Journal of Intersectional Social Justice

The Gender Influence in Law, Legal Concepts and Judicial Reasoning: Assessing its Contribution to Defining the Reasonable Person in English Law from Feminist Perspectives

Oluwabunmi Anjolaoluwa Adaramola[1,2,3]

[1]LLB (University of Leeds) 2018, [2]LLM International Corporate Law (University of Leeds) 2019, [3]MSc Law, Business & Management 2020.

Published on: Aug 28, 2022

URL: https://jisj.pubpub.org/pub/adaramola-2022

Abstract

Aristotle once expressed that: 'the law is reason free from passion…' Commentators often disagree with this premise, having argued that the law is rarely every free from passion where it is bound in politics and philosophical theories and where 'reason' and 'precedent' are often times profoundly riddled with bias. The law creates standards and requirements for defendants to satisfy as a defence in many criminal cases. One of such is in the 'Reasonable Person' as a legal concept emerging from 18th-century liberal and utilitarian ideas of the liberal legal subject. Reasonableness and the reasonable person standard is an important legal standard as such, evidenced in its keen role in virtually every area of law, a concept that needs to be satisfied in order to prove innocence or culpability in many cases.

According to its connotation in law, the liberal legal subject–the reasonable person– is free from subjectivity, neutral and a yardstick to achieve fairness in cases. However, many debates question the reality and universality of this free individual and how workable this ideology is in any realistic society, especially where it derives its roots from patriarchal structures. Arguments show that the reasonable person does not exemplify certain particularities individuals possess, creating multiple problems with its application and interpretation in other areas of law.

Focusing mainly on the reasonable person standard in criminal law, the aim of this research is to assess the impact and contribution of gender influence in judicial reasoning when determining reasonableness standard. This work, therefore, challenges the supposed objectivity and neutrality of this reasonable person, with an aim to expose the gendered nature of this concept and its contribution and influence on judicial reasoning. This paper thoroughly investigates the social realities of the reasonable person standard and the apparent gender bias in judicial reasoning present in the application of the standard in cases relating to the loss of control defence in criminal law. The arguments made would also be concluded as to the need for upholding legal subjectivity in cases as opposed to its supposed prima facie objectivity, with potential reforms to the law also discussed. This project is highly influenced by feminist works and jurisprudence as to the abstraction and problematic objectivity the liberal legal subject presents for women in society.

Key Words: The Liberal Legal Subject; Gender in the Law; The Reasonable Person; Feminist Perspectives

---

INTRODUCTION.

According to Vining J, '…the law knows no real individuals, only their mystical abstractions…' (Vining, n.d). The Age of Enlightenment[1] and subsequently the liberal era is indisputably one of the most significant periods in England and Wales that has perhaps shaped today's society, particularly in legal discourse. Introducing such a monumental concept as the liberal legal subject, to which the reasonable person concept has its bearing, This

new social idea, eagerly embraced by enthusiastic economists and political philosophers, subsequently conceived a new social class and order in Europe and all over the world- 'the new social world'. This concept, characterised by the 'free' and universal individual, free to pursue his economic and social self-interest, with its key concept founded on universal self-interest and right (Norrie, 2001), suddenly finds itself penetrating importantly into legal discourse. This personified free individual, often embodied by abstraction, autonomy and rationality, has now subsequently become the yardstick, especially in criminal law, to determine individual responsibility and liability in cases. The importance of the liberal reasonable legal subject in all legal discourse cannot, therefore, be overstated due to its overarching and continuous presence in almost every area of law as a means of proving culpability.

In judicial definition and discussion of the reasonable person, neutrality and objectivity are asserted as the foundation upon which the reasonable person is formed, whereas in practice, the effect of liberal ideas has founded these concepts solely on judicial intuition and experiences. To this extent, the law attributes sameness, universality and neutrality to this reasonable person when called upon in cases, failing to consider the realistic uniqueness and inherent differences of each individual in society, most importantly gender. Gender issues which have remained a debate for decades, especially within the criminal law, continue to confine the protection of women's rights in these cases to the distorted version of equality the law seeks to ensure. The law would rather uphold the patriarchal structures society is built upon, coupled with the emergence of these liberal theories, to present a gendered nature of the reasonable person in case law.

Against this background, This paper, therefore, seeks to provide an insight into the character of the legal subject, a reasonable person, as well as consider how much influence the historical and ideological context of reasonableness has in its twenty-first-century definition. This will consider Bentham's utilitarian principle, and its interrelation with the liberal legal subject, drawing upon its interpretation in the social context and how this fits with the characteristics and 'persona' attributed to it. Additionally, this paper will also consider the functionality of this liberal legal subject in the twenty-first century in criminal law, concluding that due to the way the legal person has been individualised, it can no longer be proclaimed to be objective and universal, as it does not take into context particularity and 'situatedness.' This paper also presents a thorough investigation of the social realities of the reasonable person standard, and the apparent gender bias in judicial reasoning present in the application of the standard in cases. Presenting a case study as to crimes of passion and the loss of control defence, the arguments made would also be concluded as to the need for upholding legal subjectivity in these cases as opposed to its supposed prima facie objectivity, with potential reforms to the law also discussed. It will further provide evaluations of the historical structures of patriarchy and its effect on the law and subsequently judicial reasoning. Such discussions consider, with particular reference to UK Feminist Judgments Projects and Fineman's Vulnerability Thesis, the resultant effects of historical liberalism and utilitarianism, merged with patriarchal structures, and how these consequently amount to foundational flaws in judicial perception where women's rights are concerned.

Part 1 focuses mainly on addressing the development of the historical and ideological context of reasonableness, and the effect on its twenty-first-century definition. This will also go further to outline the general attributes of the reasonable person, its functions and problems in society and the law. Part 2 carefully considers the move from the old law of provocation in the United Kingdom to the new partial defence provided in the Coroners and Justice Act 2009, paying close attention to the problems with both acts with regards to the reasonable 'objective' standard and battered women who kill. Part 3 analyses the historical structures of patriarchy, the stereotypes of women in law and the position that women are either 'mistakenly judged by male standards or judged by mistaken male standards' when assessing the reasonable person in certain cases. Part 4 seeks to address two main questions making use primarily of feminist jurisprudence and literature. As such, to support some of the arguments highlighted in this paper, this part is highly influenced by feminist works and jurisprudence as to the abstraction and problematic objectivity the liberal legal subject presents for women in society. Firstly, it would be argued as to the extent to which the problems of the gender bias in judicial reasoning in this area, can still be felt in the 21st century "liberal legal subject" (as defined in Part 1). Secondly, it would be evaluated, taking all factors into consideration, how far the law should go to attain legal subjectivity as opposed to objectivity in determining legal standards, where the reasonable person concept is matched against the vulnerable subject. Part 4 addresses the potential reforms with regards to the future of the reasonable person standard or test, addressing ways of eliminating the gender bias in the standard, especially towards battered women, concluding as to how feasible these reforms are, and the effectiveness of these when applied in practice.

