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Gender, violence and Brexit

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Abstract

How will the UK exit from the EU affect gender-based violence against women? Four issues are addressed to answer this question. First, the importance of theorising the interconnections with a gender regime, including between gendered economic inequality and gendered violence. Second, the significance of the difference between hard and soft security strategies for the level of gendered violence. Third, the significance of the emerging competence of the EU in the governance of violence/security relative to the member states and international bodies. Fourth, the specific nature of Brexit and the form of the future relationship between the UK and EU. The paper concludes that Brexit is likely to increase gender-based violence against women in the UK, partly as a result of the differences in the regulation of violence/security between the UK and the EU and partly as a result of increases in gender inequality in the economy that has effects across the whole gender regime.

Key words: gender; Brexit; violence; security; inequality.

Introduction

The current strategies to restructure the EU have implications for the governance of violence. Is one site of legal intervention into the governance of violence more important than another? Brexit provides an opportunity to think through these questions as to which polity, which state, which site of governance matters most and in which way for legal interventions that contribute to ending gender-based violence.

Brexit is gendered since the UK and the EU are differently gendered on many issues.[1] Much of the debate on the gender of the EU has focused on changes in gender policy and

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1   Moira Dustin, Nuno Ferreira and Susan Millns (eds), *Gender and Queer Perspectives on Brexit* (Palgrave Macmillan 2019); Roberta Guerrina and Annick Masselot, 'Walking in the footprint of EU law: unpacking the gendered consequences of Brexit' (2018) 17(2) Social Policy and Society 319; Aida A Hozić and Jacqui True, 'Brexit as a scandal: gender and global Trumpism' (2017) 24(2) Review of International Political Economy 270.

on the economy.[2] There is an emerging literature on gender in relation to EU governance of violence and security.[3] The European Area of Freedom, Security and Justice is potentially as significant an aspect of the gender of Brexit as the Single European Market because of its significance for gender-based violence. It is thus of concern for the analysis of feminism and the EU.[4] The gender of Brexit raises issues of the relative significance of member states and the EU-level in governance, which are relevant to wider debates on the EU and on the gender of the EU.[5] It raises still wider questions as to the extent to which individual states can be autonomous in a global era in which there are competing hegemons, and how this analysis of the gender of scale should proceed.[6]

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2   Gabriele Abels and Joyce Marie Mushaben (eds), *Gendering the European Union* (Palgrave Macmillan 2012); Gabriele Abels and Heather MacRae (eds), *Gendering European Integration Theory* (Barbara Budrich Publishers 2016); Catherine Hoskyns, *Integrating Gender: Women, Law and Politics in the European Union* (Verso 1996); Sophie Jacquot, 'The paradox of gender mainstreaming: unanticipated effects of new modes of governance in the gender equality domain' (2010) 33(1) West European Politics 118; Sophie Jacquot, *Transformations in EU Gender Equality: From Emergence to Dismantling* (Palgrave Macmillan 2015); Johanna Kantola and Emanuela Lombardo (eds), *Gender and the Economic Crisis in Europe: Politics, Institutions and Intersectionality* (Palgrave Macmillan 2017); Maria Karamessini and Jill Rubery (eds), *Women and Austerity: The Economic Crisis and the Future for Gender Equality* (Routledge 2013); Elisabeth Klatzer and Christa Schlagen, 'EU macroeconomic governance and gender orders: the case of Austria' in Brigitte Young, Isabelle Bakker and Diana Elson (eds), *Questioning Financial Governance from a Feminist Perspective* (Routledge 2011); Heather MacRae, '(Re)gendering integration: unintentional and unanticipated gender outcomes of European Union policy' (2013) 39 Women's Studies International Forum 3.

3   Yvonne Galligan, 'Brexit, gender and Northern Ireland' in Dustin et al (n 1); Roberta Guerrina and Katharine A M Wright, 'Gendering normative power in Europe: lessons of the Women, Peace and Security Agenda' (2016) 92(2) International Affairs 293; Roberta Guerrina, Laura Chappell and Katharine A M Wright, 'Transforming CSDP? Feminist triangles and gender regimes' (2018) 56(5) Journal of Common Market Studies 1036; Toni Haastrup and Nadine Ansorg, 'Gender and the EU's support to security sector reform in fragile contexts' (2018) 56(5) Journal of Common Market Studies 1127–1143; Andrea Krizsan and Raluca Popa, 'Europeanization in making policies against domestic violence in central and eastern Europe' (2010) 17(3) Social Politics 379; Annica Kronsell, 'Gender, power and European integration theory' (2005) 12(6) Journal of European Public Policy 1022; Annica Kronsell, 'The power of EU masculinities: a feminist contribution to European integration theory' (2016) 54(1) Journal of Common Market Studies 104; Kathrin S Zippel, *The Politics of Sexual Harassment: A Comparative Study of the United States, the European Union, and Germany* (Cambridge University Press 2006).

4   Petra Ahrens, *Actors, Institutions, and the Making of EU Gender Equality Programs* (Palgrave Macmillan 2018); Cristiano Bee and Roberta Guerrina, 'Participation, dialogue, and civil engagement: understanding the role of organised civil society in promoting active citizenship in the European Union' (2014) 10(1) Journal of Civil Society 29; Rosalind Cavaghan, *Making Gender Equality Happen* (Routledge 2017); Louise Chappell and Georgina Waylen, 'Gender and the hidden life of institutions' (2013) 91(3) Public Administration 599; Yvonne Galligan, *States of Democracy: Gender and the Politics of the European Union* (Routledge 2015); Johanna Kantola, *Gender and the European Union* (Palgrave Macmillan 2010); Johanna Kantola and Lise Rolandsen-Agustin, 'Gendering transnational party politics: the case of the European Union' (2016) 22(5) Party Politics 641; Anna van der Vleuten, *The Price of Gender Equality: Member States and Governance in the European Union* (Ashgate 2007); Anna van der Vleuten, Anouka Van Eerdewijk and Conny Roggeband (eds), *Gender Equality Norms in Regional Governance* (Palgrave Macmillan 2014); Mieke Verloo (ed), *Varieties of Opposition to Gender Equality* (Routledge 2018).

