

Gender Based Violence: Reflections on the World Envisaged in “After Dark” by Jayne Cowie: Using Literature to Critically Explore Current Legal Responses to GBV in the Home and in Public

*Claire Bessant and Kayliegh Richardson*¹

Abstract

This special issue of *The International Journal of Gender, Sexuality and Law*, edited by Claire Bessant and Kayliegh Richardson, brings together academic voices from across law and criminology in discussion of the issue of gender-based violence (GBV). Many of the ideas included in this special issue were presented previously at a 2022 conference funded by the Society of Legal Scholars, titled ‘Gender Based Violence: Reflections on the world envisaged in “After Dark” by Jayne Cowie’. That conference sought to use the book ‘After Dark’ as a focal point for a multi-disciplinary discussion about how society and the law should respond to tragedies such as the deaths of Sarah Everard and Ashling Murphy but also to the issue of violence against women. Building on the academic discussion that took place at that conference, this special edition firstly considers some of the legal interventions discussed in *After Dark* and their potential application within the real world. The second part of the special edition, then considers the potential benefits of using literature and other fictional works to stimulate discussion around legal issues.

Keywords

Gender Based Violence; Violence Against Women and Girls; Domestic Abuse; Human Rights; Feminist Dystopian Fiction; Popular Criminology

Introduction

This special issue of *The International Journal of Gender, Sexuality and Law*, edited by Claire Bessant and Kayliegh Richardson, brings together academic voices from across law and

¹ Claire Bessant, Northumbria University. Email: claire.bessant@northumbria.ac.uk

Kayliegh Richardson, Northumbria University. Email: kayliegh2.richardson@northumbria.ac.uk

Citation format: Bessant, C and Richardson, K, ‘Gender Based Violence: Reflections on the world envisaged in “After Dark” by Jayne Cowie: Using Literature to Critically Explore Current Legal Responses to GBV in the Home and in Public’ (2024) 3 *International Journal of Gender, Sexuality and Law* 1.

criminology in discussion of the issue of gender-based violence (GBV). Many of the ideas included in this special issue were presented previously at a 2022 conference funded by the Society of Legal Scholars, titled 'Gender Based Violence: Reflections on the world envisaged in "After Dark" by Jayne Cowie'. That conference sought to use the book 'After Dark' as a focal point for a multi-disciplinary discussion about how society and the law should respond to tragedies such as the deaths of Sarah Everard and Ashling Murphy but also to the issue of violence against women.

Context

The United Nations defines violence against women as 'any act of gender based violence that results in, or is likely to result in physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.'² In practice, violence against women and GBV, are terms used interchangeably to describe violence and other harmful acts directed at women.³ The Istanbul Convention acknowledges that such actions, rooted in gender inequality and abuses of power, both violate human rights and discriminate against women.⁴

GBV is a phenomenon which affects women in rich and poor countries, and across all sectors of society. Worldwide, 35% of women have experienced physical and/or sexual violence, 7% of women have been sexually assaulted by someone who is not their partner, whilst 38% of murders of women are committed by intimate partners.⁵ At a UK level, statistics suggest 1 in 4 women will experience domestic abuse (with more than 27% of women having experienced domestic abuse since the age of 16 compared to 14% of men); 1 in 5 women will be subjected to actual or attempted sexual assault in their lifetime (5% of victims are men); and 1 in 5 women will be the victim of stalking (20% of women compared to 10% of men).⁶ This is despite the plethora of policies and initiatives that have been developed, at national, regional and international level over the past thirty years designed to prevent such behaviours.

² United Nations Declaration on the Elimination of Violence Against Women A/RES/48/104 of 20 December 1993.

³ The European Institute for Gender Inequality, Strategic Framework on Violence against Women 2015-2018 (Publications Office of the European Union, Luxembourg 2015).

⁴ Council of Europe, Convention on Preventing and Combating Violence against Women and Domestic Violence CETS No. 210 Istanbul, 11.V.2011

⁵ World Bank, 'Gender-Based Violence (Violence against Women and Girls)', 2019. Available at: <https://www.worldbank.org/en/topic/socialsustainability/brief/violence-against-women-and-girls> (last accessed 17 June 2024).

⁶ HM Government, 'Tackling Violence Against Women and Girls' 2021. Available at: <https://www.gov.uk/government/publications/tackling-violence-against-women-and-girls-strategy> (last accessed 17 June 2024); Home Office News Team, 'Violence against Women and Girls and Male Position Factsheets', 7 March 2019. Available at: <https://homeofficemedia.blog.gov.uk/2019/03/07/violence-against-women-and-girls-and-male-position-factsheets/> (last accessed 17 June 2024).