1.1 The '*Persona*' of the Reasonable Person

Many theorists, who struggle to define the reasonable person, paint this standard as an elusive individual and ultimately vague concept. Sperino further argues that because of the inconsistencies and irregularities that arise as a result of an effort to place a definition to the reasonable person, the standard has no fixed meaning. (Sperino, 2015). Pefani defines this reasonable person as 'a legal fiction' and a 'judicial construction' (Pefani, n.d). McAviney further contributes to this definition by postulating that over time, the courts still do not provide any apt definition of this reasonable person concept, as it is expected that it would be understood by the juries with no leading from the courts (McViney, 2011). Anna Grear, in her book *Sexing the Matrix* (Grear, 2011), provides a vivid and detailed picture of this liberal legal subject, one that begs for illustration in the mind's eye. Describing this legal person as 'a socially decontextualized, hyper-rational, wilful individual, who is systematically stripped of embodied particularities in order to appear neutral…', one can only decipher the hint of satirising embedded in this definition, which in fact questions this individualism and universalism this legal person seek to embody. Drawing from Bentham's utilitarianism (which will be discussed in the next section), the reasonable person who presents a homogeneous front, painting the 'picture perfect' individual, plunges many scholars into a debate as to the numerous flaws this standard presents. Regardless of the prima facie neutrality and theoretic genderless persona of this standard, feminist critiques have pointed out the inherent masculinity which the reasonable person embodies. Clearly an abstract form, the law–which has

stripped the reasonable person standard of any form of emotion or mind of its own–employs the standard as a tool when faced with cases revolving around individual responsibility such as in the criminal defence of loss of control. For instance, In dispensing justice, resolving conflicts and apportioning liability, the law faces the added conflict of balancing the interests and needs of individuals all while maintaining the order and welfare of the society, to produce social justice. To satisfy this, the lawmakers created a seemingly 'objective' test, subjecting the common man to the question of: *'what would the reasonable, ordinary man do in this same circumstance?'*. As such, this legal subject is one which is summoned only when there is a legal problem that needs to be solved only objectively (Gardiner, 2015). However, Gardiner argues that the term 'objective' is only theoretical, used loosely in defining the reasonable person. In reality, this highly proclaimed objective standard only works in principle, as it is difficult to satisfy in practical and real-life cases (Gardiner, 2015).

The law, therefore, sets neutral and objective standards, which the 'ordinary' person is supposed to fall into. Described by Gardner as 'the common law's helpmate,' (Bentham, 1789) so as to resolve these conflicts and apportion losses, the reasonable person, an epitome of the acceptable citizen of the law, is usually called upon to measure conduct and apportion liability in numerous areas of law. To this aim, the reasonable person serves numerous tasks and is in high demand within the tenets of the law of torts, contract law, administrative law, (Bentham, 1789) law of trusts, commercial law and criminal law to name a few. On a general basis, Astrada notes that the reasonable person 'has and continues to play an invaluable role in the administration of the law itself' (Bentham, 1789). Particularly, the reasonable person provides a consistent and rational justification scheme for dispensing justice. Within the legal ecosystem. the key functions of the reasonable person stem from allocating culpability, fixing procedural delays, protecting of right to liberty, security and fair trial as well as distributing justice (Bentham, 1789). The reasonable person is said to provide a flexible, yet 'objective' model against which individual conduct can be measured, conduct which is supposedly easily understood by the layman (Miller, 2007). As such, any conduct or action not falling within these acceptable bounds created by the law is therefore capable of being regarded as unreasonable. These functions go as far as highlighting the usefulness and importance of this reasonable person concept in the law, especially in ensuring legal clarity, consistency and distributive justice.

The landmark case that precursors the first appearance of the reasonable person in criminal law is *R v Jones*[2] where judges introduced a personified, objective standard in determining conduct expected in fraud cases (Parker, 1993). Following this, the reasonable person from the nineteenth century continued (and continues) to make appearances in civil law and criminal law, preceded by language such as 'common', 'average' and 'ordinary'. Subsequent case law, as Parker points out, later referred to the concept as 'the good father of the family' (Parker, 1993), 'the man of ordinary prudence' (Parker, 1993) or according to Greer LJ in the hallmark case *Hall v Brooklands Auto Racing Club*, 'the man on Clapham omnibus' (Gardiner, 2015) which is equivalent to the modern-day man on the virgin train.

1.1.1 Utilitarianism and the Reasonable Person Theory.

It is the responsibility of the law to ensure the best welfare and interest of the society, ensuring that decisions and legislations are enacted to maximise the greatest satisfaction of the community. This responsibility is in line with elements of Jeremy Bentham's utilitarian theory even within the context of determining the reasonable person criteria, which is highlighted in *An Introduction to the Principles of Morals and Legislation* (Bentham, 1789). Here, Bentham explains that 'an action is said to be conformable to the principle of utility[…]when the tendency it has to augment the happiness of the community is greater than any which it has to diminish it' (Bentham, 1789). Bentham's utilitarianism is, therefore, best described as a philosophical principle which defines the best actions taken in terms of utility. Spearheaded by the maxim 'the greatest happiness for the greatest numbers' as stated by Jeremy Bentham, Utilitarianism is a 17th-century Bentham concept which focuses on ideas of rationality and the self-seeking individual in the society, whose main objective is to protect and maximise their own interest.

As a general point to note, Bentham's core principle, *The Principle of Utility* recognises the subjection of humans under the sovereignty of pain and pleasure, which subsequently separates right from wrong, determining how individuals behave, act and think. Bentham argues that because individuals are rational and calculating, rationality and reasoning play a big role in determining individual happiness. Subsequently, this leads to decisions made which are solely for the best interest of that individual. This principle 'approves and disapproves every action according to the tendency it appears to have, to increase or lessen happiness of the person or group whose interest is in question' (Bentham, 1789). As is fitting, it is often described as the principle of 'do what produces the best consequence'(Bentham, 1789) due to the fact that in this ideal world, individuals are able to calculate rationally, the costs and consequences of making any decisions, which in the long run aims at allowing the individual to maximise their interest.

Norrie further notes that this utilitarian theory is at the forefront of understanding individual criminal responsibility. Under this utilitarian theory, individuals of 'normal and sound mind', can be correctly held liable for any decision they make, the rationale for this being that they have already rationalised the effect and consequences of such actions. Miller backs this up in his article, pointing out that because 'the reasonable person is a characteristic of reactions, every individual, therefore, has an opinion as to which reactions are reasonable' (Miller, 2007). Utilitarianism fixes individuals as rational and calculating, and as such, individuals have the ability and capacity to determine which actions, reactions and behaviours are reasonable against those which are not. However, faltering on many grounds, arguments have been put forward that because utility principles aim to generate the greatest happiness as an answer to the general interest of the community, the principle fails to take account of the different minorities. Utilitarianism poses that each individual thinks rationally and is calculating when deciding which outcome produces the best results, as such failing to take into consideration actions taken by individuals in various bouts of instinctive reactions. As such, Utilitarianism ultimately generalises society, placing all individuals as one mass or super person. This is arguably a contributing factor to why the nature of the reasonable person in the 21st century appears to be the way it is,

where utilitarian principles fail to acknowledge society as being made up of 'different and distinct individuals' (Penner *et al*, 2012).