5   Emanuela Lombardo and Maxime Forest (eds), *The Europeanization of Gender Equality Policies: A Discursive Sociological Approach* (Palgrave Macmillan 2011); MacRae (n 2); Verloo (n 4); 'Multiple inequalities, intersectionality and the European Union' (2006) 13(3) European Journal of Women's Studies 211–228; Mieke Verloo and Sylvia Walby, 'Introduction: the implications for theory and practice of comparing the treatment of intersectionality in the equality architecture in Europe' (2012) 19(4) Social Politics 433–445; Cornelia Woll and Sophie Jacquot, 'Using Europe: strategic action in multi-level politics' (2010) 8(1) Comparative European Politics 110–126.

6   Rianne Mahon, 'Introduction: gender and the politics of scale' (2006) 13(4) Social Politics 457–461; Rianne Mahon, 'After neo-liberalism? The OECD, the World Bank and the child' (2010) 10(2) Global Social Policy 172–192.

Thinking through alternative scenarios for Brexit offers an opportunity to consider the way in which different states and polities have implications for the governance of gendered violence. Four scenarios are identified.

- First, no change because only the UK state governs crime and security – so exit from the EU would make no difference.

- Second, little change because the UK continues to take EU rules even while ceasing to make EU rules.

- Third, little change because the main actors will continue their influence: either because of the continuing cooperation of entities other than national states through principles and networks of mutual exchange; or because of the significance of international legal instruments that set the standards for both the UK and the EU.

- Fourth, major change because the UK would lose the EU anchor for (gender) equality policy and for a 'soft' crime/security strategy rooted in the Treaties, the Single European Market and the European Area of Freedom, Security and Justice.

Four conceptual and theoretical issues that underpin the differences between the scenarios are also identified.

- The conceptualisation of the links between different aspects of gender relations and varieties of gender regimes: can one gendered institution be examined in isolation from the others or does it always require analysis of the other gendered institutions that make up its environment and constitute a regime?

- The conceptualisation of and variation in violence/security.

- The significance of the UK, EU and other polities in the governance of gendered violence/security.

- The nature of Brexit, which requires identification of relevant aspects of the EU.

This discussion matters for the prioritisation of political objects, which policies and polities matter most, in strategy to end violence against women.

Gender, violence and state policy

An initial issue is how to compare the UK with the EU and other relevant polities. This is not only to compare the gender projects and programmes of the UK and EU,[7] although this is crucial, but also of other hegemons and international agencies that may shape the UK in the absence of an anchor to the EU.[8] There are two dimensions of gender equality projects to compare: strategy and instruments. Variations in strategy refer to the preferred model of gender relations and how to get there:[9] this requires a conceptualisation of alternative gender futures (discussed below under varieties of gender regimes). Variations in instruments refers to the mechanisms and institutions that are mobilised to take forward the gender equality project; these include laws, courts, governmental departments and agencies, and civil society institutions.

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7   Guerrina and Masselot (n 1).

8   Hozić and True (n 1).

9   Emanuela Lombardo, 'EU gender policy: trapped in the "Wollstonecraft's dilemma"?' (2003) 10(2) European Journal of Women's Studies 159–180; Dorothy E McBride and Amy G Mazur, *The Politics of State Feminism* (Temple University Press 2010).

What are the EU-level strategies and instruments for gender equality that the UK might lose on Brexit? The EU-level has innovated on some aspects of gender equality,[10] although there are dilemmas and contradictions[11] and suggestions that it is diminishing.[12] EU equality policy derives its legal competence from Treaties, articulated in Directives and Regulations, with implementation supported by technical agencies and the European Court of Justice, while priorities are set by the European Commission, European Parliament and the European Council. It has long had a distinctive strategy for gender equality,[13] more recently a plan for strategic engagement.[14] Gender equality is embedded, though not always explicit, in the EU strategies for economic growth (articulated in the Single European Market) and security (articulated in the European Area for Freedom, Security and Justice).

A comparison of the UK and EU on gender equality policy finds the EU often in advance over the UK. The UK government White Paper addressing Brexit[15] positions gender equality as if it were sufficiently embedded in UK-level institutions and as an issue to be addressed separately from the economy and security. The structure of the European Union (Withdrawal) Bill (HC)[16] implied that gender equality was fully embedded in UK law. However, Guerrina and Masselot[17] are sceptical of this claim, because of the government refusal of an amendment, during the November 2017 House of Commons debate, that would have safeguarded rights to equality established under the 2010 Equality Act and because of the actions of the UK government in opposing developments in gender equality policy in the EU, such as the Pregnant Workers Directive and for gender balance on corporate boards. Further consideration is needed of the comparison of UK and EU policy on gendered violence/security.[18]

POLICIES TO END VIOLENCE AGAINST WOMEN

Should the analysis be restricted to policies that name gendered violence/security (e.g. violence against women, gender-based violence) as their object, or does it include all policies that indirectly have this consequence?

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10 Hoskyns (n 2); Kantola (n 4).

11 Verloo (n 4); Heather MacRae, 'The EU as a gender equal polity: myths and realities' (2010) 48(1) Journal of Common Market Studies 155–74; Verloo and Walby (n 5).

12 Jill Rubery, Damien Grimshaw, Collette Fagan, Hugo Figueiredo and Mark Smith, 'Gender equality still on the European agenda – but for how long?' (2003) 34(5) Industrial Relations Journal, 477–497; Petra Ahrens, *Actors, Institutions, and the Making of EU Gender Equality Programs* (Palgrave Macmillan 2018); Sophie Jacquot, *Transformations in EU Gender Equality* (n 2).

13 European Commission, *Strategy for Equality between Women and Men, 2010–2015* (European Commission 2010).

14 European Commission, *Strategic Engagement for Equality between Women and Men, 2016–2019* (European Commission 2015).

15 HM Government, *The United Kingdom's Exit From and New Partnership With the European Union* (Cm 9417, 2017).

16 European Union (Withdrawal), HC Bill, Session 2017–2019, No 2; European Union (Withdrawal), HC Bill, Session 2017–2019, No 3; European Union (Withdrawal), HC Bill, Session 2017–2019, No 4; European Union (Withdrawal), HC Bill, Session 2019.

