that the power of positive thinking can in some way prevent gender-based violence, and the suggestion that a strategy devised for organisational development with the outcomes of 'dollar impact and very high return on investment'<sup>136</sup> can be transposed to the very different situation of women under threat of, or

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<sup>129</sup> E Stark, *Coercive Control: The Entrapment of Women in Personal Life* (OUP, 2007), 707.

<sup>130</sup> *ibid*, 709.

<sup>131</sup> Sharma and Borah, n 61 above.

<sup>132</sup> D Weitzman (Hackney North and Stoke Newington) HC Deb 16<sup>th</sup> June 1978 Vol 951 Col 1349.

<sup>133</sup> Anon., 'The Annual Meeting of the Society, 1972' (1973) 12(3) *Journal of the Society of Public Teachers of Law* 215 (my emphasis).

<sup>134</sup> F Luthans, J Avey, B Avolio, S M Norman and G Combs, 'Psychological Capital Development: Towards a Micro-Intervention' (2007) 27(3) *Journal of Organisational Behaviour* 387, cited Sharma and Borah, n 61 above, 764.

<sup>135</sup> Sharma and Borah, n 61 above.

<sup>136</sup> Luthans et al, n 134 above, 92.

actually experiencing, gender based violence. Indeed, it may be that it cannot: Sharma and Borah note that 'no research has yet focused on understanding psychological capital...in cases of domestic violence',<sup>137</sup> and the outcome of such research may indeed be that the two environments are irreconcilable. However, the philosophy at the heart of the concept is one that is in essence correct to apply in the circumstances: gender-based violence is characterised by a physically stronger male imposing himself upon a physically weaker female, and a strengthening of psychological resources may be an important defence.

The world envisaged in *After Dark* is one in which both men and women are subjugated almost entirely to state control of their economic and social activities for the sake of the prevention of crime – an effort that ultimately fails. Men are liars and murderers, women are either their victims, duped into being their accomplices, or indoctrinated into the state philosophy that the lives of men are worthless. This is a point particularly exemplified by Sarah's killing of a man who attempts to remove his tag<sup>138</sup> and subsequently demonstrating no regret or suffering any consequences. In the light of the extent and severity of cases of gender-based violence in the real world, it is easy to see why this book came to be written. However, the very fact that gender-based violence occupies such a prominent position on the agenda of policy-makers, and that there has been some serious effort to address it through the making of less-intrusive legislation, is cause for some optimism that gender-based violence might be if not eliminated, then perhaps reduced significantly, by means other than legislation by control, or violent retaliation against men.

The majority of policy decisions continue to be made by men, and are likely to remain so for the foreseeable future. It may be that organised social action of the type envisaged (albeit briefly) in the opening pages of *After Dark* is necessary in order for a concerted effort to be taken to not only tackle gender-based violence, but to eradicate its causes. As demonstrated in the failure of the programme of legislation described in *After Dark*, however, this task cannot fall on women alone, though – if any legislation to address this subject is to be effective, it must be robust and respected, and for this to happen there is a need for men to be involved in recognising the problem that they have caused and working with women towards its resolution. It is not hard to see, particularly online, that some men are unprepared to recognise that they are a threat, and indeed consider themselves to be the ones who are threatened, and in such circumstances to be pessimistic that things are ever likely to change. Alternatively, this may be perceived as witnessing the desperate last gasp of apologists for

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<sup>137</sup> Sharma and Borah, n 61 above, 134.

<sup>138</sup> Cowie, *After Dark*, n 2 above, 49-50.

male violence in the face of concerted efforts to eliminate it, and that with a unified approach by men and women it will be consigned to history, or indeed the pages of fiction. Such a perception may be considered to be naïve optimism: however, as has been noted, 'maintaining a positivity toward the future may be important when the environment is so uncertain'.<sup>139</sup>

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<sup>139</sup> Sharma and Borah, n 61 above, 134.