Clearly, Bentham's theory emphasizes on one aspect of human life 'rationality and calculation', while ignoring the other 'human and vulnerable' aspect. The recognition of the vulnerable subject, according to Fineman, defies this 'reasonable, rational and calculating individual defined by Bentham's utilitarianism (Fineman, 2003). This argument aims to expose the subsequent non-inclusion the law exemplifies due to the influence of utilitarianism and liberalism. Fineman argues further, that the idea of vulnerability, 'is a universal and inevitable aspect of the human condition, which utilitarianism and the law fail to address in its proclamation of this free individual' (Fineman, 2003). This ultimately affects the way equality is construed in society, as Bentham's utility principle only presents a homogeneous and 'same' individual, without necessarily giving consideration to the inherent differences in experiences and emotions of individuals in society. As a result of various theories which embody the liberal legal subject as a 'competent social actor' (Fineman, 2003), who is able to effectively play different roles, the lack of humanity attributed to this legal subject, according to Fineman's thesis, is consequently what has increased the social inequalities society faces. Ensuing from this, it can be further deduced that judicial interpretation of the modern-day concept of the reasonable person–the liberal legal subject–as well as the problems that arise from this interpretation, bases its ideas on Bentham's utilitarianism. Resulting from this, the law now defines equality in line with these theories where it affords sameness to fundamentally different individuals.

2. THE "REASONABLE PERSON" IN THE LOSS OF CONTROL DEFENCE.

Noting the point on utilitarianism and individual responsibility, Norrie explains that this responsibility attributed to individuals by utilitarian principles, allows individuals to justify each and every action made, whether good or bad. Subsequently, they are able to calculate the cost of making actions due to their rationality. As such, 'where the individual's mental state was such that he could not help committing the crime because of some excusing condition, he should not be punished' (Norrie, 2001) Naturally following this line of thought, the law recognises the fact that some crimes are committed without the necessary *mens rea*[3] or malice aforethought. Subsequently, the law places defences-partial or full- which an individual can rely on whenever crimes are committed, creating an allowance for justification of the mental state of the offender when such crimes are committed.

This part, therefore, seeks to provide a framework of the historical development of the loss of control defence, most especially with regard to this 'objective standard' an accused must satisfy alongside other criteria so as to successfully rely on this defence. Accordingly, this will begin by providing a brief outline of the old law of provocation as well as its problems and the reasons behind its replacement, with a particular focus on 'the gender problem'. The next sections under this part will consider the new era of the loss of control defence alongside the changes it brings, analysing the extent to which these changes in the new legislation are effective in eliminating this gender bias, with a move to protect women. Focusing on the exclusion of sexual infidelity

aspect and the objective person standard, this part will consider the inconsistencies in applying this provision and the difficulties this creates in practice, arguing and concluding as to if such an exclusion alongside a 'personified' objective standard is really favourable to both genders, or just jealous men.

2.2 The Old Law of Provocation

The introduction of the defence of provocation in England in the early 16th century began as an accommodation for human sympathy, where men who felt their honour had been violated sought to avoid a murder conviction (Morgan, 2013). With the doctrine of provocation subsequently becoming a 'defence in line with empathy for heat of passion killings' (Casey, 1999), the courts began to consider certain circumstances where homicide could be committed resulting from sexual infidelity or temporary 'unreasonableness' due to temporary insanity.

The objective requirement of the provocation defence here required the jury to assess the reasonableness of the defendant's loss of control, employing the reasonable person test to determine provocation. However, because the act did not define exactly what characteristics of the defendant are relevant in the assessment, providing only for reasonableness to be given its ordinary and objective meaning, case law showed that anything was capable of constituting provocation if following a strict interpretation of the language of Section 3. In *R v Doughty*, the constant crying of a baby was held to be a sufficient provocation to kill, and so the courts were seen to have adopted a more relaxed approach, allowing the defendant to rely on personal characteristics.

The reasonable person under this Act (and subsequent case law), was now allowed to be more short-tempered than others (Daswani, 2014), conforming to the already developed traditional male ideas of reacting to certain situations immediately with unreasoned violence. It is worth pointing out that with the act explicitly personifying the reasonable person as a 'man', the act already, arguably, is a representation of male ideas grounded in this defence, where the subconscious gendered operation of the Act and the reasonable person criteria in this Act is demonstrated.[4] This introduced a series of arguments as to the bias this defence favoured, where feminine reactions were not covered within this law. Daswani explains that via this defence, men were not only able to claim that their partner's infidelity had caused them to lose control and react unreasonably, but also get away with a reduced sentence. Additionally, the 'sudden and temporary' requirement catered favourably towards male reactions, not considering the potentially 'slow-burning' provocation women seemed to be more prone to demonstrate. As such, the most critiqued and debated problem this old defence faced was perhaps the gendered operation of the defence, which operated to the favour of male offenders.

2.3 A New Era: The Loss of Control

After addressing the problems with the old law of provocation, and taking reforms by the Law Commission into consideration, the new loss of control defence was established under Sections 54-56 of the Coroners and Justice Act 2009, as a partial defence to murder, to take effect in 2010. Drawing upon similar intentions as the

old provocation defence, this new Act gave wider discretion as to sentencing to judges, but was more restrictive in terms of what constituted provocation. As opposed to the previous provocation defence, it is worth highlighting that this 2009 Act significantly removed certain requirements from the former, introducing a more stringent and stricter interpretation and application of the defence. While the old law of provocation was seen to be too subjective and cast the defence too wide, the new law of loss of control swings too far the other way, not sufficiently protecting defendants with real mitigating factors.

The new defence set out various elements that needed to be satisfied for there to be a loss of control, most importantly the qualifying triggers and the objective person standard. In the case of *R v Smith (Morgan)*, Lord Hoffmann explained that 'male possessiveness and jealousy should not today, be an acceptable reason for loss of self-control leading to homicide'. Continuing on, theorists and critiques of the law alike argue that there should be no defence that allows those who kill get away with murder solely based on the concession of human weakness, and that 'we should only partially excuse those who had the capacity to control themselves, but lacked the fair opportunity to do so' (Clough, 2012).

The reasonable person as expected makes an appearance in determining the extent of the loss of control required from the defendant (D) with an aim to ensure clarity in sentence reduction. This appearance comes in Section 54(1)(c), which prescribes the reasonable objective person, as being of the same age and sex of the defendant, having a *normal* degree of resistance and tolerance which is similar to that of D. As such, the defendant's loss of control plea would be successful if this reasonable person in the same circumstances as D, having these similar characteristics, would have reacted in the same way or in a similar fashion. Evidently, the reasonable person makes up the objective element of the loss of control defence, as the jury is usually directed by the judge to determine whether the defendant has reasonably lost his or her self-control.

The extension of the reasonable person criteria in the loss of control defence to cover certain particularities of the defendant (sex and age), can arguably be described as a move in the direction of the law into legal subjectivity. Encouragingly, the law now appears to provide some form of relief for 'battered women' who seek to rely on this defence upon murder. Commentators have agreed that the objective standard requirement possesses an underlying subjective interpretation of the criteria, that allows defendants to be matched with someone of their age and size. This subjectivity is further wrapped up and tied nicely in an objective bow, where the jury, as opposed to the defendant, determines whether there had reasonably been a loss of control. However, like a greater part of the Act, little or no guidance is given as to what constitutes 'normal degree'. Clough further points out that because there are no guidelines given as to what or who determines what this normalcy should be, this objective test creates some difficulties in case law (Clough, 2012). With the inclusion of what seems to be a face-value *character-friendly* objective standard in the new law, continuous problems with interpretation and application of this reasonable person standard and the supposed objectivity of this standard appears to emerge, with difficulties arising as to the extent to which the law protects women by way of these defences.