17 Guerrina and Masselot (n 1).

18 Sylvia Walby, Phillipa Olive, Jude Towers, Brian Francis, Sofia Strid, Andrea Krizsan, Emanuela Lombardo, Corinne May-Chahal, Suzanne Franzway, David Sugarman, Bina Agarwal and Jo Armstrong, *Stopping Rape: Towards a Comprehensive Policy* (Policy Press 2015); Guerrina et al (n 3).

On the one hand, the analysis might only concern policies that name violence against women as the issue; while on the other hand, the analysis might extend to policies that address other (gendered) issues that have indirect but significant effects on gendered violence/security. If there is no Brexit change in policies that name 'violence against women', it might appear as if Brexit could make no difference – if the analysis is restricted to this field. If there is no change in gendered violence/security policies but change in policies that have consequences for gendered violence/security, then it is important that the focus is extended to include these indirect links if a full picture of the implications of Brexit is to be established. The underlying issue is whether analysis treats institutions as if they were autonomous or should extend to the system of interconnected institutions that make up a gender regime.

Underpinning these questions is whether variations in gender violence are theorised at the meso (institutional) or macro (regime/societal) levels. Feminist institutionalist analysis in political science has argued for a focus on institutions, not only the micro level.[19] However, the connections between gendered political institutions have also been demonstrated, for example in the impact of feminist movements on the state[20] and in the impact of descriptive and substantive political representation of gender on the constitution of gender relations.[21] Further, there is a link between gendered economic inequality and gendered violence.[22] Gendered institutions should not be treated as if they were autonomous, but rather analysed as part of an interconnected system of gender relations or gender regime.[23] Developing gender concepts at the macro level also facilitates engagement with other macro level debates on European change.[24] The analysis of the consequences of Brexit should include gender regimes as well as gendered institutions in order to consider the indirect effects of changes in institutions other than gendered violence/security on gendered violence/security.

Varieties of gender regimes

Comparing gender regimes requires a conceptualisation of varieties of gender relations, so that pre-Brexit and post-Brexit forms of gender relations can be compared.

The comparison of macro level gender relations has been addressed in several ways. This has included the extent to which there is a male breadwinner or dual earner household and its relationship to the welfare state,[25] but this does not include

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19 Georgina Waylen, *Engendering Transitions: Women's Mobilization, Institutions, and Gender Outcomes* (Oxford University Press 2007); Louise Chappell and Georgina Waylen, 'Gender and the hidden life of institutions' (2013) 91(3) Public Administration 599–615; Rosalind Cavaghan, *Making Gender Equality Happen* (Routledge 2017).

20 McBride and Mazur (n 9); Mala Htun and S Laurel Weldon, 'The civic origins of progressive policy change: combating violence against women in global perspective, 1975–2005' (2012) 106(3) American Political Science Review 548–569; S Laurel Weldon, *Protest, Policy, and the Problem of Violence against Women: A Cross-National Comparison* (University of Pittsburgh Press 2002).

21 Sarah Childs, Paul Webb and Sally Marthaler, 'Constituting and substantively representing women: applying new approaches to the UK case study' (2010) 6 Politics and Gender 199–223.

22 Sylvia Walby, Jude Towers and Brian Francis, 'Is violent crime increasing or decreasing?' (2016) 56(6) British Journal of Criminology 1203–34.

23 Sylvia Walby, *Globalization and Inequalities* (Sage 2009).

24 Hans-Jürgen Bieling and Thomas Diez, 'Linking gender perspectives to integration theory: the need for dialogue' in Abels and MacRae (eds) (n 2) 279–292.

25 Jane Lewis, 'Gender and the development of welfare regimes'(1992) 3 Journal of European Social Policy 159–173.

violence/security. The analysis of gender orders by Connell[26] is wider, but it does not include violence/security as a distinctive institutional domain. Walby's typology of gender regimes,[27] includes violence as well as economy, polity and civil society, and is drawn on here in order to conceptualise the potential changes in gender relations consequent on Brexit.

Walby differentiates between domestic and public gender regimes, and then further differentiates public gender regimes along a spectrum from neoliberal to social democratic. These differences in varieties of gender relations are mobilised at the meso level of specific institutional clusters (economy, polity, violence and civil society) and at the macro level of the gender regime as a whole (for example, UK, EU), while also being relevant to the micro level of practices and projects (such as a strategy for gender equality). In the domestic gender regime, there is appropriation of women's labour within the household, and the exclusion of women from paid employment and other public domains of the polity, education, and some aspects of civil society. In the public gender regime, while appropriation of women's labour in the household does not cease, it is less significant since women are not excluded from the public domains of employment, polity, education and civil society. Different trajectories from a domestic to public gender regime has consequences for its form, sometimes a more social democratic and other times a more neoliberal form of the public gender regime. The social democratic variety has greater gender depth of democracy and less inequality than the neoliberal form. The more unequal forms of the gender regime generate higher levels of violence against women.[28]

There has been a slow change from domestic towards a public gender regime in Europe; but this is still not complete, so the two varieties co-exist. There is a spectrum from more neoliberal public gender regimes (e.g. UK) to more social democratic public gender regimes (e.g. Sweden). The EU has a more social democratic public gender regime than the average of EU member states.[29] In the crisis starting from 2008, there have been varied changes in the gender regime in Europe: in the UK, within the public gender regime, a turn away from social democratic towards neoliberal;[30] while in Spain both a partial push-back from public to domestic and also from social democratic towards neoliberal public form.[31]

Will the UK develop a more neoliberal public gender regime after Brexit? The typology of varieties of gender regime that distinguishes not only between domestic and public forms, but also between social democratic and neoliberal public forms, is helpful in conceptualising changes.

1 Violence against women

The concept of gendered violence/security sits at the point of overlap of three fields – gender, violence, and security. This paper is not the place for a discussion of the nuances

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26   Raewyn W Connell, *Gender and Power* (Polity Press 1987).

27   Walby (n 23).

28   Ibid.

29   Ibid.

30   Sylvia Walby, *Crisis* (Polity Press 2015).

31   Emanuela Lombardo, 'The Spanish gender regime in the EU context: changes and struggles in times of austerity' (2017) 24(1) Gender, Work and Organization 20–33.

in the relationship between the concepts, which has been developed elsewhere.[32] The focus here is on 'gender-based violence' and 'violence against women' as short-hand for a variety of practices.

