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Gendering the carceral web: Public sector reform, technology and digital (in) justice

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Abstract

The UK government's Transforming Our Justice System agenda represents an emerging system of penal governance. Its cumulative impact, manifested through the mainstreaming of virtual hearings, a system of automatic online convictions and the Single Justice Procedure is a story yet to tell, with the potential impact on marginalised women simply a footnote. Such women, well-documented victims of the legal aid cuts as well as the digital divide, must comply with and negotiate the requirements of the carceral web alone. Pursuance of the reforms, representing the next instalment in the neo-liberal justice agenda, exposes another example of life at the penal–welfare nexus. This precarious territory has burgeoned since government-imposed austerity, with implications for self-criminalisation, net-widening and social justice. Reforms couched in the language of 'efficiency' and 'common sense' are likely to run in direct opposition to what marginalised women might need (or respond well to) and may jeopardise official reductionist strategies.

Keywords

court modernisation, digital divide, social justice, women offenders, carceral web

Introduction

The fundamental changes to penal governance over the previous decade have been widely documented in the field of criminology and criminal justice (Garland, 2002;

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Simon, 2009; see Rock, 2019, for a British perspective). Yet the latest developments, initiated following election of the Conservative–Liberal Democrat coalition government in 2010, are arguably overseeing the most radical reconfiguration of the UK penal state in modern history (Bell, 2011; Birkett, 2018). Such changes are permeating all aspects of the landscape and calling the very legitimacy of the 'system' into question. From transformations in summary justice and the court modernisation agenda to the failed 'hollowing out' of probation and the crisis of the custodial estate, recent developments have heralded an unprecedented disruption of policy, practice and political discourse. The impacts of such developments on the police, prison service and probation are routinely debated within the field of British criminology (Ludlow, 2014; Teague, 2013), yet the discipline's limited attempts to make intellectual sense of the government's historic court digitisation agenda is striking (although see Donoghue, 2017; Easton, 2018). This programme, overseeing the most fundamental changes to the administration of justice since the Judicature Act of 1873, has also received limited academic attention within the political sciences, yet it also speaks to the broader changes in governance, policy-making philosophy and public sector reforms since 2010. Instead, this territory is almost exclusively dominated by legal scholars who either fully support government plans or who have expressed concern about the tendency in Whitehall to consider 'justice' as simply another public service requiring an administrative update (see, for example, Le Sueur, 2015; Susskind, 2019). Borne in part out of austerity and the nationwide court closure programme,[1] the government has indicated that the digitisation agenda is necessary to keep up with the pace of modern life and the role of technology within it. The overarching vision for this new system is one that is more responsive to modern pressures, cuts wastage (with regard to judicial personnel and court time) and recognises the fundamental role of technology in modern life, underused by the courts thus far. The British government stated in 2016 that the court estate was to be viewed merely as a 'resource' in future (Ministry of Justice, 2016), and it has routinely reiterated that 'increased use of digital services will mean that fewer court and tribunal hearings will be needed in a traditional courtroom setting' (Ministry of Justice, 2018b: 5).

This article questions the compatibility of the court digitisation agenda with traditional notions of justice. It does so through a feminist framework, viewing technology as a consequence of gender relations, with the very foundations of service delivery (in this case information and communication technology [ICT]) developed through and for the White male lens (Eubanks, 2011; Faulkner, 2001; O'Donnell and Sweetman, 2018; Wajcman, 2010). In viewing ICT as a key vehicle for the successful (and swift) delivery of modern justice 'services', government strategy threatens to exacerbate, exploit and develop multiple existing webs of control in the field of welfare and the already tiered (gendered, racist, classist) justice system in which the marginalised[2] are already disadvantaged (see also Sandefur, 2009, 2019). Consistent with decades of feminist criminological scholarship (Carlen, 1983; Eaton, 1986; Hedderman, 2004; Hedderman and Gelsthorpe, 1997; Hedderman and Hough, 1994; Kennedy, 1992; Smart, 1976; Worrall, 1981) it views the courtroom as a gendered space, where females are often judged differently from their male counterparts.