3. Crimes of Passion and the Legal Reasonable Person.

Some 24 years ago, in a case where a husband had murdered his wife on the basis of sexual infidelity, Judge Cahill (a renowned American judge) introduced doubt as to the proclaimed neutrality of the judicial system with a controversial statement made in the course of sentencing: *"I seriously wonder how many men married for four, five years would have the strength to walk away without inflicting some corporal punishment"* (Miller, 2010.) Personally believing the defendant's actions were justified by his wife's indiscretions, this statement exposed the underlying non-neutrality in judicial reasoning, where sensitive cases as such are concerned, especially in today's world. Miller agrees that this statement clearly reveals the subsequent male bias present in judicial reasoning (Miller, 2010) in virtually every legal system in the world, an idea which will be further discussed in the rest of this part. Where responsibility for crimes is dependent on the satisfaction of the reasonable 'objective' person test created by the courts, arguments have been made that this criterion is heavily influenced by male perspectives of what the reasonable person standard is, and in turn, does not afford fair protection of female victims of domestic violence who kill.

The criminal law classifies these special murder cases–crimes of passion–as homicides committed in the 'heat of passion', fuelled by feelings of betrayal and anger, thereby being treated as voluntary manslaughter upon satisfaction of the partial defence to murder. This idea of passion powered by anger and violence, Abu-Odeh explains, is institutionalised by the law as a 'blameless' reaction, as a result of 'unexpected and overwhelming circumstances' (Abu-Odeh, 1997), inevitably reducing culpability from murder to voluntary manslaughter. In historic English era, crimes of passion were honour killings, murder committed to defend one's honour, especially with sexual betrayal, defensible even in the English courts under the old provocation defence. Even within the new 2009 Act, Gausden explains that the 'loss of control' requirement of the loss of control defence 'became synonymous with the angry and violent responses typical of male perpetrated intimate partner homicides' (Gausden, 2011). As such, women, especially abused ones were required to conform to certain gender stereotypes reflected in the gendered nature of the defence, which provided much difficulty when they sought to rely on it.

Consequently, the new loss of control defence left abused women in the same position as they were in the previous defence, as gender stereotype informed what the appropriate legal standard was. Cobbon argues that as a result of 'the gendered nature of legal reasoning' (Cobbon, 2000) that embodied the legal framework, men and women were required to adhere to the same standard with regards to the loss of control defence. Gausden to this effect points out that 'under standards of sameness, equal treatment within the legal system pivots upon treating likes alike' (Gausden, 2011). As such, this concept of '*treating like cases alike*' and sameness forces women to fall within the same framework and structure of that of men. Where judicial reasoning was influenced by experiences of men, experiences which departed from these pre-conceived ones would thus not be considered reasonable. The law's attempt to treat equally those that sought to rely on the defence, by attributing sameness to each and every defendant, paved way for further inequality to nest in the defence.

3.1 Gender in the Law.

Society and social order introduces with it numerous variables; from race to gender to ethnicity and religion, which the law should preferably take into consideration to establish social justice and fairness. Whilst the law aims to rationally consider these variables, commentators bring to light the one sided and sneaky non-neutral identity the law attempts to mask in a cloak of neutrality, universality and impartiality (Norrie, 2001). Consequently, the law fails to take certain particularities into account, and for the purpose of this research paper, ignores the social realities gender presents.

Wendy Parker provides a concise definition to gender, describing it as 'a social construct whereby one learns behaviour that is appropriate to one's sex' (Parker, 1993). With emphasis on social construct, Parker illustrates that subsequently, the idea of gender and 'gender relation is deeply rooted in the social order (Conaghan and Russell, 2015), with gender ordering social life, according to Conaghan, as society is structured around gender (Conaghan and Russel, 2015). Developing from this, where societies are dominated by various hierarchies (Hunnicutt, 2009), a social structure as gender naturally becomes a major division in a society where men and women live closely (Myerson, 2007). As a result, societies become dominated by the more 'superior' males, who present one official voice of superiority as 'the dominant male' (Myerson, 2007). Subsequently, a continued acceptance of this dominance is undeniably what has driven many societies into patriarchal ones, allowing what Hunnicutt describes as a 'freight of historical baggage' (Hunnicutt, 2009) determine the framework of society.

As a point to note, patriarchy is a key explanation as to why social structures are the way they are, a concept which is infinitely problematic at all social levels (Hunnicutt, 2009). Patriarchy is thus defined as 'the ordering of society under which political, economic, legal and social standards are set by, and fixed in the interests of men' (Cobbon, 2000). This thus allows men to enjoy, extensively, social privilege and dominance in comparison to women, either ideologically or structurally. Key to this paper, is the fact that patriarchy has even presented itself historically, where men were excused for killing their partners or even others in a bid to maintain their honour. Furthermore, variations in gender pay, dominance of men in senior positions in companies and employment discrimination based on gender, all present themselves as demonstrations of patriarchy operating at the micro and macro levels of society and social welfare (Hunnicutt, 2009), leading into gender bias within societies.

Over time, the continued prevalence of historical patriarchal societies have increased this gender bias, such that all of society has now accepted this dominance as the norm, feeding its way into what even the law considers normal and rational. As a result of this, the law appears inherently masculine, built upon the premise of male standards and masculine tradition (Conaghan and Russell, 2015). With 'men occupying seats at patriarchal tables' (Hunnicutt, 2009), women in society are forced to face systemic violence by way of oppression as a result of patriarchy. Clearly, the law still has a long way to go in ensuring this completely gender-neutral and unbiased nature in its decision making according to feminist literature. The criminal law, amongst other areas

of law, exemplifies this gender inequality, with rulings and judicial reasoning prejudiced according to masculine perspectives and reasoning. With legal systems (and the criminal law) being classified as conforming to patriarchal standards, debate, inevitably surrounds who and whose interest the law seeks to protect in reality.

Due to the historical influence of liberalism and utilitarianism, the law and all legal discourse rightly relies heavily on reason and reasoning, especially on points relating to consistency and legal coherence (Conaghan and Russell, 2015). This consistency prioritises treating all individuals the same before the law, and treating similar cases alike. However, this 'like alike' treatment also involves subjecting women to similar masculine standards in certain areas of law, and subsequently conforming to patriarchal systems as highlighted previously. Reasoning and rationale in respect to crimes of passion for instance, now appears to be flawed and highly gendered to suit the male standard of the law. Based on this premise, it is evident that the law generalises both sexes, calculating legal standards by reference to a concept defined by male gender and attributed male characteristics.

Theoretically, the interests the law would seek to protect is that of everyone, but realistically, interests itself are influenced by the decision maker's reasoning, view and experience. With elements of the law being substantially influenced by attributes from Bentham's utilitarianism, it is no surprise therefore that the interests of the community the law would seek to protect are those in line with the definition of patriarchy explained previously. As such, the interests that become protected are those of this male dominated system. Subsequently, establishing innocence or culpability of offenders in criminal cases, giving allowance for defences in murder and voluntary manslaughter, would undoubtedly be with its bias to certain gender.