Most notably, at international level, the Istanbul Convention imposes obligations on signatory states to establish appropriate support services for GBV victims, including a telephone hotline, counselling services and refuge spaces.⁷ The UK signed the Istanbul Convention in 2012 but did not ratify the Convention until 2022. Whilst now ratified, the UK controversially reserved the right not to be bound by Article 59, which places obligations on the state to provide protection to migrant women whose residence status depends on their spouse or partner. The government have suggested that this reservation will be reviewed following the ‘the results and evaluation of the support for migrant victims scheme’.⁸ The House of Lords International Agreements Committee has questioned the link between Article 59 and the migrant victims scheme and have asked for this to be reviewed at the earliest opportunity.⁹ At the time of writing, the reservation remains in place despite the evaluation of the pilot scheme having been published in August 2023.¹⁰

Jennifer Nedelsky has previously suggested in her book “Law’s Relations”, that ‘violence against women and children is so widespread that it cannot properly be understood simply as a matter of individual pathology or criminality or wickedness. It is a characteristic of our society.’¹¹ She argues that a relational approach is the best way to tackle the failures of existing legal regimes for addressing violence against women. She contends that ‘violence against women cannot be prevented until the relations between men and women are transformed—which means that transformation of these social and intimate relations must be an objective of the liberal state.’ She suggests ‘what is required to end violence against women is, ultimately, a transformation of the relations between men and women.’¹²

The Societal Transformation Envisaged in After Dark

It is a dramatic transformation of the male-female relationship, and a rebalancing of power in favour of women that is at the heart of the 2022 novel, “After Dark”, written by Jayne Cowie.

⁷ Council of Europe, Convention On Preventing and Combating Violence Against Women and Domestic Violence, n 4 above.

⁸ Charley Coleman, ‘Istanbul Convention: Preventing and Combating Violence against Women and Domestic Violence’ House of Lords Library (23 June 2022). Available at: <https://lordslibrary.parliament.uk/istanbul-convention-preventing-and-combating-violence-against-women-and-domestic-violence/#heading-6> (last accessed 17 June 2024).

⁹ House of Lords International Agreements Committee, 2nd report of Session 2022-23, ‘Scrutiny of international agreements: Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ HL Paper 24 (17 June 2022).

¹⁰ Home Office, ‘Evaluating the Support for Migrant Victims (SMV) Pilot: Findings from a process evaluation’ 4 August 2023. Available at: <https://www.gov.uk/government/publications/evaluating-the-support-for-migrant-victims-smv-pilot/evaluating-the-support-for-migrant-victims-smv-pilot-findings-from-a-process-evaluation> (last accessed 17 June 2024).

¹¹ Jennifer Nedelsky, *Law’s Relations* (Oxford University Press 2012) 200, 218.

¹² *ibid*, 218.

“After Dark” offers a radical vision for an alternative world, where violence against women is a thing of the past. All males aged 10 and older are subject to curfew, from 7pm to 7am. All males aged 10 and older are also electronically tagged, making it impossible for them to venture forth at night. If they leave their home in breach of curfew, they face imprisonment. Evenings and early mornings have thus become a time for women to enjoy the outside world, to go jogging, to socialise, to walk home from a cafe, bar, or nightclub alone. Violent crime rates have plummeted. In the home, domestic abuse rates have similarly dropped. Couples are not permitted to cohabit until they have received counselling and their relationship has been vetted, with a view to minimising the risks of male-female abuse within the home.

At first glance the legal solutions “After Dark” envisages seem far *too* radical. In fact, however, many aspects of the After Dark world are already evident in today’s society. In After Dark, Jayne Cowie writes of the importance of ‘escape funds so that no woman is trapped due to a lack of money if she decides to end a relationship.’ In January 2024, following recommendations from the Domestic Abuse Commissioner,¹³ the Government announced the setting up of a £2 million fund from which domestic abuse victims will be able to secure a payment of £500 to help them escape abuse.¹⁴

Section 37 Domestic Abuse Act 2021 already envisages that when a court makes a domestic abuse protection notice they will also impose an electronic monitoring requirement (tagging). As the Government’s draft statutory guidance on the DAA 2021 explains, the purpose of such electronic monitoring requirements

is to monitor the perpetrator’s compliance with the other requirements imposed by the DAPO. For example, if the DAPO prohibits the perpetrator from coming within a specified distance of the victim’s home, then electronic monitoring could be imposed to monitor whether the perpetrator is complying with this requirement by remaining outside of the exclusion zone.