Like ICT, national criminal justice strategies have been traditionally designed by and for men. Although the past 15 years have heralded vast improvements in relation to the development of some gender-responsive services (Clarke, 2004; Gelsthorpe, 2005;

Gelsthorpe et al., 2007; Ministry of Justice, 2007, 2018a), the justice system of England and Wales has historically failed to integrate gender in a meaningful way. Although research has shown that the drivers to offending behaviour (such as economic and social disadvantage, poor educational opportunities, relationships with parents and family, the influence of peers) are broadly gender-neutral, some crimes are more gendered in nature. Males overwhelmingly commit violent crimes when compared with their female counterparts, whereas women are more likely to be charged with lower-level offences such as TV licence evasion and shop theft.

This article warns that despite the existence of an explicitly reductionist Female Offender Strategy (Ministry of Justice, 2018a) government plans risk entangling more marginalised women in the carceral net. Women's status as lesser offenders makes them more likely candidates for new forms of virtual justice, yet at the same time, they are caught in a paradoxical combination of (digital) exclusion and (technologically enabled) surveillance. This is a complex situation. Drawing on the Foucauldian (1977) concept of the carceral state, Garland's (2002) 'culture of control' and Cohen's (1979) notion of the dispersal of discipline, this article highlights how the stakes have been raised for marginalised women, who, already among the most surveilled and monitored in British society, key stakeholders of the 'digital welfare state', are now also subject to the 'carceral web'. A concept developed by Gurusami, the carceral web can be defined as 'the spatial intersection between carceral institutions and digital technologies'[3] (2018: 435), and it can result in 'simultaneous, multi-institutional surveillance' (2018: 440) for the socially disadvantaged.

By its very nature, the shift to an online platform of justice obligates the neo-liberal requirement of personal responsibility and rational action. Elevating the responsibilisation agenda discussed by Garland (2002) to another level, it sees those in contact with the law as service users making rational decisions about their guilt or innocence, either virtually or via gov.uk. Here exists another tension. Although implemented successfully elsewhere, the rationally designed e-platform that requires a rational navigation through the interface to decide on 'guilt' or 'innocence' will not always correspond with the 'rationality' associated with chaotic private lives. As any scholar of criminology will reiterate, people simply do not exist in an equal world where all crimes (and confessions of innocence or guilt) are committed according to the weighing up of potential outcomes.

Despite its focus on marginalised women offenders, this discussion does not attempt to erase men living in similar circumstances and recognises that the digital divide is the consequence of a myriad of different exclusions, largely relating to poverty. The discussion here is not anti-progress. Research points to the pivotal role of ICT in improving global gender imbalances and fostering women's empowerment and employment prospects (Faulkner and Lie, 2007; Rossner et al., 2021). Nor are the points against technology. It is certainly the case that the court digitisation agenda of England and Wales will result in greater access to justice for most. Certain aspects have the ability to improve the situation for vulnerable or marginalised women in the criminal justice system. The virtual approach could offer greater forms of flexibility and safety for those affected by sexual or domestic violence or other forms of controlling or coercive behaviour (Godfrey et al., 2021; Rumgay 2005), for example. This welcome development does not detract from the body of scholarship that continues to highlight the relationship

between poverty, gender and digital injustice, however (Byrom, 2020; Eubanks, 2011, 2019; Rossner and McCurdy, 2021).

A final point. Any discussion about the 'potential' consequences of a partially implemented government agenda is likely to draw criticisms in respect of its lack of empirical data. Although the argument put forward in this article is theoretical in part, it is also based on sensible assumptions about some of the likely consequences of the court digitisation agenda. Existing research in the field demonstrates that marginalised women offenders are structurally disadvantaged and consequently more likely to be victims of the digital divide (Blomberg et al., 2021; Goedhart et al., 2019; Gurusami, 2018; Seo et al., 2020). They are, at the same time, and by virtue of their status as 'lesser offenders' at risk of being more likely to be caught up with the new online systems that are designed to deal with lesser offences. The potential for net-widening is clear. If government plans are upscaled further then questions must also be asked about how new forms of justice delivery are to work with the reductionist Female Offender Strategy (Ministry of Justice, 2018a). Providing an early analysis of the reforms on marginalised women, this article is also an attempt to conceptualise the gendered carceral web.