Rosiejka in an article draws attention to the fact that 'it took 275 years for the English courts to fully and finally acknowledge that women who kill their adulterous husbands could also employ the provocation defence' (Rosiejka, 2012). As previously discussed, before the enactment of the provocation defence, English courts were left only with their reasonings based on experiences and discretion in determining what 'provocation' constituted, until the problematic former provocation defence was enacted eventually. 5 decades later, the English courts only realised the gendered operation of the provocation defence, attempting to ratify this problem by way of the 2009 Act. However, still failing to understand women's perspectives in such cases, it is this pre-conceived male idea, by virtue of this patriarchal domination, that evidently lodges itself in judicial reasoning, even within the determination of individual culpability. The law therefore upholds masculinity behind the scenes as it is seen to 'provide the degree of objectivity required for an authoritative judgement' (Hunter, 2013).

Sara Mills, in a review on *Gender, Sexualities and the Law,* approaches this idea of gender stereotypes in violent crimes, advocating that where 'male violence is considered inevitable and natural due to testosterone, female violence is considered abnormal and different' (Mills, 2011). It is no surprise then, that from the period between 2007-2012, the total average of male offenders accounted for under intimate violence against women

is 83%, according to the appraisal of statistics by PARITY (PARITY Briefing Paper, 2013). Translating this into criminal cases, such as murder and voluntary manslaughter, the high percentage of male homicide perpetrators as show above, indicates therefore that homicide itself is appears to be an act primarily committed by men, (Rosiejka, 2012) thus gendering this offence. The former law of provocation served as an explicit demonstration of this male bias, excusing 'masculine outburst of violence' (Rosiejka, 2012), and describing female violence as 'improper', and deserving of strict punishment. Going further, Miller surmises that male judges are more likely to subconsciously present harsher treatment based on the perception that 'defiant women are an anomaly to the image of the stereotypical 'virtuous woman' (Miller, 2012).

Society's perception of crimes of passion itself, appears to be already biased from the onset. Already, we see the effect patriarchy has on society, where male homicide is deemed as normal, and as such, are able to find protection even in criminal law by way of more flexible sentences. Miller again explains that judges are more likely to treat male defendants with an increased leniency, purely based on the acuity that 'unfaithful wives goad their husbands into the act of killing through their improprieties' (Miller, 2010). This subsequently provides a keen explanation as to who in reality, can successfully rely on the loss of control defence based on this already established subconscious premise in judicial reasoning. Even within the scope of crimes of passion, the law fails to accord any equal recognition to women's rationality the same as it would their male counterparts. Colvin provides a reason for this, pointing out that women are seen as more prone to having a more slow-burning anger which develops over time, in comparison to men's immediate angered response (Colvin, 2001). This, Colvin argues, then suggests that because of how women respond, intimate killings with women as the perpetrators, would then be classified as 'premeditation', thus constituting necessary *mens rea* for murder as opposed to claiming under crimes of passion. Herring establishes that 'rather than a woman lashing out in anger in response to a provocation, her anger tends to slowly increase until violence is exhibited sometime after the provocative incident' (Herring, 2016). As a matter of fact, this is perhaps why satisfaction of the loss of control defence under offences as such proves to be stringent and very difficult, especially for women, where the law does not subjectively consider reactions as such.

The lingering influence of centuries of male centred perceptions and dominance of patriarchal societies surrounding the justification of crimes of passion, can still be felt even in this 21st century. Essentially, gender discrimination, not only being an ongoing cause of debate amongst scholars in so many other spheres of law (from employment to criminal law), has also sparked discussions and debates amongst scholars as to its continued appearance in homicide, manslaughter and the loss of control defence. Though the law presents itself as an institution with the sole aim of securing justice for all, ridding society from all forms of discrimination and oppression, the law continues to treat women less favourably than men in so many ways. In reality, this is because of the continued existence of the vague reasonable person standard used to determine responsibility, and subsequently the reduction of a sentence from murder to manslaughter.

3.2 The Subjection of 'Battered Women' in Criminal Law to the Liberal Legal Subject.

Hunnicutt notes that 'today, research on violence against women continues to amass at impressive rates, yet theory development remains slow' (Hunnicutt, 2009). Gender has and continues to remain a centre of discussion, that has stirred up much debate amongst commentators, especially feminist theorists. Feminist critiques argue that even with the proclaimed equality of all sexes, society, and subsequently the law, still presents and follows the idea of 'the dominant male and the submissive female' (Hunnicutt, 2009). Patriarchal structures have been inserted into these liberal theories, which emphasised the importance of the free, rational and calculating individual, giving birth to this 'reasonable man', a concept which follows patriarchal ideas. Consequently, women are subject to the same standard as men, without taking into context the differences in experiences of both in such cases. Essentially, women are still left in the same position as they were in 1957 under the old law of provocation, with no significant change in their position. Historical criminal law, with regards to special defences, therefore affords no significant recognition of women's perspectives, even where this reasonable person concept is concerned. Heidensohn confirms this assertion, pointing out that 'women were largely invisible in most criminology works, and where they did appear, were portrayed in a stereotypical manner that distorted and marginalised their experiences' (Heidensohn, 2006).

3.3 Liberalism, Utilitarianism and the Reasonable Person in the Loss of Control Defence.

Liberalism and Utilitarianism, both following within the same line of thought and emphasising the 'free individual', have significantly influenced the workings of the law, especially pertaining to individuals' rights and liberty. Ignoring the social realities attached with the reactions of women who kill after being subjected to prolonged periods of abuse, the law under the loss of control defence continues to attempt to afford the same standards of reasonableness. Within this context, it has been continuously argued as to where and how battered women who kill fit, as a result of the uniqueness of these cases not covered within the 2009 Act (Coroners and Justice Act, 2009). Feminists alike agre that in this regard, the law appears to pay 'lip service to equality' (Conaghan and Russell, 2015) and so, needs to be 'freed from its straight-jacket' (Conaghan and Russell, 2015) in order to effectively accommodate every individual in the law in a way that exhibits equity and fairness, whilst ensuring consistency and clarity.

In the case for abused women who kill, *R v Ahluwalia*[5] and *R v Thornton*[6] provide authority for these special cases, which gives insight into women's reactions after prolonged periods of violence at the hands of their husbands, deducing that an abused state of mind does not see 'morally right or wrong'- it only sees soothing a long-lasting hurt by any means possible, which usually results in the killing of the abusive partner. Horder and Fitz-Gibbon surmise that in reactions as such, sometimes, the courts may take the view that a battered woman may already pre-meditate the murder of her husband, as such cases cannot be classified as a 'spontaneous confrontation' (Horder and Fitz-Gibbon, 2015) due to liberalism which only sees intentional calculation and rationality. In such cases, the courts, according to Youngs, define the *mens rea* criteria as 'a calculated, malevolent conduct which exploits societal inequality to restrict the freedom of another.' (Young, 2015). The

law therefore classifies these reactions as premeditated according to the impact of liberalism on their understanding of the mental element needed to commit a crime.