There are differences in strategies towards gendered violence by the UK, EU and other relevant entities. A key distinction in strategy towards violence is between 'hard' and 'soft'. 'Hard' entails the use of violence and coercion to deter the use of violence by others. 'Soft' entails the use of policy instruments other than violence and coercion to generate the forms of society that generate less violence.[33] 'Hard' seeks to improve security and reduce violence in society by increasing security and criminal justice activities of the state/polity. There is a tendency to grow the state and its agencies concerned with criminal justice and security.[34] 'Soft' seeks to reduce violence and improve security by reducing inequalities between perpetrators and victims, including targeted support for victims. Less coercive practices can be adopted by states: diplomacy in the neighbourhood;[35] a variety of 'peace' processes;[36] supporting victims and those in vulnerable situations through both targeted services and by generic developments in welfare state provisioning; the use of civil legal rather than criminal legal interventions; and regulations to reduce exploitation and inequalities in the economy and elsewhere. These strategies implicitly mobilise different theories of the relationship between violence and society.[37] While many entities deploy some aspects of both approaches, the balance between them and resources allocated to them varies significantly, with varied outcomes for the level of violence in a society (for example, homicide rates in the US are five times higher than those in Europe).[38] 'Hard' is associated with neoliberalism, 'soft' with social democracy.[39] The EU has a softer security strategy than the US;[40] the UK is in between.[41]

Violence varies with inequality, so policies addressing inequality are relevant to violence. The extent of violence in a country varies not only with the nature of the strategy and capacity of its national state, but also with the extent of inequality and

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32 Guerrina and Wright (n 3); Guerrina et al (n 3); Aisling Swain, *Conflict-Related Violence against Women: Transforming Transition* (Cambridge University Press 2018); Chris J Bickerton, Bastien Irondelle and Anand Menon, 'Security co-operation beyond the nation-state: the EU's common security and defence policy' (2011) 49(1) Journal of Common Market Studies 1–21; Barry Buzan, Ole Wæver and Jaap de Wilde, *Security: A New Framework for Analysis* (Lynne Rienner 1998): Mary Kaldor, *Human Security* (Polity Press 2007); Nick Vaughan-Williams, *Europe's Border Crisis: Biopolitical Security and Beyond* (Oxford University Press 2015); Didier Bigo, 'Globalized (in)security: the field and the ban-opticon' (2006) in Didier Bigo and Anastassia Tsoukala (eds), *Illiberal Practices of Liberal Regimes: The (in) Security Games* (L'Harmattan 2006).

33 John D Brewer, *Peace Processes: A Sociological Approach* (Polity Press 2010); Johan Galtung, *Peace by Peaceful Means* (Sage and PRIO 1996).

34 Loïc Wacquant, *Punishing the Poor* (Duke University Press 2009); Loïc Wacquant, 'Crafting the neoliberal state' (2010) 25(2) Sociological Forum 197–220; Buzan et al (n 32).

35 Karen E Smith, *European Union Foreign Policy in a Changing World* (Polity Press 2003).

36 Galtung (n 33); Brewer (n 33).

37 Walby (n 23); Sylvia Walby, 'Violence and society' (2013) 61(2) Current Sociology 95–111.

38 Walby (n 23).

39 Wacquant, *Punishing the Poor* (n 34); Wacquant, 'Crafting the neoliberal state' (n 34); Walby (n 23).

40 Smith (n 35).

41 Walby (n 23).

poverty.[42] Domestic violence against women increases in gendered economic crisis.[43] Hence, changes in policy towards (gendered) economic inequality has implications for (gendered) violence/security. Further, gendered violence varies with gendered political representation, for example, the rate of femicide is higher in countries with lower rates of women in parliament.[44] Variations in many aspects of the gender regime are relevant for the structuring of violence/security.

The analysis of potential changes in gender-based violence against women, or more generally gendered violence/security, consequent on Brexit needs to include not only policies directly focused on violence against women but also policies towards (gender) equality (including in the economic and political domains).

2 Polities and governance

What are the differences in the governance of gendered violence of the various polities? The analysis of the governance of gendered violence relevant can be divided into two aspects: the strategies; and the entities. The strategies for violence vary in focus between 'hard', using force to deter others; and 'soft', using non-coercive means to secure peace, which were discussed above. The discussion of relevant entities and their capacities includes not only the UK and the EU, but potentially also the UN and the USA, which make up the world system in which these changes are taking place. There are four approaches to the relevant polities: states only; member states and EU only; multiple polities in a world system, in addition to member states and EU; and governance by non-polities.

2.1 STATES ONLY

If only national states (including devolved administrations) were involved in the governance of violence and security, then UK exit from the EU would have no consequences for gendered violence/security. This is consistent with the traditional 'Westphalian' approach to states, which assumes that they are the only significant entities involved in governance and that the sovereignty of individual states is paramount, even if compromised a little in practice. In this approach, violence/security is regarded as a matter for states alone. Both 'law and order' and 'warfare' were considered the prerogative of the sovereign state. However, this is not the case in practice.

2.2 STATES PLUS EU

If the EU is significant for the governance of violence/security, then Brexit would make a difference to violence in the UK. Is the EU different and, if so, is it better than the UK in reducing violence? Is such a zero-sum approach to the powers of the member state and EU-level[45] appropriate or, since the EU assists member states to complete their domestic

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42   Theodore G Chiricos, 'Rates of crime and unemployment (1987) 34(2) Social Problems 187–212; Pablo Fajnzylber, Daniel Lederman, Norman Loayza, 'Inequality and violent crime' (2002) 45(1) Journal of Law and Economics 1–39; Ching-Chi Hsieh and M D Pugh, 'Poverty, income inequality and violent crime' (1993) 18(2) Criminal Justice Review 182–202; Walby (n 23).

