

# Gender and Crime: a red herring?

**Sandra Walklate** calls for a critical appraisal of when and how gender 'really matters' in relation to crime and the criminal justice process.

The recently mooted change to the understanding of provocation in relation to a defence to murder might appear to be a move in the right direction for those committed to campaigning around the way in which the law operates in relation to female defendants in such cases. The fact that such a proposal exists at all stands as testimony to the extent to which criminal justice policy debates have changed since the publication of Smart's seminal work *Women, Crime and Criminology* in 1977. However, in the intervening years since the publication of that book and the greater focus on the question of how to understand the gendered nature of provocation, raises the question of what has really been achieved and for whom?

Arguably much has changed in the criminal justice and policy arena since 1977. If we take, for example, those experiences of crime and criminal victimisation that have been the focus of much campaigning work like rape and sexual assault, or 'domestic' violence, it is easy to spot the differences. In both of these arenas the advent of the 'rape suite',

criminological agenda from one preoccupied with sex (males, females and crime patterns) to one concerned with gender (masculinity, femininity and crime patterns). This latter concern resulted in efforts to take the maleness of criminality seriously, in other words the extent to which committing crime was part and parcel of an expression of masculinity from the use of violence on the streets to fiddling the books in the suites. Cynically one might suggest that underneath this change in focus was a deeper-rooted determination on the part of a hegemonic masculine discipline like criminology to ensure that the discipline remained so! However such cynicism aside it did lead to some effort being made in trying to understand crime work as men's work. And hence, there may be still much to be learned from this concern in the contribution it can make in helping us understand the stumbling block referred to above. Criminal justice work, especially when it comes to the courts, and decision making in the courts, is still very much men's work. The focus on masculinity and masculinity theory, however, has in itself reached some stumbling blocks. To put it simply, if rape, for

***We find on closer examination that whilst more rapes are being reported, and more are being taken forward in terms of prosecution, conviction rates have fallen.***

the domestic violence unit, and the associated changes in policing have all made in-roads into changing how these crimes are understood and dealt with by the criminal justice system. Yet there are still stumbling blocks. In the context of rape, for example, we find on closer examination that whilst more rapes are being reported, and more are being taken forward in terms of prosecution, conviction rates have fallen. Arguably this is a result of an interaction between the much slower pace of change in the court process itself – see for example, the persistence of questioning styles employed by barristers to undermine the complaint reported in Lees (1998) – and the willingness of the police and the Crown Prosecution Service to take forward more 'contentious' cases ('date rape' for instance) that give room for barristers to exploit rape images with the jury. However such statistical patterns are produced, the gains made in one arena appear to be undermined in another. In the interim the criminological agenda has also shifted from a focus on *Women and Crime* (Heidensohn, 1985) to *Gender and Crime* (Walklate, 1995, 2000).

This change in focus reflected a changing

example, is to be understood as a product of masculinity, how is it that not all men rape?

For some theorists recognition of this problem has led them down the road of psychoanalysis and the use of the biographical method, for others it has returned them to the perennial criminological question of explanation: what is the relationship between statistical patterns (the behaviour of groups) and individual action? As Messerschmidt states: "Specific forms of gender, race and class are available, encouraged, and permitted, depending on ones' position in these social relations..... Accordingly, gender, race and class must be viewed as structured action – what people do under specific structural constraints" (Messerschmidt, 1997). In other words, there are other structural conditions that give frame, inform, and act upon people's behaviour.

So, we might conclude that structure does matter; the question is when? When is race, class, gender, sexuality, or ethnicity etc. the salient variable in contributing towards criminality, criminal victimisation or experiences as professionals or otherwise of the criminal justice process? This question has not gone away. It is one recognised in



the work of Naffine (1987) and is a dilemma that faces those who would campaign for changes in the interpretation of provocation in cases of murder referred to above. Ultimately, it is a question that reflects the classic tension between the universalism of modernity (wanting one rule to fit all) and the celebration of difference in post-modernity (many rules with many cases). Both positions produce anomalies in terms of outcome for individuals in individual cases. This, in the context of murder, can produce equally problematic results for males as well as females depending upon how well they match up with the white, normative heterosexuality of the court.

All of the above discussions, of course, reflect a very academic agenda. There is, however, a real political concern here. At one level, there has been much to commend feminist informed interventions in the academic and criminal justice policy arena, some of which are documented in this issue of *Criminal Justice Matters*. However, as MacInnes (1998) has argued there may be increasing evidence of some of the limitations to the 'personal is political' strategy of feminist inspired work. Patterns of injustice still remain, some of which cannot be changed by a personal political agenda. Perhaps he is right. Perhaps now it is time to reassert what politics is properly about. Not about the personal or political correctness, or about making proposals to

appease the latest pressure group that might win or lose the government the next election, but about the "collective struggle against material exploitation and inequality to achieve equal public rights for private citizens, using the sort of material which classic sociology provides" (MacInnes, 1998). Such a reassertion of what politics is about might benefit us all and, in the context of the discussion here, might lead to a much more critical appraisal of when it is that gender really matters. This seems to be one of the key questions for the future of both research and practice for those interested in the question of gender and crime and its impact in the criminal justice arena.

**Sandra Walklate** is Professor of Sociology, Manchester Metropolitan University.

#### References

Heidensohn, F. (1985), *Women and Crime*. London: Macmillan.

Lees, S. (1998), *Ruing Passions*. London: Sage.

MacInnes, J. (1998), *The End of Masculinity*. Buckingham: Open University Press.

Messerschmidt, J. (1997), *Crime as Structured Action*. London: Sage.

Naffine, N. (1987), *Law and the Sexes*. London: Allen and Unwin.

Smart, C. (1977), *Women, Crime and Criminology*. London: Routledge and Kegan Paul.

Walklate, S. (1995, 2000), *Gender and Crime: An Introduction*, republished as *Gender, Crime and Criminal Justice*. Devon; Willan Publishing.