Where the loss of control defence establishes the requirement for such a reaction to be a 'normal degree of tolerance and self-restraint', normality is constructed to male ideas, which is non-accommodating of battered women. The reason being that a normal male reaction would be defined in terms of immediacy and instinct, whereas women tend to have a 'slow-burn effect' reaction. Therefore, abused women within the context of the loss of control defence struggle to satisfy the objective reasonable standard in the defence, as their reactions clearly do not fit with the law's prescribed definition of reasonableness. Primarily due to the belief that no rational person can commit such an act, the law prescribes a 'pathological interpretation' (Cobbon, 2000) to explain women's reactions in crimes of passion cases, dealing with them as temporarily abnormal, and requiring them to satisfy the already difficult to satisfy, diminished responsibility defence (Cobbon, 2000). This expected rationality and calculated reasoning the law demands of every individual in society, takes no interest in the uniqueness and differences of reactions of other groups in the society, as it is founded on patriarchal institutions.

The basis of liberalism and utilitarianism, which always sees humans as only calculating of every decision made, coupled with 'men's understanding of women's capacity and experiences' (Cobbon, 2000) are thus unarguably responsible for the difficulties abused women face when seeking to rely on the 2009 defence, as they have thoroughly informed the law, somewhat negatively in this regard.

3.4 The Gendered Reality in Judicial Reasoning towards Abused Women Who Kill.

In the Feminist Judgments Project (Hunter *et al,* 2010), Hunter recognises the point that in reality, 'a judge's philosophical, religious and/or political beliefs, including feminism, are likely to inflect his or her decision-making' (Hunter *et al,* 2010). This is ultimately the foundational reason as to the presence of a gender bias in the way judges perceive battered women who kill, and seek to rely on the loss of control defence. As a result of the predominance of male judges, there is in turn a 'systematic tendency' (Hunter *et al,* 2010) for judgments based on male experiences to prevail and become precedent. Subsequently, typical male responses are adopted as the normative legal standard, (Gausden, 2011) and 'homogeneity then becomes mistaken for neutrality' (Hunter, 2015). As emphasised previously, there continues to be a need to deconstruct this gender bias prominent in judicial reasoning in a way that is consistent with legal principles and reflects equitable decision making. The rule of law prescribes that all people are equal under the law, and 'can expect it from a neutral and unbiased determination of their rights' (Stubbs, 1986). As such, the rule of law promotes the autonomy and individualism of each member of society, while in turn ensuring the sameness of all members under the law. However, the law with its aim to ensure social equality by ensuring individual freedom and justice in society (Stubbs, 1986), continues to treat all cases alike without giving thought to the inherent differences of each case.

While this is highly valued in the rule of law and supremacy of the law, in reality not all cases are alike as each turns to the specificity of the facts. Where the law continues to ascribe 'equality' to all cases, Fineman establishes that this would remain 'an inadequate tool to resist or upset persistent forms of subordination and domination' (Fineman, 2003). Women are debatably invisible throughout criminal legal history in England and Wales (Zaman, 2015), with their reactions remaining unprotected, and their perspectives practically ignored by the law. The supposedly objective reasonable person, according to Zaman, 'is an authentication of the masculine perspective, characterised as 'objective' and then portrayed as normative' (Zaman, 2015). The judicial definition placed on the concept of reasonableness now works against female defendants in crimes of passion cases, forcing a mental illness stigma on battered women who kill. Wake expands on this, explaining that 'the ostensibly gender-neutral concept of reasonableness' (Wake, 2013) inevitably operates against female defendants. Reasonable standards, interpreted to masculine sense as a result of the long standing liberal institutions built upon the premise of male perspectives, now appear to work against women in crimes fuelled by passion.

Youngs identifies with feminist jurisprudence, with regards to domestic violence and abused women who kill, attesting that 'this pattern of violence is basically rooted in the patriarchal ideas of male ownership of their female partners' (Young, 2015) Ideas of ownership, domination and possessiveness, all characteristics of patriarchal institutions, now serve as motivation for intimate partner violence, elements which the law tends to ignore in cases as such. The lasting effects of patriarchy on the legal system and process cannot be overemphasised, as a result of the social injustices these have caused for women in society. The Feminist Judgment Projects subsequently, aim to correct these social disparities caused by continuous patriarchal systems and male oriented liberalist ideas, by introducing real-world exercise of judgements, which take into account women's perspectives (Hunter *et al*, 2010). With the aim of several of the feminist judicial approaches to 'challenge gender bias in legal doctrine and judicial reasoning' (Hunter *et al*, 2010), it is now evident that the solution to the underlying predominance of male ideas in judicial reasoning requires complete deconstruction of this predominance and domination. These recommendations alongside construing new ideas of reasonableness in relation to the feminist judgement projects, will be regarded in greater detail in the final section.

4. The Case for Reasonableness: The Vulnerable Subject versus the Liberal Legal Person.

The liberal legal subject remains an important topic that has continuously stirred debate amongst feminist scholars, with attention to its complete disregard of women's perspectives. The functionality of this concept as drawn out continues to show the need for a complete 'reimaging' in order to ensure equality whenever this standard is applied. Previous arguments and discussions made allow for an accurate summary of this concept as 'an illusory myth which is invulnerable, disembodied and de-contextualised' (Furusho, 2016). This liberal legal subject, as a result of its non-consideration of the actual human aspect, has led to a series of social inequalities and injustices. As such, Furusho in a pursuit for enlightenment, points out that 'the legal subject

must be exposed through the lens of vulnerability' (Furusho, 2016). There is thus a need to further investigate the social realities of the reasonable person as opposed to the abstract individualism and uniformity attributed to it in courts.

As a starting point, Fineman establishes that 'the liberal legal subject stands outside of human experiences' (Fineman, 2003). In most cases, if the liberal subject is indeed associated with human experiences, they are usually tended towards male experiences, hidden in liberal universalism and individualism terms. As a result of classic liberal law and theories, combined with patriarchal structures as explained earlier, the liberal legal subject remains an 'idealised conceptualization' (Fineman, 2003), one that is essentially invulnerable, unrealistic and unrealizable. Fineman continues to establish that it is only the recognition of the vulnerability of the legal subject that would come a long way in the law's journey for gender-neutral and unbiased reasoning in judgements. As such, when the liberal legal subject is matched against the vulnerable subject, the acceptance of vulnerability as a concept allows this legal subject to embrace 'bare vulnerability as a normatively relevant feature' (Furusho, 2016), one which is missing from the foundation of the liberal model. As such, if the 'vulnerable' is moved from its everyday societal definition that connotes weakness, and is understood as a universal, constant and inherent human condition, then the concept can be easily adopted in law, replacing the autonomous and calculating subject, thus 'ensuring a richer and more robust guarantee of equality than is afforded by the law' (Furusho, 2016).

Upon acceptance of this vulnerability, the position battered women would face when seeking to rely on the loss of control defence could be significantly better than the current position. As Fineman asserts, 'understanding vulnerability begins with the realisation that some events are ultimately beyond human control' (Fineman, 2003). Where the liberal legal subject attempts to 'squeeze battered women into abstract categories' (Fineman, 2003), by imputing characteristics and criteria that are defined by and in the interest of men, the vulnerable subject presents a more realistic criterion, one which is 'susceptible to harm and change', a criterion that could potentially present better opportunities for equality where women's rights are concerned. This position will be evaluated in further detail, as a possible reform for the liberal legal subject in the final section. As such, the recognition of the differences between male and female responses, coupled with the acknowledgement of vulnerability as normal, makes the difference in how legal and social policies reflect the social realities of human subjects, in a way that breeds equality.