43   Walby et al (n 22).

44   Walby (n 23).

45   Andrew Moravcsik, 'Preferences and power in the European Community: a liberal intergovernmentalist approach' (1993) 31 Journal of Common Market Studies 473–526.

agendas, is it better to conceptualise this as a situation in which pooling some sovereignty aids all?[46]

The EU has a softer violence/security strategy than the UK. The EU has developing competence in internal and external violence/security, especially since the 2006 Treaty of Lisbon.[47] It is addressed by EU law (Treaties, Directives, Regulations, European Court of Justice), by EU political institutions (Parliament, Council, Commission), by Commission Directorate-Generals, and by more than 10 technical agencies (from Europol to Eurostat). The 2006 Treaty of Lisbon significantly expanded the legal competence at the EU-level to act to pursue the EU's goals, leading to new Directives and new agencies. In Article 82 of the Treaty, EU-level competence to address violent crime is enabled (though limited to cross-border and serious crime) and underpins several Directives that engage with gender-based violence against women.[48] The EU technical agencies are important in the practical integration of the EU into a single Area of Freedom, Security and Justice. They include: Europol (police); Eurojust (judges); Frontex (borders); CEPOL (police college); EASO (asylum); FRA (fundamental rights); and EIGE (gender equality). Under the direction of the European Commission, and the guidance and jurisdiction of the European Court of Justice, each agency assists the practical cooperation of professionals across all the member states of the EU, for example, setting standards and exchanging sensitive information.

The EU has a stronger approach to gender equality than the UK, which has consequences for gendered violence/security. Policy instruments to implement the goal of gender equality are varied and are lodged in institutions that have different amounts of power and influence. These instruments include: legal principles (for example, equal treatment); descriptive representation (for example, gender balance in decision-making institutions); and gender mainstreaming (the inclusion of gender equality goals in all policy-making instruments and institutions). The UK government, in its White Paper on Brexit, addresses gender (and other) equalities issues as if they were a separate policy field from those of the economy or violence/security. However, there are significant variations in the extent to which the project, or goal, of gender equality is embedded in different policy fields. The variations have significant effects. For example, the legal principle of 'equal treatment', written into the Treaties that underpin the EU, is differently and more strongly institutionalised in the EU institutions that regulate the Single European Market than in the Area of Freedom, Security and Justice; by contrast, the policy of 'gender mainstreaming' potentially has implications for a wider range of policies but tends to be weakly institutionalised.

The EU has significant powers to promote the reduction of gendered violence, both directly through its policies on violence/security and indirectly through its policies on gender equality. Changes in EU-level competence that diminish UK autonomy have implications for the extent to which Brexit would make a difference to the governance of gendered violence/security.

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46 Alan Milward, *The European Rescue of the Nation-State* (Routledge 1992).

47 European Union, Treaty on the European Union (Treaty of Lisbon) (European Commission 2007); European Union, Treaty on the Functioning of the European Union (European Commission 2007).

48 Sylvia Walby, *European Added Value of a Directive on combating violence against women, Annex 1 Legal Perspectives for Action at EU Level*, PE 504.467, EAVA 3/2013 (European Parliament 2013).

2.3 POLITIES IN ADDITION TO STATES AND THE EU

If there are relevant polities in addition to states and the EU, then the implications of Brexit will depend on the significance, capacities and strategies of these entities in addition.

An exclusive focus on states is challenged by the recognition of a plurality of polities and sources of governance, such as organised religions, cities, the UN, Council of Europe, and NATO, which overlap rather than saturating a given territory.[49] It is further challenged when these entities are understood to operate in a wider, global environment.

These other polities differ in the extent to which their gendered violence/security strategies are aligned with the EU's relatively soft strategy, such as the UN and its concern for human rights, or aligned with a harder more coercive strategy, such as that of the USA. The former includes the UN (UN Declaration of Human Rights, UN Office of Drugs and Crime, UN Security Council, UN Women) and the Council of Europe (European Convention on Human Rights, European Court of Human Rights, Istanbul Convention). The latter includes major states seeking hegemony over global rules and practices, especially the USA.[50]

There are parallel institutional structures in the UK and EU and additionally in the Council of Europe, UN and NATO, including law, politically led policy-making institutions, technical agencies to implement policy, shaped by wider and varied systems of inequality. Identifying what forms of governance are being left behind on exit from the EU is entangled with identifying whether these were 'really EU' or were a consequence of simultaneous engagement of the UK and EU with the Council of Europe (for example, the European Convention on Human Rights) or the UN (for example, the Universal Declaration on Human Rights, or UN Security Council Resolutions) or the USA.

2.4 OTHER ENTITIES

One approach to the governance of gendered violence/security focuses on polities, while a second addresses wider forces, including economy (e.g. global capital) and civil society (e.g. feminist projects).

Within the UK, interpersonal violent crime is directly addressed by law, government ministries of home affairs and justice, the criminal justice system, and the provision of services to victims, and indirectly shaped by the system of inequality. Interstate violence/security is directly addressed by law, government ministries of foreign affairs and defence, the military and security services, and indirectly shaped by the global system of inequality. In the second approach, the governance of objects other than violence affects violence. Hence, variations in violence may be caused by many institutions in society not only by states. For example, changes in gendered economic inequality may change the rate of gender-based violence. The approach selected depends on the theory of violence in society.

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49   Jan Zielonka, *Europe as Empire: The Nature of the Enlarged European Union* (Oxford University Press 2006); Walby (n 23).

50   Peter Andreas and Ethan Nadelmann, *Policing the Globe: Criminalization and Crime Control in International Relations* (Oxford University Press 2006).

These issues are entangled with more theoretical questions as to the nature of polities and of governance involved in the relationship between the UK and EU polity. One traditional debate, which concerned the balance in a zero-sum game of power between two discrete states,[51] has been challenged by those noting the multiplicity of sites of governance linked through networks,[52] and complicated by the significance of scale.[53] In a parallel, how should the tension between complex systems theory[54] and post-structuralism,[55] which is a dimension of these debates, be resolved for the purposes of this analysis?

2.5 CONCLUSION

Would UK exit from the EU mean that the nature of the governance of gendered violence/security would be set autonomously by the UK, or shaped by other non-UK forces: multiple plural polities; international regimes such as the UN; the imperatives of the US hegemon; or other forces? Since autonomy is unlikely, and the EU has the softest violence/security regime among relevant polities, Brexit is likely to have the consequence of hardening the UK violence/security regime and increasing violence against women. The extent of this change will depend on the nature of Brexit.

