

VICTIMS' EXPERIENCES  
OF THE CRIMINAL JUSTICE  
RESPONSE TO DOMESTIC  
ABUSE

# FEMINIST DEVELOPMENTS IN VIOLENCE AND ABUSE

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# VICTIMS' EXPERIENCES OF THE CRIMINAL JUSTICE RESPONSE TO DOMESTIC ABUSE

Beyond GlassWalls

BY

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*University of Glasgow, United Kingdom*



United Kingdom – North America – Japan – India  
Malaysia – China

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INVESTOR IN PEOPLE

For my dad Charlie and his GlassWalls' angels ....

And for my mum, who taught us both all the  
most important things.

With love

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At the heart of this book lies the stories of ordinary women who have faced inordinate challenges and achieved extraordinary things. As one of the research participants told me, 'I used to see stained glass in churches and wonder who made it. Now I look at it and think, I can do that'. I am so grateful for all I have learned from them. Thanks to Scottish Women's Aid, the Daisy Project, ASSIST advocacy service and all the amazing women who shared their experiences with me. The beautiful images between the chapters of this book

are reproduced with kind permission from Brian Waugh, artist and sympathetically photographed by Ian Marshall. The photograph at the start of chapter 7 is reproduced with kind permission from Colin Mearns of *The Herald* and *The Evening Times*.

This is the first time I have written a book and juggling it with full-time work in a pandemic was a stretch. Thanks to Professors Nicole Westmarland and Hannah Bows for having faith in my pitch and to Katy Mathers, Kirsty Woods and the fantastic team at Emerald for their patient guidance through the process.

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## FOREWORD

The criminal justice system has always struggled to understand the needs of victims. Part of the problem lies in the use of language. “What’s in a name?”, asks Emma Forbes in her Introduction. Quite a lot is the simple answer to her question. The word “victim” is not a suitable term within a court of law, as she points out. The court has to be guided throughout by the presumption of innocence. The prosecutor has to respect that principle too, as do the police. This means that a person cannot be referred to there as a victim unless and until that presumption has been overcome. That is why we use the terms “complainant” and “complainer” instead. But the fact is that those who are brave enough to complain to the police and to come to court in that capacity are almost always victims too.

I was acutely aware, when taking evidence from a complainant in gender violence cases during my time as an Advocate Depute in the High Court of Justiciary that I was not there to represent the complainant, however compelling her case might seem to me to be. I did my best, by careful and patient questioning and by maintaining eye contact with her throughout the whole process as we went over in public all the most intimate details, to set her at ease. But this was done at a distance across the court room, not by standing beside her or offering her any other kind of support. I had to leave it to others to look after her before and after her appearance in court. For those others she was still seen as a complainant until the verdict was announced. I could not speak to her

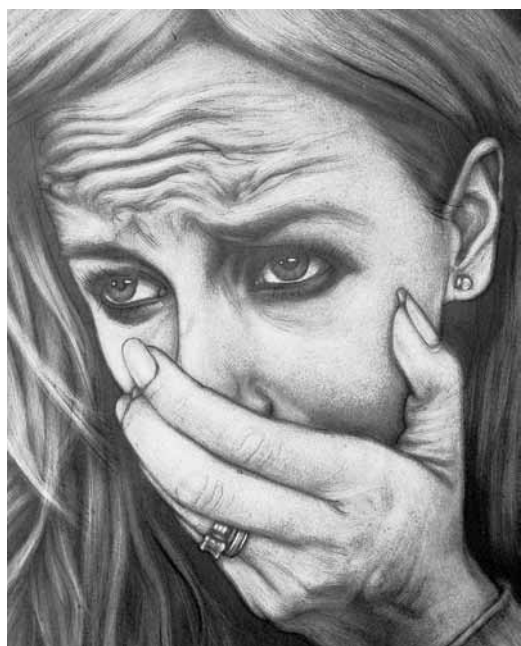
during any adjournments, and I had to remain detached from her even at the end of the trial. I did not think that gender had much to do with this. It was the system I had to work with, and it was the system that left her friendless and alone.