The court digitisation agenda

This article contextualises the government's court digitisation agenda within the broader programme of e-governance. E-government is a simple concept that can be defined as 'the use by government of information technology internally and to interact with citizens, businesses, voluntary organisations and other governments' (Margetts and Partington, 2010: 47). Technological developments are rooted in the underlying assumption that citizen service users prefer to engage with the state electronically and that there is sufficient ICT literacy among the population to ensure the system is universal.[4] This approach has been rolled out successfully to cover key Home Office, Department for Work and Pensions and Department for Transport services such as applications (for a passport, driving licence or benefits), for some traffic offences and, more recently, applying for a divorce. Broadening the remit of online services to the field of civil and criminal justice is more worrying, however.

Drawing on a number of reviews (namely Sir Brian Leveson's Review of Efficiency in Criminal Proceedings of 2015 and Lord Justice Briggs' Civil Courts Structure Review of 2016), the modernisation agenda consists of three strands, digitisation, simplification and modernisation, each with its own raft of measures. Unlike other developments in the justice system, it has garnered limited media interest, although the newsworthy buzz phrases of 'justice by smartphone' or 'trial via Zoom' may have permeated some areas of public discourse via the specialist press.[5] Originally outlined in Part Two of the Prison and Courts Bill of 2017,[6] many of the below elements have now been enshrined in the Judicial Review and Courts Act 2022.[7] Acknowledging that this agenda is still a work in progress, the Act makes provision for some important changes to be implemented via secondary legislation. This is a contentious decision considering the nature of this radical overhaul, and the potential consequences for future users of the civil and criminal justice systems in England and Wales. The overarching vision of the court digitisation agenda is to cut costs and better integrate the court system of England and Wales via

several (interlinked) approaches. Legislation now allows for the development of an end-to-end system of case management (the common platform) and the digitisation of case files, enhanced courtroom video technology for victims and witnesses, and an expansion of virtual hearings, a system of online pleading and automatic online convictions for non-imprisonable summary offences and the removal of certain low-level offences from court altogether (the Single Justice Procedure [SJP]). Several of these elements, conceptualised as the online courtroom, are outlined here.

The rationale behind online pleading is based on the view that entering a plea of innocence or guilt is a largely administrative matter that does not need to attract the costs of an open court setting (Susskind, 2019). It assumes that people will already know how they want to plead to a given offence, that they will have the necessary access and expertise to complete an online form, and that they will not require legal advice or representation to do so. The government has repeatedly stressed that online pleading is simply a new 'option' for defendants (and that they are still permitted to engage with the courts via the traditional channels) yet it provides little in the way of alternative guidance. Although accessed via gov.uk in a similar manner to other online government services, the stakes are that much higher when interacting with Her Majesty's Courts and Tribunals Service (HMCTS). Any plea entered online cannot be changed, and if defendants do not attend any subsequent hearing in court, the 2022 legislation has made provision for any punishment to be decided in their absence.

Like the system of online pleading, the system of automatic online convictions allows defendants to respond to a charge online, with a fixed penalty offered in return for a quick (within 21 days) guilty plea. For many this decision will be simple: pleading guilty and paying a fine via an online form avoids a time-consuming and stigmatising trip to court. Currently dealing with cases of railway fare evasion, tram fare evasion and fishing with an unlicenced rod or line, there are plans to expand the remit of automatic online convictions via secondary legislation. Like the system of online pleading, the government has made clear assumptions about who will be engaging with this 'service' and how they will (almost certainly without legal advice) weigh up the consequences of responding in a certain way (Easton, 2018). It has promised that the Assisted Digital service will provide the necessary information to those who need additional support when utilising technology. Research has already exposed the limitations of Assisted Digital: it cannot help those who are unable to/do not open the postal notification in the first place, those who do not understand that they need help, those that cannot afford to phone the helpline, or those that have no awareness that they are entitled to access the service (Transform Justice, 2021a).

The new systems of online pleading and automatic online convictions remove magistrate input from part of or the entirety of the process. Instead, and certainly in the case of automatic online convictions, the magistrate is wholly replaced, with punishment decided by an algorithm (Easton, 2018; Magistrates' Association, 2016). Magistrate input is, however, retained through the SJP, which requires no ICT access for service users, but is nevertheless as potentially impactful. Like the system of automatic online convictions, the SJP has removed certain low-level offences from the courtroom altogether. However, unlike the online systems, defendants under the SJP are required to plead guilty or not guilty via a paper form ('on the papers'). Responses are assessed by a single magistrate

and a legal advisor in private conditions (not open court), sometimes working in-person, sometimes working virtually. Non-respondents are convicted in their absence, and are awarded the maximum possible fine, costs and a criminal record. Subject to limited scrutiny at this stage, this 'behind closed doors' procedure removes any option of participation in the justice process altogether (Magistrates' Association, 2021). It also makes assumptions about a defendant's permanent address, their ability/preparedness to open post and their capacity to respond to it properly and within the required time frame.