3 Brexit

Despite the early slogan that 'Brexit means Brexit', there are multiple contested approaches to Brexit. Although the UK left the EU on 31 January 2020, with the transition period intended to end on 31 December 2020, many issues concerning the future relationship between the UK and EU were not settled in the 2020 Act.[56] There have been two sets of agreements between the UK and EU for a *Withdrawal Agreement* and *Political Declaration* of the European Commission and UK government, first in 2018[57] and second in 2019;[58] and in March 2020 further negotiations are ongoing. The two existing sets of documents appear to be similar for England, Wales and Scotland, but differ considerably for Northern Ireland, which is more closely aligned to the EU in the more recent *Agreement*. In early December 2019, there appeared to be a spectrum of options from 'hard Brexit' to 'soft Brexit', which are discussed below. 'Hard' Brexit means a rupture from the EU, with trade with the non-EU world prioritised over the EU on World Trade Organization rules or bespoke trade rules (e.g. 'Canada' model). Hard Brexit may be reached either via a failure to agree ('no deal') or via a negotiated departure and a future distant relationship. 'Soft' Brexit means maintaining a close relationship with the EU, maintaining EU regulatory standards and much of the 'acquis' (e.g. 'Norway' model).

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51   Milward (n 46); Moravcsik (n 45).

52   Zielonka (n 49).

53   Neil Brenner, Jamie Peck and Nick Theodore, 'Variegated neoliberalization: geographies, modalities, pathways' (2010) 10(2) Global Networks 182–222; Mahon (n 6).

54   Walby (n 23).

55   Nick Vaughan-Williams, *Europe's Border Crisis: Biopolitical Security and Beyond* (Oxford University Press 2015).

56   European Union (Withdrawal Agreement) Act 2020.

57   European Commission, *Draft Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union* (TF50(2018) 55, European Commission 2018); European Commission, *Political Declaration Setting Out the Framework for the Future Relationship between the European Union and the United Kingdom* (European Commission 2018.

58   HM Government, *Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community* (CCS1019294568 10/19, 2019); HM Government, *Political Declaration Setting Out the Framework for the Future Relationship between the European Union and the United Kingdom* (CCS1019297528 10/19, 2019).

Soft Brexit is reached via a negotiated departure and future relationship. There are further variations and potential scenarios.

Understanding the implications of hard and soft Brexit requires understanding of the structure of the governance of the EU and the numerous entanglements of the UK with EU-level institutions. There are several types of EU institutions: political (European Parliament, European Commission, European Council); legal (Treaty, Directives); juridical (European Court of Justice); technical (e.g. Europol for law enforcement, CEPOL or the European police college, Eurojust for judicial cooperation, Frontex for border guards, EASO for asylum issues, FRA for fundamental rights, EIGE for gender equality, and Eurostat for statistics). There are also strategic clusters (especially the Single European Market and the European Area of Freedom, Security and Justice). The Single European Market has a complex and highly developed set of legally binding regulatory practices to achieve four principled freedoms of movement for people, goods, services and capital and a 'level playing field' for all actors within this economic space. These regulations concern matters ranging from chemical safety to equalities. The coherence and significance of the strategic clusters has often been underestimated; but these are crucial in understanding the dilemmas of Brexit.

Hard Brexit means leaving all the EU institutions – political, legal, juridical, and technical – as well as the strategic clusters. Soft Brexit seeks to continue economic trade with the EU as before, with no tariffs or checks at borders for freedom of movement except that of people (migration). The internal coherence of the regulatory space of the Single European Market makes selective exit from one of the four freedoms very challenging. The UK has been offered exit from the freedom of movement of people and from participation in the political institutions but not exemption from the detailed regulation of economic space. This is not surprising if the highly regulated and integrated nature of the Single European Market is appreciated in the context of an understanding that markets are always regulated by sets of rules.

The 'negotiations' between the UK and EU have considered many alternatives as to which institutions the UK would leave and which it stays part of. Even before Brexit, the UK had obtained a bespoke relationship with the EU over its engagement in EU institutions, being involved in many but far from all of these. For example, on the economy, the UK is not a member of the EU currency; on security, the UK routinely opts out from Directives and selectively opts back in some. However, the high level of integration of institutions within strategic clusters makes exit from some institutions but not others difficult. The scope for further ad hoc bespoke arrangements seems exhausted. The UK Brexit strategy for opting in or out of EU institutions may be the same or different for violence/security as for the economy, but is not covered in either *Withdrawal Agreement* and only briefly mentioned in the two *Political Declarations*. There are suggestions that, despite the ostensible centrality of crime/security for traditional understandings of sovereignty, the UK is seeking greater continuity of its engagements over violence/security than it is for the economy, but that the *Political Declaration*, by its nature, is not an agreement to this.

A further challenge to analysing the situation is that Brexit is not a process occurring between two stable entities, since neither the UK nor EU, nor indeed the wider environment, is stable. Brexit has the potential to rupture the internal relations between the nations and devolved administrations of the UK, including that concerning Northern Ireland, and to change their capacities to govern violent crime and security. The EU continuously deepens its institutional architecture towards ever closer union, as part of its

original design,[59] with implications for democracy and justice.[60] It has been undergoing an internal review, 2017–2019, of the balance of decision-making between member state and EU-level, in the context of a crisis, where one possible outcome is some form of 'ever closer union'.[61] The COVID-19 pandemic further unsettles the wider environment in which Brexit is taking place, with both closure of national borders and new forms of cooperation occurring. Brexit is taking place in the wider context of an unstable polarisation and turn to the right of politics in Europe and North America, potentially altering the nature of Brexit.

3.1 POTENTIAL POST-BREXIT FUTURES FOR GENDERED VIOLENCE/SECURITY

Four potential outcomes (scenarios) for Brexit are postulated following the discussion of the nature of gender, violence/security, the governance of gendered violence/security and Brexit. They are: no change because the UK state governs crime and security policy; little change because the UK continues to take EU rules while ceasing to contribute to the making of EU rules; little change because the relevant governance actors continue; and major change because of the loss of the EU anchor for gender equality and for a softer violence/security strategy.

At the time of writing (March 2020), Brexit has happened; but it is unlikely that the process of adjusting the relations between the UK and EU will be complete by the target date for the end of the transitional period of 31 December 2020. While the details will soon be out of date, the wider issues brought into focus by Brexit concerning the significance of the relationships between the UK, member states and the EU for the governance of gendered violence will continue to be relevant.