Decades have passed since those days, and much has been done by means of legislation and policy changes to remove the glass barriers and to redress the balance in favour of the most vulnerable. This is especially with regard to gender violence and domestic abuse, in particular. But there are still problems that have not gone away and, as this perceptive and carefully researched book shows, much still remains to be done. Its value lies in the fact that the writer's understanding has been gathered at first hand from her experience in practice as a prosecutor. So her research has been based on her observations of what actually happens before, in and after court. This provided her with the ideal setting for her discussion with victims at each stage in the process. She knew and understood what they were talking about because she was there too. The result is a vivid and compelling account of the emotions which pull in so many directions as each case evolves, and of the tensions that are created by the time it takes to resolve it.

Against that background the writer seeks to address what she sees as a stubborn misalignment between the policy vision, the legal framework and women's reality. So there are recommendations. They range from small practical changes to improvements in education and reforms to law and to policy. For this reason alone the book deserves to be widely read. But there is much more to it than that. The way it is written draws the reader into the subject in a way that a mere textbook cannot do. Here is someone who feels deeply about the way women are still failed by the system, and who seeks to encourage others to think as deeply about how to address these failures as she does. The way forward, in other words,

lies in the hearts and minds of those who practice in this field. I hope that in that way the book will achieve the success that it so obviously deserves.

David Hope  
September 2021



# INTRODUCTION

The first time I visited Glasgow Sheriff Court, uncomfortable in ill-fitting black clothes, my feet pinched in cheap heels, I sat in the public gallery of the custody court and prepared for great excitement. As a keen law student, I was enthusiastic about the opportunity to shadow a solicitor in one of the busiest courts in Europe. In fact, it was bewildering and boring. The custody court is a cavernous room in the basement, and the public gallery is set back from the body of the court. Sitting in the second row, I could not hear anything. I watched for hours as a troop of lawyers came forward, mumbled, and retreated like dejected theatre actors at an audition. Not only was it dull, it was frustrating because I did not understand what was happening.

Fast forward two years, I was often the newly qualified prosecutor in the same courtroom. My experience was very different. Within the well of the court, there is a buzz, camaraderie, focus, and spiky, engaging debate. It is a privilege to prosecute in the public interest. Whilst there is often banter with solicitors on both sides of the table, there is a deep sentiment of duty instilled in prosecutors and those representing the accused. All of this is lost on the public. Perceptions of court come from (American) television dramas and bear little resemblance to reality. Members of the public, complainers giving evidence, and

accused are all involved in the court process and yet still leave the building unclear on the process. What just happened? Unlike television, there is no helpful recap. Support agencies like Victim Support and Witness Service work hard to help those attending court demystify the process. However, for victims of domestic abuse, the barriers to understanding the process are compounded by the impact that court decisions have on their home life and the lives of their children and the compelling effect this has on their emotional response to court.

I became the first full-time prosecutor within the Domestic Abuse Pilot Court in Glasgow in 2004. My understanding of domestic abuse was so scant that I thought I did not know anyone who had been affected. My strategy was to deal with one case at a time and treat each person coming to court as an individual. I started at the beginning. I read Erin Pizzey, Ellen Pence, and the Dobashes and attended my first Scottish Women's Aid (SWA) conference. I tried to learn from victims and their supporters. This made me sensitive to the public/private nexus in these cases, and the most difficult consideration is often deciding where the public interest<sup>1</sup> lies in such a victim-led approach.

It also made me think about why it is so hard to achieve good outcomes despite legislative and policy advances. Police reports relating to physical assaults and threatening and abusive behaviour contain intensely private details of family life: a window into someone else's inner sanctum. Such feelings are intensified as reports detail long-term emotional and psychological abuse (Ontiveros, 1995). Victims may be asked to share personal details of sleeping arrangements, daily routines, and private messages, comprising: 'an individualised package of behaviours ... by the person who knows her most intimately' (Tolmie, 2017, p. 7). This is uncomfortable (Hoyle, 2000). It is a challenge

for the police officer and the prosecutor that becomes magnified for those in the courtroom when faced with the raw, unedited reality of women and children's emotional response to abuse. Despite best efforts and increased training, the discomfort of professionals polarises victims and leads to profound feelings of being unheard and disbelieved. Recognising and dealing with emotion appears to me to be the nub of what is missing from the justice response.