Although video links are not a new innovation in the criminal justice process (previously used to conduct bail or first hearings between courts and police stations or prisons), the expansion of virtual justice using the Cloud Video Platform is a new dimension. 'Trial via Zoom' requires access to a computer and (ideally) a suitable space to engage with the solemnity and gravitas of the court process and court personnel. The expansion of virtual courts formed a key part of the Prison and Courts Bill of 2017, but the largely untested system (in terms of technology, training and effectiveness) was rapidly rolled out during the Covid-19 pandemic. A pragmatic response to lockdown, virtual courts have quickly become part of the justice fabric and have since been enshrined in the Judicial Review and Courts Act 2022. Although officially labelled a 'success', implementation problems persist, particularly in relation to the availability and suitability of legal advice and representation, technical support and user satisfaction (HMCTS, 2021; The Law Society, 2020; Transform Justice, 2021b).

Government inattention to the potential impact of the reforms on women has been telling, although it follows a familiar pattern. None of the above innovations take account of the official requirement for gender-responsive justice. The uneasy interface between equality legislation and 'gender-blind' justice has been discussed elsewhere (Player, 2014). It is, however, the case that the Equality Act 2010 and the Bangkok Rules of the same year both advocate (or require) a situation in which public authorities (including government departments and sentencers) engage more effectively with the specific needs of women. It is therefore regrettable that there was no specific mention of the impact of the court digitisation agenda on women in the vast majority of the associated Public Bill debates passing through the UK Parliament. Much like the Offender Rehabilitation Act of 2014, which was to have a fundamental impact on services for women offenders in the community, women were omitted from Parliamentary debates of the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 and the Court and Tribunals (Online Procedure) Bill 2017–19. The same can be said for the Judicial Review and Courts Act 2022, where there was no mention of women's digital exclusion, women's problems accessing technology, the tensions between gender and algorithmic justice or inequality issues relating to remote hearings.[8]

The bi-dimensional and socio-technical drivers to women's digital (in)justice

In the brave new world of justice reform, the new, very clear, guiding principle is that access is no longer defined by proximity to a physical building. Instead, access via technology is now viewed as the critical factor. Recognising the 9.2 million adults in the UK

who have never used the internet, the government, in its Transforming our Justice System White Paper, promised that no one would be 'left behind' (Ministry of Justice, 2016: 7) and it committed, in 2017, to conduct extensive research and testing on the new justice services. To date there is no discernible evidence that this has been done, other than some online impact assessments (see also Transform Justice, 2021a).[9] As more offences become automated, more defendants will be drawn into the online world. Any cursory audit of a magistrates' court in England and Wales will quickly demonstrate who the majority of court users are, and they too often fall within the realms of social disadvantage. It is these people that are most at risk from the government's plans, not the 'average working citizens' with 'busy lives' who have never (and may never) step foot in a courtroom in their life. Highlighted by Peay and Player, '*defendants … are not a random sample of the population*. They disproportionately include those who are rendered vulnerable and disadvantaged in various ways, whether by education, by employment, by birth or by bad luck' (2018: 940, emphasis added). Women in the justice system may inhabit one of the most precarious positions in terms of the digital divide, when gender, race and socio-economic status are taken into account (Blomberg et al., 2021).