3.2 NO CHANGE BECAUSE THE UK STATE GOVERNS CRIME AND SECURITY

The premise of the first scenario is that there would be no change because the UK state (and devolved administrations in Scotland, Wales and Northern Ireland) governs crime and security policy. If the competence to govern violent crime and security is solely that of the UK polity (and devolved administrations), then exit from the EU would make no difference to the governance of gendered violence and security in the UK. However, this is not the case since the UK state (and devolved administrations) is not the sole source of governance over crime and security.

The EU-level has acquired significant competence over law and policy for crime and security, especially since the 2006 Treaty of Lisbon. This moved the subsidiarity boundary between member states and the EU-level, concerning the lowest level of decision-making consistent with effective governance, in favour of the EU-level. This is likely to change further in this direction. The extent to which the EU has legal and practical competence in the field of violence and security is underestimated in the 'no change' scenario. Since the EU as well as the UK governs crime and security, the premise of this scenario is voided.

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59 Ernst B Haas, *The Uniting of Europe: Political, Social, and Economic Forces, 1950–1957* (Stanford University Press 1958); Walter Hallstein, *Europe in the Making* (Norton 1973).

60 Jürgen Habermas, *Europe: The Faltering Project* (Polity Press 2009); Jürgen Habermas, *The Crisis of the European Union: A Response* (Polity Press 2012).

61 European Commission, *Draft Agreement* (n 57); European Commission, *Political Declaration* (n 57) .

3.3 LITTLE CHANGE BECAUSE THE UK WILL CONTINUE TO TAKE EU RULES WHILE CEASING TO CONTRIBUTE TO MAKING EU RULES

The premise of the second scenario is that the EU has become a hegemon at least in its neighbourhood, and the UK will struggle to produce and implement a different form of governance of gendered violence/security. There would be little change if the UK implements EU rules after it exits from the EU-level political entities that set the rules. If the UK continues to participate in and accept the rulings of the EU-level technical agencies while removing itself from the EU-level political decision-making entities, there will be little change. For example, the independent body proposed to oversee legal disputes would take guidance on its legal principles from the European Court of Justice.

Taking EU rules while not making EU rules depends on the nature of the legal Brexit process. It appears to be proposed in both *Withdrawal Agreements* and is consistent with the earlier UK White Paper. It is also consistent with previous UK decisions concerning the Area of Freedom, Security and Justice, in a context in which the UK had acquired the capacity to select into which EU initiatives (e.g. Directives) in this Area it would opt in. While the UK had stated that it would not accept the jurisdiction of the European Court of Justice, the *Withdrawal Agreements* propose an independent body that would take its legal practice from this court. However, a hard, no deal Brexit would reject the supremacy of the European institutions, including its court.

3.4 LITTLE CHANGE BECAUSE THE MAIN GOVERNANCE ACTORS WILL CONTINUE TO INFLUENCE

The premise of the third scenario is that the state institutions of the UK and EU are not important in the governance of gendered violence as compared with other polities and entities at different scales. There would be little change if the sources of governance in the EU and UK operate through principles and networks of mutual exchange that are not dependent on centralised EU state machinery and its relationship to the UK state. There would be little change if the governance of gendered violence/security is centred not in the EU or UK, but rather in international entities, in particular the UN, but also the Council of Europe, the European Court of Human Rights and NATO. If the source of governance is other than the EU polity, then exit from the EU will have little effect.

However, in the governance of crime and security, centralised state machineries that make and clarify law and its implementation are significant. It is not possible to avoid centralised harmonised standard-setting and interpretation of legal rules in this domain. While practices for implementation and exchange of innovative and best practices involve cooperation between actors at other levels, including local states, ultimately local entities benchmark and anchor their legal regulations in centralised state/polity institutions. Hence, changes in the nature and relationship of the UK and EU polities will have implications for the (gendered) governance of violence and security.

Further, while the UN is important in setting international standards at an abstract level, their implementation remains extremely varied between states. Implementation matters. Even if the UK were to continue to abide by international legal instruments that also set standards for the EU, this is not a guarantee of stable practices, since these UN (and other international entities) are not the main source of practices for implementation.

This scenario is unlikely, since the UK and EU states are important in the shaping the governance of gendered violence/security.

3.5 MAJOR CHANGE BECAUSE OF THE LOSS OF THE EU ANCHOR FOR (GENDER) EQUALITY AND FOR A 'SOFTER' SECURITY STRATEGY

The premise of the fourth scenario is that the EU is a significant source of governance of gendered violence and that exit will remove this influence. There is likely to be a major change because the UK governance of gendered violence would lose its anchor to laws and policies embedded in EU Treaties and implemented in institutions developed for its economic and security strategies. The EU contributes to the governance of gendered violence/security in the UK through laws and policies rooted in the Treaty of Lisbon and related acquis and implemented through the European Commission, European Court of Justice, and many technical agencies supporting its strategies for the economy through the Single European Market and for violence/security through the European Area of Freedom, Security and Justice. There are four components: gender equality laws and policies; general economic policies that affect overall levels of inequality in society; the violence/security strategy; and global forces. In each, the EU policies are more likely to reduce gendered violence than those policies the UK is likely to pursue and be able to implement by itself on exit. Probably, these components would be lost with Brexit. The effects of loss of the EU anchor are likely to increase over time.

The first component concerns gender equality laws; and whether these are domestically rooted in the UK or dependent on the EU. Currently, it is both. There is a debate as to whether this was independently developed by the UK, developed jointly by UK and EU actors, or imposed on the UK by the EU.[62] There is the additional and perhaps more important issue of the trajectory of development of UK law on gender equality on exit from the EU, if and when the Treaty obligations to maintain the Directives end. There are competing political forces: on the one hand, advocates of free markets have included gender equality labour market regulations and maternity leave in their recommendations to cutting out 'red tape' (Institute of Directors), and these may be given impetus in the search for 'free trade deals'; on the other hand, the UK government has so far committed to maintaining the current laws and policies (White Paper).