Whilst the intention of this legislation is clearly not the wholesale monitoring of men envisaged in After Dark, nonetheless such monitoring, although tailored to the specific situation in which

¹³ Domestic Abuse Commissioner ‘Chancellor Must put Cost of Living Crisis and Domestic Abuse at the Top of his Agenda – Lives Depend on it’ 3 November 2022. Available at: <https://domesticabusecommissioner.uk/chancellor-must-put-cost-of-living-crisis-and-domestic-abuse-at-the-top-of-his-agenda-lives-depend-on-it/> (last accessed 17 June 2024).

¹⁴ Home Office, ‘Domestic Abuse Victims Given Fresh Support to Escape Abuse’ 9 January 2024. Available at: <https://www.gov.uk/government/news/domestic-abuse-victims-given-fresh-support-to-escape-abuse> (last accessed 17 June 2024).

the perpetrator and victim find themselves, may potentially have significant impact upon a perpetrator's ability to move around the neighbourhood in which they live.

"After Dark" is a novel of its time, reflecting the concerns many are now expressing about the safety of women in public, concerns that became heightened following the murders of a number of women including Sarah Everard and Sabina Nessa in London and Ashling Murphy in Ireland.¹⁵ In the wake of Sarah Everard's death, women in the Clapham area were cautioned by the Metropolitan police against venturing out alone; they were effectively asked to self-curfew.¹⁶ In response to the Metropolitan Police's advice, in her contributions to the House of Lords debates on the Domestic Abuse Bill in March 2021, Baroness Jones of Moulsecoomb indicated:

at the next opportunity for any Bill that is appropriate, I might put in an amendment to create a curfew for men on the streets after 6pm. I feel this would make women a lot safer, and discrimination of all kinds would be lessened.¹⁷

Whilst later suggesting that she was not making a serious suggestion, Baroness Jones, nonetheless identified a significant issue:

when the police victim blame by asking women to stay home, we don't react. We just think it's normal ... in fact nobody makes a fuss when, for example, the police suggest women stay home. But when I suggest it, men are up in arms.¹⁸

As Judi Atkins recognised in her response to the furore that followed Baroness Jones' comments, many people took Baroness Jones' words at face value, failing to recognise the 'rhetorical device' being used.¹⁹ Baroness Jones words accordingly resulted in a backlash of misogynistic online abuse, allegations of extremism, and suggestions that women are 'demanding insane levels of protection'.²⁰ Women are, however, consistently told to modify their behaviour, to avoid male violence, whether that be by taking a taxi home rather than

¹⁵ See for example discussion on Radio 4 Women's Hour, 3 March 2022. Available at: <https://www.bbc.co.uk/sounds/play/m0014xt6> (last accessed 17 June 2024).

¹⁶ Unattributed, 'Sarah Everard: How a Woman's Death Sparked a Nation's Soul-Searching' BBC News, 14 March 2021. Available at: <https://www.bbc.co.uk/news/uk-56384600> (last accessed 17 June 2024).

¹⁷ HL Deb 10 March 2021, Vol 810, Col 1750.

¹⁸ Alan McGuinness 'Sarah Everard: Baroness who Suggested 6pm Curfew for Men Says she Wanted to Make a point' Sky News, 12 March 2021. Available at: <https://news.sky.com/story/sarah-everard-baroness-who-suggested-6pm-curfew-for-men-says-she-wanted-to-make-a-point-12243462> (last accessed 17 June 2024).

¹⁹ Judi Atkins, 'Baroness Jones: Why Did So Many People take her 6pm Curfew for Men Proposal at Face Value?' The Conversation, 17 March 2021. Available at: <https://theconversation.com/baroness-jones-why-did-so-many-people-take-her-6pm-curfew-for-men-proposal-at-face-value-157183> (last accessed 17 June 2024).

²⁰ *ibid.*

walking or by avoiding dark alleyways.²¹ Baroness Jones thus made a serious point, her comments reflected the 'outrage that half the population has to put up with all the time'.²²

Whether a male curfew is the 'right' answer to the problem of violence against women and girls remains a live question; it is a question which is given much careful consideration by Professor Jonathan Herring in the first article in this special issue, 'A Right to a Male Curfew'. In his article, Herring discusses the epidemic of male violence and harassment against women in public spaces, arguing that this is a breach of women's human rights and that there is a state obligation to protect women. Herring explains why a male curfew may be an effective way for the state to fulfil these obligations, whilst acknowledging the challenges in enforcement and the potential for discrimination against gender-non-conforming women and trans women.