The digital divide is complex, intersecting class, gender, race, politics and culture (Attewell, 2001; Ragnedda and Muschert, 2017; van Deursen and Helsper, 2015). Digital inequalities relate to access (first level), using (second level), and benefits and tangible outcomes (third level) (Ragnedda and Ruiu, 2020). Digital exclusion is bi-dimensional, in that it relates to both physical access and digital competencies (Ragnedda and Ruiu, 2020). Although it is important to stress that the socially disadvantaged do not always lack interaction with IT, it also follows that simply having physical 'access' does not necessarily equate to greater use (Goedhart et al., 2019). TP Hughes (1986) has labelled this as a socio-technical barrier, in that it is neither explicitly social nor explicitly technical, rather a 'seamless web' in which social and technical aspects impact one another. Research continues to demonstrate that the gender gap in ICT is driven by socio-economic social norms and cultural barriers that negatively affect females (Herbert, 2017; see also Bimber, 2000; Gurumurthy, 2004; O'Donnell and Sweetman, 2018;). Barriers to usage include cost, security, harassment and technical literacy (Herbert, 2017). Although there are clear opportunities for ICT to be a force for change, particularly in the field of e-government and public service administration, a report by the United Nations Economic and Social Commission for Asia and the Pacific (2016) found that some national ICT strategies still fail to integrate gender analysis in a 'meaningful way'. The idea that technology is a neutral platform that can be asserted to solve 'judicial' problems ignores important lessons from feminist scholarship. Research has long-exposed how women are more likely than men to self-criminalise (Lacey, 2009) and plead guilty to crimes they did not commit (Jones, 2011) to get things 'out of the way' (Dell, 1971; Edwards, 1984). Increased interaction with the justice system via digital channels is likely to facilitate such behaviours.

Considerations of net-widening and mesh-thinning are particularly pertinent in relation to marginalised women. When thinking about digital exclusion in relation to both first- and second-level barriers, marginalised female service users risk either breaching (due to access issues) or becoming entangled (due to competency issues) in the carceral web. The stakes are raised in both cases. If women do not possess the necessary

technology or fail to engage with a Single Justice Procedure Notice (the paperwork associated with the SJP that is sent by post), a notification to plead online or attend a virtual hearing then they risk being in breach of the system, with potential further consequences. If they do engage, then there may be challenges in relation to their interpretation of the consequences of the choice to 'go online', their confidence using ICT, and their concerns regarding surveillance and privacy (Seo et al., 2020). ICT can therefore complicate the relationship between certain citizens and the state, certainly when referring to those who are regular service users, likely due to their dependency on welfare or state support (Eubanks, 2011). It is certainly the case that technology has facilitated the 'hypervisibility' (Eubanks, 2011) of many marginalised women to government agencies, a situation that can increase vulnerability and lead to mistrust and deception (Eubanks, 2006). Research on such women (including women in the justice system) has exposed their suspicions towards authority, often having been surveilled by state institutions for all of their adult life (Fong, 2017, 2020; C Hughes, 2019; Opsal, 2009). The power of the carceral web is able to 'automate inequality' (Eubanks, 2019) and can reinforce the all-too-familiar experiences of domestic abuse, coercive control and offline/online victimisation experienced by many marginalised women in society (Dragiewicz et al., 2018; Sheehan et al., 2010). Throughout history, women's behaviours have always been closely monitored and surveilled through the patriarchal 'male gaze' (D'Cruze and Jackson, 2009; Smart, 1992). Viewing the gendered carceral web as an emerging extension of the justice system takes the concept of social control to its virtual extreme.

The digital dispersal of discipline: gender and the carceral web

Fifty years of feminist scholarship in the field of criminology has taught us a great deal about the circumstances surrounding women's lawbreaking and their experiences of the justice system (Burman and Gelsthorpe, 2017; Worrall and Gelsthorpe, 2009). Traditionally 'female' offences such as welfare fraud and stealing food and clothes have, on the whole, been viewed as offences with a lesser degree of culpability (Gelsthorpe and Loucks, 1997; Marougka, 2012; Birkett, 2016). Such offending patterns are often linked with domestic and family responsibilities, which have long been seen as a mitigating factor for women's offending (Eaton, 1986; Farrington and Morris, 1983; Worrall, 1990). One of the main purposes of the new online pleading system is to make non-imprisonable summary offences such as TV licence evasion, careless driving and failing to send children to school all automated by default, however. This could mean that many 'gendered' crimes will become 'gender-blind' in the sense that prosecuting authorities will no longer be able to 'capture interactions between agency, structure and context, which are central to feminist theories and research about women's criminalisation' (Hannah-Moffat, 2010: 204). Such developments risk running counter to the requirements of international and domestic equality legislation and the hard-fought gender-responsive strategies relating to diversion (Ministry of Justice, 2019), policing (in the form of increased cautions; Easton et al., 2010), sentencing (Roberts and Watson, 2017; Sentencing Advisory Panel, 2009) and probation (investment in women's-only provision in the community; Goldhill, 2015; Ministry of Justice, 2018a). The remainder of this article considers how the four elements of the court modernisation agenda that encompass the online courtroom (online pleading and

automated online convictions, the SJP and the expansion of virtual hearings) are already having a negative impact on marginalised female users of the justice system.