The second component concerns equality laws more generally; and whether the loss of laws and policies for equality centred on the Single European Market would have consequences for the rate of violence against women. On the one hand, it might appear that they concern separate institutional domains – economy and violence/security – so they would not. On the other hand, the increase in gendered economic inequalities that would be consequent on their loss would be likely to increase violence against women. If gender is conceptualised as a regime, rather than as a set of autonomous institutions, then links between economy and violence can be brought into focus. The loss of gender equality regulations would increase gendered economic inequalities and would be likely to increase violence against women.

The third component concerns the approach to the governance of violence/security; and whether the EU is different from the UK. The EU has a softer, more social-democratic approach to the strategy for violence and security, which is more gender-equality aligned, than the strategy that the UK pursues when it has the capacity for independent action. This concerns both internal security, or law and order, and external

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62   Hoskyns (n 2).

security, such as interstate diplomacy and capacity for war. The UK has a harder, more coercive and violent internal and external security strategy than the EU. The EU strategy is softer, more dependent upon diplomacy than violence. The EU has been developing its competence in internal and external security matters. In external affairs this includes the capacity for diplomacy. While NATO has been the primary form of military cooperation, where the US has been hegemonic, the EU is developing capability in external affairs and security. The UK is preparing to exit from a large bloc that has a softer security strategy than its own or NATO. An example concerns whether the UK is more or less likely to go to war after Brexit than before and its implications for gendered violence since conflict zones have higher rates of violence against women than non-conflict zones. The loss of the EU anchor is likely to increase gender-based violence.

The fourth component concerns vulnerability to other forces. These forces include other polities, such as the US hegemon, China and any state with which the UK seeks a trade deal, and global capital, especially global finance capital. These forces generate higher levels of inequality and violence. The EU has greater capacity to withstand the pressures of these forces than the UK because of its scale and capabilities. The loss of the EU anchor is likely to increase inequality and violence in the UK.

The loss of the EU is likely to change the nature of the gender regime in the UK so that it takes a more neoliberal form of the public gender regime, which is associated with higher rates of violence against women.

Conclusions

The analysis of the governance of gendered violence addressed four issues: gendered institutions and gender regimes; the governance of violence; the relationship of states and other entities in the governance of gendered violence; and the nature of the EU. They are relevant to the evaluation of the potential of different feminist strategies to end violence against women.

To understand the causes of changes in gendered violence it is necessary to know the connections between the different aspects of gender relations, the extent to which changes in one institutional domain would change another; and to conceptualise the changes. There are sufficient links between clusters of gendered institutions (economy, polity, civil society, violence) to constitute gender regimes; and that understanding developments in any one gendered institution required taking into account its environment that is made up of other gendered institutions. Varieties of regimes can be distinguished not only between domestic and public, but also between forms of the public gender regime, which can be divided into more social democratic and more neoliberal forms. The implications are that changes in the form of the gendered economy from a more social democratic to more neoliberal form can have consequences for other gendered institutions and for the regime as a whole. Hence, the consequences of Brexit for gendered violence/security are affected by the consequences of Brexit for gendered economies. Brexit is likely to lead to a change in the form of the UK gender regime, which has consequences for gendered violence/security.

There is one interconnected institutional domain of violence, which underpins the field of security. While there are multiple institutions, each with its specificity, they are sufficiently linked together to constitute a single domain so that an increase in violence in one institution is likely to entail an increase in violence in the others. Strategies for violence/security differ. One is to increase state capacity to utilise harsher, more coercive, more violent opposition to the violence of others with the goal of reducing their violence through deterrence and reducing their capacity. A second is to utilise state capacity to

reduce inequalities including between potential victims and perpetrators of violence, including targeted support to potential victims for prevention and mitigation of harm. The UK is closer to the first, harder strategy, and the EU to the second, softer strategy.

The governance of violence requires analysis along two dimensions: strategies and the institutional capacity of relevant polities. The most relevant polities for the UK currently are the UK and the EU. Transnational entities such as the UN and Council of Europe have legal instruments focused on human rights that are significant for standard-setting, but much less significant for implementation. The notion of autonomous state action is not supported. If the UK were to leave the EU, then the harder security strategy of the US becomes more significant.

The different forms of Brexit entail the UK leaving different EU-level institutions, varying from all institutions to only the political institutions. However, it is difficult to leave some but not all EU institutions because of the high level of integration of EU institutions within its strategies for economic growth in the Single European Market and for violence/security in the European Area of Freedom, Security and Justice.

Four potential scenarios for Brexit were assessed: no change because only the UK state governs violence/security; little change because polities and entities other than the EU shape violence security in the UK; little change because the UK will continue to take EU rules in relation to violence/security while leaving EU political institutions; and major change as a consequence of the loss of the EU anchor for gender and equality and for the governance of violence/security. The three scenarios that lead to little or no change were found unlikely. The fourth scenario, major change, is the most likely. The probable changes would be linked to the significantly greater capacities and strategies for (gender) equality in the EU than UK and the significantly softer more social democratic security strategy of the EU than UK, both of which are likely to be lost to the UK as Brexit occurs. These changes would be consistent with expectations of an increase in violence against women. This is a consequence of three associations: reduced strength of (gender) equality laws and policies, rooted in the Single European Market, leading to an increase in gendered violence; reduced pressure to deploy a soft rather than coercive security strategy, which is likely to lead to increased violence, some of which will be against women; and the general shift away from social-democratic to neoliberal social formation, which generates more inequality and more violence. Brexit is likely to diminish the quality of the governance of gendered violence/security over the medium and long-term. It is likely to diminish laws and policies that promote gender equality, equality in the economy more generally, and to harden the violence/security strategy. The consequence of these changes is likely to lead to an increase in gendered violence. The changes are interconnected, since changes in one institutional domain in the gender regime change other institutional domains. The overall change in the gender regime in the UK is towards a more neoliberal form of the public gender regime. The analysis of Brexit provides a lens through which to consider the implications of changes in multiple polities for the governance of violence. No single state or polity is sufficient; multiple polities and their changing intersection need to be brought into focus.

The implications of this analysis for feminist strategy to end violence against women is that Brexit is very important, rather than marginal; it is potentially a tipping point in the violence system. This is because of the interconnections between gender violence and the form of the gender regime and because of the significance of the EU in the shaping of the form of the gender regime.