The world envisaged in *After Dark* mirrors and calls upon us to examine aspects of today's society. As *After Dark* illustrates, the pre-cohabitation counselling that all couples must engage in before living together does not afford cast iron protection against violence. In *After Dark*, the counsellor identifies and raises concerns about Helen and Tom's compatibility. Her decision to nonetheless grant the cohabitation certificate which enables Helen and Tom to live together, and her decision that she will leave it to Helen to decide whether to cohabit simply shifts the onus to Helen (the victim). Similarities can be drawn here to discussions about the merits of the Domestic Violence Disclosure Scheme, another early intervention scheme, which, similarly to the pre-cohabitation counselling aims to prevent future victimisation, in this instance through the disclosure of an intimate partner's previous convictions. Whilst, in theory, it is suggested women will be empowered because they will be able to make informed choices about how to keep themselves and their children safe, scholars highlight a similar displacement of responsibility.²³ The onus is again placed upon the female victim to do something.

In a similar vein, the classroom-based discussions about the Prevention of Femicide Act 2023 in *After Dark* further highlight key questions which victims of gender-based violence are often called upon to answer: Why didn't you go to the police? Why didn't you just leave? Such questions, which lie at the heart of a culture of 'victim-blaming', are examined in detail in Professor Mandy Burton's article for this special issue, 'Policing Men, Policing Women:

²¹ *ibid*; also Arwa Mahdawi, 'Angry at the Idea of a Curfew for Men? Think of all the Ways Women are Told to Adapt' *The Guardian*, 13 March 2021. Available at: <https://www.theguardian.com/commentisfree/2021/mar/13/men-curfew-sarah-everard-women-adapt-violence> (last accessed 17 June 2024).

²² Judi Atkins, n 19 above.

²³ Marian Duggan, 'Victim Hierarchies in the Domestic Violence Disclosure Scheme' (2018) 24(2) *International Review of Victimology* 199.

Responsibility and Accountability for Violence against Women and Girls, including Domestic Abuse and Femicide'. Burton argues that this 'responsibilisation' of the victim is evident both in the substantive law and the practical implementation of the law. This article considers the question 'how can we focus less on the victim behaviour and more on perpetrator responsibility and accountability'.

In the third article for this special issue, 'Against a Dark Background: The Prevention of Femicide Act 2023 and the Problem of Legislating for Control', Ross Fletcher recognises that 'formidable obstacles' may be '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'. Fletcher uses the book *After Dark* to challenge us to consider '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.'

The Use of Literature to Stimulate Debate on the Law

Whilst GBV, and particularly abuse within the home (domestic abuse) is a topic frequently covered on family law syllabi, the focus is most often upon examining current laws and proposals for reform analysing how and where they may fail to sufficiently protect human rights. This special issue illustrates how literature can be used to inform, and to prompt reflection upon existing laws. It illustrates how such literature can be used to stimulate discussion of *appropriate* legal responses. The educational benefits of using literature and other fictional resources in this way are examined in the second half of this special issue.

The future world discussed in *After Dark* may be considered as utopian, anti-utopian or dystopian. In the fourth article for this special edition, 'Dystopian Fiction: Can it Enable us to Think Critically about Gendered Violence and Power', Kim McGuire clearly positions *After Dark* within the canon of dystopian fiction. She discusses the issues of power, sex, gender, and the law across a range of dystopian works of fiction, exploring their application, both actual and potential, to real life. Whatever stance the reader may take, we hope that this special issue will provide a valuable starting point for discussion of current legal responses to GBV and will challenge readers both to revisit preconceived ideas about the laws governing gender-based violence, and about how we teach our students about those laws and their role in society. The use of literature to stimulate discussion of the law is not new. It is an approach increasingly being used in legal education by advocates of law and literature approaches to

teaching. Although there is much debate both about what a law and literature approach is,²⁴ and what its benefits are,²⁵ a variety of reasons have been offered for using literature to teach and to understand law.