Online pleading and automatic online convictions are particularly concerning, certainly in relation to marginalised women. Both processes have the possibility to stray into the territory of coercive prescription, with flashy prompts promising to 'make it all go away' if a guilty plea is entered or a fine is accepted. In framing such interactions as 'just another public service', the government risks pulling more women into the justice net by virtue of their misinterpretation or misunderstanding, and their increasing likelihood of making decisions alone. The situation is compounded when we broaden the discussion to the tendency of some women to plead guilty or 'self-criminalise' (Lacey, 2009). Jones (2011), in his research on imprisoned women, found that the main pressures for pleading guilty when innocent were different for men and women, and often included childcare considerations and/or coercion. Jones's findings are consistent with much earlier research in the field by Dell (1971) and Edwards (1984) who found that women pled guilty for a number of reasons including: they thought there was no point in contesting the case, they wanted to avoid remand in custody, they hoped for a lesser sentence and, crucially, they wanted to get the matter 'out of the way'. Gudjonsson and Sigurdsson (2003), in their much-cited research, found that complicity with the system was highly correlated with feelings of low self-esteem and that this trait was more prevalent in women. Peay and Player have expressed similar concern that 'women demonstrate significantly higher levels of compliance and acquiescence in efforts to avoid conflict, particularly when dealing with those in authority or in situations in which they feel powerless' (2018: 946; see also Carli, 1999). Such behaviours underline the critical need for some form of legal advice or representation over and above Assisted Digital.

There are of course equal risks that some marginalised women will simply refuse to engage with the digital process, not simply because of exclusion, but because of their suspicions around surveillance, or their personal (precarious) circumstances. Research demonstrates how many marginalised women have 'second order risks' (Chan and Rigakos, 2002) in relation to caring responsibilities, motherhood, abusive relationships, mental health issues and substance misuse (Jordan, 2013). This combination of forces (Chigwada-Bailey, 2003) can make them less likely to engage with any official process that is likely to entangle them further.

According to Ministry of Justice (2020) data, the summary offences with the highest proportion of females among those convicted in 2019 were TV licence evasion (women are more likely to be at home when an enforcement officer calls), truancy (women are more likely to be the primary caregiver), drunkenness in charge of a child and benefit fraud (women make up a larger proportion of benefit claimants). Organisations are already highlighting how the vast majority of those prosecuted under the SJP are women for non-payment of TV licences (APPEAL, 2021, Gibbs, 2021). If government plans expand the remit of the SJP to the summary offences described above or extend some of the work currently allocated to the SJP to the system of automatic online convictions (Transform Justice, 2021a), the situation highlighted by APPEAL is likely to be exacerbated further. Any expansion of this system of algorithmic justice is likely to undermine the hard-fought wins in relation to gender-responsive justice.

Virtual hearings also have the capacity to threaten gender-responsive gains. The placeless, and often faceless, online courtroom provides no space or time for connection, for

safety, or for redemption. Such elements have long been discussed as core to gender-responsive justice (Gelsthorpe, 2009; Home Office, 2007; Ministry of Justice, 2018). Emerging research, much of which was conducted during the Covid-19 pandemic, provides insights into how the process will likely be experienced by marginalised women. One of the most recent evaluations of virtual courts conducted in 2020 by Fielding et al. raised concerns in relation to ICT and patchy guidance. Crucially, it identified a 'distancing effect' between defendant, legal representatives and court personnel, with evidence of detachment and exclusion (Fielding et al., 2020). Similar research has exposed that, in addition to issues affecting the quality of audio and pictures, defendants were routinely unable to see all participants. This meant that they were unable to gauge the mood or atmosphere, affecting their ability to understand what was going on and communicate properly (Transform Justice, 2017). Most concerning is the fact that administrative parties were able to 'mute' defendants at certain points, with the research highlighting that virtual courts could lead to 'the dehumanisation of defendants and undermine the right to participation' (Transform Justice, 2017: 18). Any system that has the potential to mute and dehumanise runs counter to gender-responsive justice, where decades of research has highlighted the need for women to be heard by official parties, and for them to feel that this is the case (Prison Reform Trust, 2019; Women's Breakout, 2014). Virtual courts have also worked to severely curtail any relationship between lawyer and client, with limited opportunity to develop trust and build rapport. Such factors have been identified as crucial for some women as they negotiate the criminal justice process. Research by Transform Justice (conducted during the pandemic) found that remote legal advice given in police custody negatively impacted people's ability to understand what was happening, that some solicitors were more passive, less likely to intervene in proceedings and less likely to hold follow-up debriefs (Transform Justice, 2021b; see also Fielding et al., 2020). Feeling uneasy or uncomfortable in such positions, many women will fail to disclose important personal information for risk of being judged.