4.1 Possible Reforms towards the Law's Protection of Women's Rights

Cubbon in her article, summarises judicial perception in the interpretation of legal rules and standards in a simple sentence, 'the law tells it and sees it like a man' (Cobbon, 2000). With the effects of patriarchy on legal institutions as emphasised previously, it is now clear that a move into clarity and coherence of the law, especially concerning equality, now requires 'dealing with the dilemma of the legal language' (Cobbon, 2000). This demands a reconstruction and reimagining of the judicial language used to define the reasonable standard as a criteria for developing culpability in various areas of the law, by way of dismantling patriarchal societal

structures. In *AG for Jersey v Holley*[7], the writers of the Feminist Judgment Projects demonstrated an attempt to reconstruct the legal rules relating to crimes of passion and the loss of control defence, in a way that produces substantive equality as opposed to the problematic normative system the law continues to exemplify. As such, this aimed at embodying the perspectives of battered women who kill their abusive partners after years of domestic violence, as opposed to the 'perspective of possessive men who feel their masculinity has been threatened' (Hunter *et al*, 2010). This development provides a basis (with respect to existing legal principles) for the advancement of the reasonable person standard as a thorough representation of all human experiences, and not just the favoured section of society.

Upon close and careful consideration of the problematic loss of control defence , for instance, especially with regards to this gendered-nature of the reasonable person standard, it is now apparent that the dilemma which needs to be solved is the masculine language hidden in legality, of how certain triggers and criteria embedded in the loss of control defence are defined. Cobbon focuses on this 'legal language' in her article, highlighting that in order for change and equity to be exhibited within the legal system, its foundational patriarchy needs to first be dealt with, dealing with the patriarchy that governs the legal system (Cobbon, 2000). Further recognising the situation that the 'gendered nature of legal reasoning has produced jurisprudential ideologies which have justified and consolidated male ascendancy' (Cobbon, 2000), the law therefore requires a clear cut criteria, and certain reformatory measures, so as to break these gendered reasoning and barriers.

4.2 A New Reasonableness Criteria: Towards a Reasonable 'Vulnerable' Subject

McAviney in an article reasons that the problems with the objectivity of the reasonable person standard cannot simply be dealt with by a continuous 'fluctuation between objective and subjective interpretation' (McAviney, 2011) whenever the court deems it, as this will continue to lead to legal uncertainty. This fluctuation, has 'dragged the defence in the 2009 Act into a confusing mixture of common law rules and statute' (McAviney, 2011), which overtime has led to inconsistencies and confusion in case law. At the same time, leaving the test as a purely objective one, as has been analysed previously, continues to force women to conform to unequitable standards, leaving them in the same pre-2009 position. Fineman suggests that where the liberal legal subject is found lacking, with its characteristics having no bearing with abused women who kill, the vulnerable subject should be introduced as a legal standard, as it affords 'a practical judicial expression of substantive equality.' (Fineman, 2003) The idea of the vulnerable subject as a standard, analyses certain characteristic of the human condition, ranging from age to 'bodily fragility to material needs' (Fineman, 2003), in a way that provides reasonable and equal justification for certain reactions and actions.

This vulnerable subject, according to Fineman, defies the 'reasonable', rational calculating individual defined by liberal and utilitarian philosophises, pulling apart persistent forms of domination and subordination within the legal system and society (Fineman, 2003). However, to what extent does this consideration of subjective elements introduce significant difference and feasibility? Concerns of respect for existing legal principles as well as floodgate arguments are presented, with regards to a move into legal subjectivity by way of the

vulnerable, reasonable subject. Cubbon also notes that although *Ahluwalia* and *Thornton*[8] marked a transition in the provocation defence to women, it evidently did not go far in setting a precedent as to women's protection by the law. Evidently, in practice, courts are reluctant to accept the vulnerability aspect as a subjective criterion for self-restraint and tolerance, focusing only on the objective and rational. However, where the essence of the human condition and an individual in general is ignored and absent in liberal theories, equality ideas and most especially the law, it is therefore evident that an inclusion of these characteristics and circumstances in defining the reasonable person, presents for potential reform specially to battered women who kill.

4.3 A Push Towards Feminist Judgments and Judicial Diversity

According to Baroness Hale, 'ensuring fairness and equality may mean providing special or different or tailored treatment' (Hunter, 2015). Therefore, as evidenced by the UK Feminist Judgments Projects, the recognition of a bias and impartiality in judgments relating to gender issues, represents a step towards an improvement of the law's position compared to decades ago. Baroness Hale in a interview given, describes the works of the UK Feminist Judgments Project, as 'the best objective evidence that a different perspective can indeed make a difference' (Hunter, 2015). This debunks further arguments, presented by both male judges and commentators, that feminist judgments presented by feminist female judges, introduces impartiality into judicial reasoning. Rather, as demonstrated in re-written case judgements, whilst promoting substantive equality, feminist judgments are indeed more likely to be consistent with the 'fundamental principles of the law, and as such are hardly objectionable' (Hunter, 2015).

Not only do these perspectives presented in judgements as such, provide for better opportunities for gender equality and subsequently better protection of women's rights by the law, but the inclusion of women's perspectives and experiences will potentially make the law 'more representative of the variety of human experiences' (Hunter, 2015). Hunter also explores the idea of further diversifying the judiciary, in a way to be more inclusive and representative of female ideas, experiences and feminine characteristics. As judges make use of their own experiences as a reference point when providing a reasoning and rationale in decisions reached, a more inclusive bench of more female judges could potentially increase the 'democratic legitimacy' of the judiciary, (Hunter, 2015) which would consider the experiences of both men and women as rationale in judicial decision-making.

As such, suggestions that feminist judgments be applied and serve as a basis for judicial reasoning in cases that are likely to breed social injustice in gender related issues, alongside diversification of the judiciary to include more female judges, may provide for potential reform of the law.

5. CONCLUSION AND FINAL REMARKS.

It is true that 'the totality of the reasonable person standard mirrors the rules of the predominant culture, and simultaneously excludes the values of other groups in society' (Wake, 2013). From the analysis presented, this

'objectivity' attributed to the reasonable standard of the reasonable person is clearly problematic, with regards to its application in crimes of passion cases. The law must no longer condone and accept the inbuilt gender bias evident in social structures and institutions if it is to ever achieve social equity and justice. Gender bias remains an unwelcomed and problematic influence in judicial interpretation of reasonableness in crimes of passion cases, where patriarchal structures and liberal ideas inform decision-making. Legal language continues to match the 'male gender of its linguistic architects' (Cobbon, 2000), where women's experiences are now altered through the male's eyes when it comes to judicial decision-making. Consequently, the law affords no inclusion or empathy of these differences as result of strict masculine interpretations of the reasonable person standard, and women in crimes of passion who seek to rely on the loss of control defence thus find it problematic to do so successfully.