It has been suggested elsewhere that novels about law may provide 'a path to human understanding,'²⁶ that literature can be used both to provide a language for those representing women's experiences before the law, and to enable readers to understand women's perspectives and their suffering.²⁷ 'The literary imagination' is viewed by Martha Nussbaum to be important because it 'asks us to concern ourselves with the good of other people whose lives are different from ours.'²⁸ From a pedagogic perspective, fiction can be used to explore fundamental legal concepts, making 'abstract concepts concrete for students'.²⁹ It can 'invite explorations of how and why the rule of law succeeds, is threatened, or fails in different circumstances', make the law more accessible but, as is the case with *After Dark*, can also be used in a provocative way.³⁰

Mary Kay O'Malley has previously recognised the benefits that may be drawn also from using film to teach family law, to make learning more fun, to promote creative thinking, to enhance learning and exploration of human relationships, and to broaden understanding of how law impacts upon family members.³¹ O'Malley suggests that it is the narrative aspect of film that makes it so useful in teaching law. One could argue that literature, like film, has 'the ability to transport us from our physical reality.' Both can also be used to explore complex issues such as domestic violence by 'giving students an opportunity to witness events that they may not be able to conjure up on their own.'³²

Stepping outside the field of law into the field of criminology, in the final article for this special issue, 'Popular Criminology, Sexual Violence and Alternative Modes of Justice', Louise Wattis invites us to consider the related notion of 'popular criminology'. As she explains, criminologists are increasingly recognising that popular cultural portrayals of crime, violence and justice offer alternatives discourses which enhance the criminological imagination beyond

²⁴ See for example, Richard Posner, *Law and Literature* (3rd Edn, Harvard University Press 2009) and Robin West's comments on Posner's approach in 'Authority, Autonomy and Choice: The Role of Consent in the moral and political visions of Kafka and Richard Posner'. (1985) 99 *Harvard Law Review* 384.

²⁵ Ian Ward, *Law and Literature: Possibilities and Perspectives* (Cambridge University Press 2009).

²⁶ Robert Weisberg, *The Failure of the Word* (Yale University Press 1989).

²⁷ Ian Ward, *Law and Literature: Possibilities and Perspectives*, n 25 above.

²⁸ Martha C. Nussbaum, *Poetic Justice: The Literary Imagination and Public Life* (Beacon Press 1995).

²⁹ James Landman, 'Using Literature to Teach the Rule of Law' (2008) 72(4) *Social Education* 165, 165.

³⁰ *ibid.*

³¹ Mary Kay O'Malley, 'Through a Different Lens: Using Film to Teach Family Law' (2011) *Family Court Review* 715, 715-6.

³² *ibid.*, 716.

the limits of academic criminology, offering more complex understandings of crime and violence and reimagining the nature of justice. The specific focus that Wattis takes in her article for this special issue are cultural representations of sexual violence. She explores how such popular culture might contribute to a more progressive vision of justice which resonates with Clare McGlynn and Nicole Westmarland's (2019) notion of 'kaleidoscopic justice'³³ where victims are centred and the harms of sexual violence are fully recognised.

Conclusion

Using *After Dark* as a focal point for discussion of issues of gender-based violence at the conference in 2022 and subsequently in this special issue has opened the door to academic discourse on a number of important issues. Several of the articles featured used this as an opportunity to highlight state obligations to protect women and girls and the potential breach of human rights if such protection is not provided. This is timely given the ongoing debate about the reservations that the UK has chosen to make when ratifying the Istanbul Convention, as discussed earlier in this editorial. Alongside this, however, another common theme discussed is the difficulty in both implementing and enforcing legislation, raising the question as to whether legislative changes are always the answer to achieving societal change, especially when considering an issue which is so deeply rooted in patriarchy and women's unequal status within society. It is therefore notable that the final theme of this collection and one particularly discussed within the final two articles is the use of literature and popular culture to tackle societal ideas and opinions of gender-based violence or to at least open the door to further discussion. It is hoped that this special issue will encourage the use of literature in this way in the future.

Acknowledgements

We would like to thank all contributors for their thought-provoking articles and all peer reviewers who volunteered their time to provide feedback. We thank the editor of the *International Journal of Gender, Sexuality and Law*, Laura Graham, for waiting so patiently for us to collate all the articles, and for her support in putting this issue together. Finally, we thank the Society of Legal Scholars for its generous grant which made the event which inspired this special edition possible.

³³ Clare McGlynn and Nicole Westmarland, 'Kaleidoscopic Justice: Sexual Violence and Victim-Survivors' Perceptions of Justice' (2019) 28(2) *Social & Legal Studies* 179.