When these collective changes are considered as one, the online courtroom, the court in a 'cloud', becomes one that can legally follow citizens around, can demand virtual compliance, and can collect more data on them than ever before. It has the remit to make marginalised female service users hyper-visible, further entangling them in in a welfare/carceral web that they may not fully understand while at the same time dehumanising, distancing and even muting them in their own personal space. Exacerbating the existing unequal justice system with its digital by default philosophy, the court digitisation agenda has implications for social justice, net-widening and future life chances. More fundamentally, it calls into question traditional understandings of the principles of fairness, transparency and equality, the very foundations of the justice system in England and Wales.

Raising the stakes … again

Certain elements of the court digitisation agenda represent the latest manifestation of the new penal welfare complex. The stakes have been raised for marginalised women defendants because online developments will likely exacerbate offline inequalities. More likely to be victims of the digital divide, government presumptions about ICT access and usage

(and indeed interactions with the justice system more broadly) has exposed them further. Pointing to the hidden hand of 'techno-fixation' (Postman, 1993) in the carceral framework, it is clear that official thinking is now bound to the idea that technology can provide a clean, neutral 'solution' to moral issues and questions of justice. It cannot.

Considering the court digitisation agenda through a gendered lens, this article has highlighted how the online courtroom risks running counter to the government's own reductionist strategy for women offenders (and countless former iterations), along with decades of work in the academic and policy fields. Player concluded nearly a decade ago that 'the contradictions that presently underpin penal policy for women are […] the logical and coherent outcomes of a process in which reforms rooted in principles of social inclusion and social justice are pursued within a broader penal context grounded on principles of "less eligibility" and "exclusion"' (2014: 291). Via its capacity to enmesh and entangle marginalised women even further, the online courtroom risks taking Player's concerns to an entirely new level.

Many questions remain unanswered. To date, the government has, for example, provided little information about who will decide what cases should be dealt with online, how it will ensure that there are no incentives for pleading guilty online, and how it will check whether it is the 'right' person responding to the Single Justice Procedure Notice or the online portal. Such issues are critical in this context, when considering the tendency for some women to take the blame or cover for others. Research to date has highlighted that, in addition to the barriers created by digital exclusion, defendants in virtual hearings have experienced silencing and dehumanisation (Fielding et al., 2020; Transform Justice, 2017). There can be limited hope for marginalised female defendants who, already experiencing a raft of sociocultural barriers, face the possibility of being rendered to a state of powerlessness, watching their future unfold in the virtual form. Removing possibilities for the intermediary of the lawyer via the cuts to legal aid (or requiring engagement with legal professionals virtually), such women may be left to negotiate the carceral web alone.

The gendered carceral web is likely to expand. The government is considering plans to develop the digitisation agenda from civil and low-level summary offences to include some indictable offences, where initial pleas will be entered online, hearings will take place remotely and only sentencing will take place in a physical courtroom. Possible offences could include the highly gendered cruelty to or neglect of a child, benefit fraud, conveyance of drugs or weapons into or out of a prison, and fraud by failing to disclose information (Ministry of Justice, 2020). Given the intersection between structural disadvantage and female offending, a key focus for criminologists and legal scholars must be on how the Ministry of Justice seeks to amalgamate the commitments made in its Female Offender Strategy with its plans to expand online pleading and virtual courts, and the gender-responsive mitigations that must be put in place.