A move into construing reasonableness in a new dimension therefore requires dismantling evident male dominated structures that define this area of law, and move into legal subjectivity in ways that afford substantive equality as opposed to the formal equality the law is characterised by. From these potential reforms expressed, it is however uncertain the direction the law would head towards and rely on in the next 10, 20 years where the determination of reasonableness is concerned, as it relates to judicial reasoning. As law does not consider women's perspectives and reactions, and continues to ignore its patriarchal foundations in the definition of the criteria, it is uncertain as to when legal subjectivity will be attained in this area. Perhaps if society realised and understood feminist perspectives regarding many gender-related issues, such as the vulnerable subject and feminist judgment arguments, herein lies a 'powerful conceptual tool' (Fineman, 2003) for the state to ensure a richer and more robust assurance of equity.

BIBILIOGRAPHY.

Abuh-Odeh, A. (1997) 'Comparitvely Speaking: The Honour of the East and the Passion of the West.' *Georgetown University Law Center* 287

Bentham, J. (1789). 'An Introduction to the Principles of Morals and Legislation' (Batoche Books, Kitchener. 1789)

Casey, J. (1999) *'Legal Defences for Battered Women who Kill: The Battered Woman Syndrome, Expert Testimony and Law Reform.'* University of Edinburgh: Edinburgh Research Archive.

Clough, A. (2012) 'Sexual Infidelity: The Exclusion that Never Was?' 76(5) *Journal of Criminal Law* 382-388

Cobbon, S. (2000) 'The Dismantling of Patriarchy' *UCL Jurisprudence Review* 253

Colvin, E. (2001) 'Ordinary and Reasonable People: The Design of Objective Test of Criminal Responsibility' 27(1). *Monash University Law Review.* Available at: http://classic.austlii.edu.au/au/journals/MonashULawRw/2001/9.pdf

Daswani, Y. (2014) 'Loss of Control: An Acceptable Defence?' *Keep Calm Talk Law* [online]. Available at: <http://www.keepcalmtalklaw.co.uk/loss-of-control-an-acceptable-defence/> [Accessed on: 23rd February 2018]

Fineman, M. (2003) 'The Vulnerable Subject: Anchoring Equality in the Human Condition'. 2(1) *Yale Journal of Law and Feminism* 1-23

Furusho, C. (2016). 'Uncovering the Human RIght of the Vulnerable Subject and Correlated State Duties under Liberalism.' 5(1) *UCL Journal of Law and Jurisprudence* 1-31.

Gardiner, J. (2015) 'The Many Faces of the Reasonable Person' *The Law Quarterly Review* 131(10) 563-584

Gausden, A. (2011) 'Defences to Murder: A Woman-Centred Analysis.' *Durham Theses, Durham University* [online] Available at: < http://etheses.dur.ac.uk/3297/1/Anna_Gausden_MJUR_PDF.pdf?DDD19+> [Accessed on 3rd March 2018]

Grear, A. (2011). Sexing the Matrix: Embodiment, Disembodiment and Law towards the Regendering of Legal Rationality? In A. Grear, *Gender, Sexualities and Law*. London: Routledge.

Heidensohn, F. (2006). 'New Perspectives and Established Views. ' In Heidensohn F (ed) *Gender and Justice*. William Publishing. 1-20

Herring, J. (2016) *Criminal Law* (7th edn) Oxford: Oxford University Press.

Horder, J and Fitz-Gibbon, K. (2015). 'When Sexual Infidelity Triggers Murder: Examining the Impact of Homicide Law Reform on Judicial Attitudes in Sentencing' *The Cambridge Law Journal* 1-25

Hunnicutt, G. (2009). 'Varieties of Patriarchy and Violence Against Women: Resurrecting Patriarchy as a Theoretical Tool' 15(5) *Violence Against Women Journal* 553-574

Hunter, R *et al* (2010). *Feminist Judgments: From theory to Practice* Hart Publishing. 3-35

Hunter, R. (2013) 'Contesting the Dominant Paradigm: Feminist Critiques of Liberal Legalism'. In M. Davies and V. M (eds). *The Ashgate Research Companion to Feminist Legal Theory*. Ashgate: Farnham.

Hunter, R. (2015). 'More than Just a Different Face? Judicial Diversity and Decision Making'. 68 *Current Legal Problems* 119-141

McAviney, V.P. (2011) 'Should Anger Mitigate Murder? An Examination of the Doctrine of Loss of Control. *Durham These, Durham University [online]* <http://etheses.dur.ac.uk/3406/> accessed 20th December 2021

Miller, A. (2007) 'The Reasonable Man and Other Legal Standards.'

Miller, A. (2010) 'Inherent (Gender) Unreasonableness of the Concept of Reasonableness in the Context of Manslaughter Committed in the Heat of Passion.' 17(2) *William and Mary Journal of Women and the Law* 249

Mills, S. (2011) 'Review of Jackie Jones, Anna Grear.' In R. Fenton and K. Stevenson (eds) *Gender, Sexualities and the Law* Routledge: London. 334

Morgan, C (2013).'Loss of Self-Control: Back to the Good Old Days. 77(2) *Journal of Criminal Law* 119-135

Myerson, D. (2007). *Understanding Jurisprudence* London: Routledge 181

Norrie, A. (2001) 'Chapter 2: The Historical Context of Criminal Doctrine. In *'Crime, Reason and History: A Critical Introduction to Criminal Law* (2nd edn) Butterworths Publishing. 15-31

PARITY Briefing Paper. (2013) *'Men and Women and the Criminal Justice System- Appraisal of Statistics*

Parker, W. (1993) 'The Reasonable Person: A Gendered Concept?' 23 *Victoria University Wellington Law Review* 105-113

Pefani, D. (n.d.) 'The Reasonable Person in Today's Diverse Society' *The Brief*

Penner, J *et al* (2012) *White's Textbook on Jurisprudence.* (5th edn) Oxford: OUP. 5-7

Rosiejka, D. (2012) 'Killing for Possession and Killing for Survival: Gender and the Criminal Law of Provocation and Self-Defense.' *Law School Student Scholarship* Paper 54. 1-34

Sperino, S.F. (2015) 'Retaliation and the Reasonable Person' 67 *FLA Law Review* 2031.

Stubbs, M. (1986). 'Feminism and Legal Positivism' 3 *Australian Journal of Law and Society* 63-92

Vining, J. (n.d) Legal Identity.

Wake, N. (2013). 'Battered Women, Startled Householders and Psychological Self-Defence: An Anglo-Australian Perspective. 77(5) *Journal of Criminal law* 435-457

Young, J. (2015) 'Domestic Violence and the Criminal law.' 79(1) *Journal of Criminal Law* 55-70

Zaman, K. (2015). 'Is the Defence of Loss of Control a 'Better' Defence for Female Victims of Domestic Abuse than Provocation?' 1(1) *University of Bradford Student Law Journal* 1-14.

Footnotes

1. The Age of Enlightenment period in England was the period where there was a radical reorientation of European politics, philosophy, science and communications. (also known as the long 18th Century) ↩

2. ↩

3. The mental element required for a criminal offence. ↩

4. Section 3 of the Homicide Act 1957- Express referral to the ‘reasonable man’ ↩

5. (1993) 96 Cr App R 13 ↩

6. [1996] 1 WLR 1174 ↩

7. [2005] 3 WLR 29 Privy Council. ↩

8. *R v Ahuwalia* (1993) 96 Cr App R 133 ↩