#### PURPOSE OF THIS BOOK

This book tells the story of the justice response from the perspective of a victim of domestic abuse: from the initial call to the police, waiting for court, procedural hearings, the trial, and until the ultimate outcome. It is a progressive area in which there have been developments in social and political understanding of the state's remit in private life following intimate abuse. In telling the victims' story, it is important to understand the legal and policy landscape. The apparent sweep of progress on the public stage is juxtaposed with the private struggle of individuals who continue to face barriers to justice. Drawing on in-depth interviews with women who have experienced domestic abuse and those who support them, this book identifies enduring challenges and makes practical recommendations.

Chapters One and Two provide the context for women's stories. Based on a 40-year timeline of the UK response to domestic abuse, these chapters set the scene of the policy, legal, social, and academic responses to victims of gender violence, in general, and domestic abuse, in particular. Chapters Three–Five tell women's stories of the impact of

reporting to the police, going to court, and the aftermath. Chapter Three considers the risks and safety implications for women of reporting to the police and the fault lines in current communication with victims as they wait *for* court. Chapter Four narrates stories of women waiting *at* court and how such waiting influences their ability to give evidence and reflects how they are perceived. Chapter Five discusses different potential outcomes, from an early decision not to proceed to a late negotiated plea or a trial and sentence. Chapter Six argues that legislative change has limited potential until structural inequalities are addressed and the best hope for victims lies in a more emotionally intuitive response through consistently delivered procedural justice. It considers potential developments, including problem-solving courts and closer alignment of the civil and criminal courts. Chapter Seven concludes with the impact of informed debate on gender inequality within criminal justice and identifies how we can move beyond 'glass walls'.

#### WHY GLASSWALLS?

The gendered and under-recognised nature of barriers faced by women is similar to the 'glass ceiling' which second-wave feminism highlighted 40 years ago (Fielding, 2018) as a seemingly invisible, structural barrier to women progressing equally in the workplace. Domestic abuse is both publicly recognised and privately ongoing and imperceptible. At once, women are offered support and encouraged to report and, at the same time, they report 'feeling crazy' because ongoing abusive behaviour is not acknowledged. I describe this as living behind glass walls.

*GlassWalls* is both the ideological framework explored throughout this book and the name of a collaborative community art project with victims of domestic abuse. The premise of this book is that the barriers faced by women in the court process are gendered and structural. Their stories unfold through the images between each chapter. These images were developed to engage a wider audience through a creative medium and became part of a colourful stained-glass exhibition.<sup>2</sup>

*GlassWalls*, the project, is a collaboration with the Daisy Project, a grassroots support project for victims of domestic abuse, and WASPS art studio. Professional stained-glass artists provided weekly art classes at Daisy and the women each created their own piece. A collage of their work formed part of the final exhibition, alongside a triptych of stained-glass panels set in light boxes. The large panels are an artistic depiction of societal responses to domestic abuse from the 1970s to the present. The exhibition was created through grant funding and charitable donations and has been gifted to Glasgow Museums. Proceeds of this book will help rehabilitative art classes at Daisy to continue.

## WHAT IS DOMESTIC ABUSE?

This book adopts a gendered and legal understanding of domestic abuse.<sup>3</sup> Social and legal responses can be distinct, without being contradictory.

In England and Wales, there was a shift in 2013 from ‘domestic violence’ to ‘domestic violence and abuse’ (Home Office, 2013). The definition of domestic abuse goes beyond the physical to recognise psychological, sexual, financial, and emotional abuse within intimate

partner relationships (irrespective of gender or sexuality). The Domestic Abuse Act 2021 extends this definition to include ex-partners. The Crown Prosecution Service (CPS) adopts a Violence Against Women and Girls (VAWG) Strategy, based on the UN Convention,<sup>4</sup> to inform their investigation and prosecution of domestic abuse as an example of offending that: 'has been identified as being committed primarily but not exclusively by men against women' (HM Government, 2016).