Conclusion

The online courtroom can be considered as a placeless, sometimes faceless, virtual space that enables the constitutionally significant practice of judicial authority to follow a service user to any given geographical location. No longer confined to a physical

institution that can be entered, and accordingly left, it has the capacity, enshrined in law, to request compliance with the justice system via technology from a home, a hostel, a coffee shop or a park bench. It is increasingly experienced alone and speaks to Garland's (2002) 'culture of control', Foucault's (1977) conception of the carceral state and Cohen's (1979) notion of the dispersal of discipline, where the blurring of boundaries between institutional and non-institutional forms of control, between welfare and justice, and between public and private are ever more obscure. It draws on Gurusami's notion of carceral web entanglements (2018), and in so doing it raises concerns about the surveillance society, net-widening and mesh-thinning, and the place of neo-liberal values in the justice system more broadly.

Considering such developments through a feminist framework provides the opportunity to reflect further on issues relating to structural disadvantage, digital injustice and developments in e-justice. It also provides the opportunity to reflect more fundamentally on the digitisation of the carceral. In 'gendering' the carceral web we are able to consider the development of an 'inclusive' system that may result in structurally unjust outcomes for some. The reality is that e-government makes no space for gender, it is a rationally designed interface that is purposefully gender-blind. This is problematic given all that we know about the need for gender-responsive justice and the developments that have been made in the lower courts in recent years (Minson, 2015; Player, 2012; Birkett, 2016, 2021). It also risks running counter to the legal and policy developments promised by government a full decade ago (see Equality Act, 2010; Ministry of Justice, 2007). There is a risk that this technologically driven gender-neutral approach could exacerbate the tiered justice system, as the invisible digital poorhouse, historically housing poverty-stricken women, permeates further still.

The original conception of the carceral web as described by Gurusami (2018) is one that refers to both stickiness and entanglements. This article has adopted the entanglement analogy in its conceptualisation of the potential impact of the online courtroom on marginalised female service users. Given the position of many women within the justice system (already experiencing socio-technical barriers to digital inclusion, already key stakeholders of the digital welfare state, already vulnerable, often with a history of victimisation) a gender-blind, faceless, binary system of box-ticking between guilt or innocence feels like a retrograde step. The fundamental issue is that of social and digital injustice. Ultimately, and as highlighted by Eubanks (2011), strategies to alleviate the digital divide do not go far enough, because they fail to address the social and economic justice issues that are central to the lives of people who struggle to meet their basic needs. The long-term impact of the court digitisation agenda on such women is a story yet to tell, but as this article warns, the writing is already on the wall.

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Notes

1. See: https://www.lawsociety.org.uk/campaigns/court-reform/whats-changing/court-closures
2. I use the term 'marginalised' in the context of social exclusion. Social exclusion is a 'complex and multidimensional process' (Levitas et al., 2007: 9) that can happen when people suffer from 'a combination of linked problems such as unemployment, poor skills, low incomes, poor housing, high crime, poor health and family breakdown' (Office of the Deputy Prime Minister, 2004).
3. Gurusami's (2018) conceptualisation refers to both stickiness and entanglements. Stickiness refers to the internet's ability to make carceral histories inescapable across time and space, making it impossible for people to move on and shed their criminal pasts. Entanglements, of more relevance in this context, refer to the intersections of institutional carceral relationships that result from practices of digital connectivity. This includes data-sharing among institutions.
4. See the UK government Digital Inclusion Strategy. Key areas of focus include digital skills, connectivity, accessibility and trust (https://www.gov.uk/government/publications/government-digital-inclusion-strategy/government-digital-inclusion-strategy#:~:text=capable%20will%20be.-,What%20this%20strategy%20is%20about,individuals%2C%20SMEs%20or%20VCSE%20organisations).
5. See, for example: https://www.thetimes.co.uk/article/top-judge-prepares-for-justice-by-smartphone-bzg6zcf2k
6. The Bill fell due to the dissolution of Parliament in May 2017.
7. See https://www.legislation.gov.uk/ukpga/2022/35/contents
8. Only fleeting mentions of the disproportionate impact that the SJP is having on women were made during the Bill's entire legislative passage.
9. See, for example: https://consult.justice.gov.uk/digital-communications/transforming-our-justice-system-assisted-digital/supporting_documents/overarchingia.pdf

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