Similarly, the Scottish government recognises domestic abuse as a gendered problem (*Equally Safe*, 2018). The current Joint Protocol (2017) between Police Scotland and Crown Office and Procurator Fiscal Service (COPFS) contains a definition of domestic abuse which includes physical, verbal, sexual, psychological, and financial abuse. It applies to (ex)partners, men and women. It does not distinguish between same-sex and heterosexual relationships, but it recognises a specific dynamic of intimate partner abuse and does not include familial abuse within its definition.

Both jurisdictions have shown that it is possible for the law to remain gender-neutral whilst adopting a gendered policy understanding of the realities of predominant victimisation. Although, some commentators consider this falls short (Bishop, 2016b). This is explored further in Chapter One.

## WHAT'S IN A NAME?

The court process in England and Wales refers to complainants; in Scotland, complainers. This book adopts the term 'victim'. Feminist literature on domestic abuse is divided on appropriate terminology. Some refer to 'victims' and many prefer 'victim-survivor' (for a discussion, see Gondolf & Fisher, 1988; Burton, 2008).<sup>5</sup> Personally, the annual domestic

homicide statistics make me uncomfortable referring to victims as ‘survivors’; like ‘battling’ an illness, it is not always possible to control the outcome. These are social terms and as I have engaged directly with those who have experienced abuse to conduct this research, I judged it sensitive and apposite to refer to victims in my discussion. However, as Lord Hope rightly observes, this is not a suitable term this is not a suitable term within a court of law, where the presumption of innocence is a basic tenet of our justice system and the rules of evidence are clear. There are increasing references to victims’ rights in the formal process but broadly in relation to legislation providing *service* rights within the process; it has not affected court vocabulary. Throughout this book, reference to legal texts or the court process may refer to complainants/ers, but I have broadly adopted social meanings.

#### WHAT DOES IT MEAN TO HAVE AGENCY?

Defining women’s agency is problematic in relation to violence against women as views are divided about whether women ought to be cast as victims or assertive agents (Schneider, 2000). Hoyle and Sanders (2000) advocate a model of victim empowerment which is centred on individual choice and does not prefer the public interest (see also Mills, 1998). There have also been warnings that a social mentality of victimisation could emerge in which all women are perceived victims (Mythen, 2011; Stanko, 2000).

There is scope for victims to retain greater agency *within the court process*,<sup>6</sup> without compromising the public interest, the rights of the accused, or the independence of the court. I suggest that there are three aspects to agency for victims within the court process. A definition ought to include, first, the capacity for informed choice; second, freedom from further

criminal conduct; and, third, a means to be heard. Informed choice means that when a woman makes a call to the police to report domestic abuse or is asked by the police to provide a statement, she knows the consequences of her action: that the criminal justice response is predictable, understandable, and transparent. Freedom from further criminal conduct means that the act of reporting an allegation of criminal conduct ought to stop further abuse. The interview data in this book suggest that far from bringing domestic abuse into the open, reporting criminality represents an opportunity for the accused to coercively control his victim through abuse of the system. Agency within the court process encompasses having your voice heard. This may be within the formal setting of a trial but need not be. Ways in which this can be achieved are explored throughout this book.

## THE NATURE AND SCALE OF DOMESTIC ABUSE

The nature and impact of domestic abuse are increasingly understood and a government report estimated that the overall social and economic 'cost' in England and Wales in one year (2017) was £66 billion (Oliver, Alexander, Roe, & Wlasny, 2019). Across the UK, governments recognise domestic abuse as an endemic problem (HM Government, 2016; Scottish Government, 2016). Increased reports of domestic abuse as a direct result of the Covid-19 lockdown and confinement with abusers have led the Executive Director of United Nations Women to describe gender-based violence as the 'shadow pandemic' (Mlambo-Ngcuka, 2020). Nevertheless, understanding the scale of the problem is difficult because of the hidden, suppressed nature of the offending. Governments rely on reported cases, which we know represent a small proportion of the overall number, as under-reporting