

unable to survive the next episode. Again, it is vital that jurors are made aware of the history in order that they may understand the nature of the threat which the defendant feared. Even where a woman kills a sleeping partner, evidence of her circumstances may allow a jury to appreciate the absence of alternatives open to her, so that they may consider the reasonableness of her actions as they might those of a hostage who sees no alternative to the proactive use of force against a threat which may be rendered insurmountable if he waits to be attacked.

Self-defence exists in order to allow citizens to take steps to protect themselves where circumstances render it necessary for them so to do. Many battered women are faced with no realistic alternative to the use of force against abusive partners. The construction of the family as private and the resulting societal blindness to violence within it, the power inequalities which result from men's greater earning potential and the resulting economic dependency of many women, the isolation of many women within their homes and their subsequent alienation from formal and informal support structures, the unavailability of decent alternative accommodation for women who leave their abusers, the fear of pursuit and greater injury or death; these factors render many women hostages of domestic violence and make invisible any escape from that violence except by the force. The way to prevent battered women killing is to provide them with adequate alternative means of escape from violence, and perhaps then to condemn those who choose to use violence instead. Such a course of action would have the effect of saving the lives of battered women as well as those of their abusers. It is however a long-term solution, and one which requires the commitment of government rather than the law alone. In the meantime, society's failure to protect women from violence within their homes must be brought to the fore by defence lawyers and taken into account by those whose task it is to allocate blame.<sup>174</sup>

## FEMALE VICTIMS IN THE CRIMINAL LAW<sup>175</sup>

**Sheila McLean<sup>176</sup>**

There is no obvious reason why females should be victims in the general criminal law any more often than males. Indeed, in certain offences, there is little doubt that males are more highly represented in the victim group.<sup>177</sup> It may, therefore, seem unnecessary to treat females as a special category of victim, since liability to become a victim seems rather randomly spread, and is, apparently, not gender-specific. However, gender does have a relevance to the criminal law, not only in the methods by which female offenders are treated but also in certain types of offences – notably those involving sexual activities. Of obvious importance in such offences are the crimes of rape and incest which have, by definition in the case of rape, and by practice in the case of incest, a predominantly female victim group.

The contention in this chapter will be that the definition of rape whilst designed to offer protection to females and apparently importing no gender assumptions –

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174 *In Defence of Battered Women who Kill*, pp 521–29.

175 Sheila McLean and Noreen Burrows (eds), *The Legal Relevance of Gender* (Macmillan Press, 1988), Chapter 10.

176 At the time of writing, Lecturer, Institute of Law and Ethics, University of Glasgow.

177 For discussion, see M Hindelang, M Gottfredson and J Carofalo, *Victims of Personal Crime* (Cambridge, Mass: Ballinger Publishing, 1978); M Hough and P Mayhew, *The British Crime Survey* (HMSO, 1983).

none the less, by its concentration on certain types of forced sexual behaviour, and by defining rape in purely heterosexual terms,<sup>178</sup> has contributed to the generation of a sexual mythology which makes care and sympathy for victims less than readily available. Moreover, it will be contended that where rape is thus defined, the terminology itself perpetuates the view that rape is essentially a sexual offence, again contributing to the perpetuation of unhelpful (and unacceptable) stereotypes. Thus, the victim specificity of the crime allows for the varieties in victims to be ignored. It is well acknowledged that:

... women of all ages, lifestyles, or economic status are victimised by sexual assault. Nuns, grandmothers, toddlers, prostitutes, married, divorced or single women working outside or inside the home have experienced sexual assault from strangers, fathers, uncles, friends, husbands – men known and unknown to them.<sup>179</sup>

However, the one characteristic which all of these people share is their sex, a factor which should be irrelevant but which does, in fact, facilitate, if not encourage, the making of assumptions about victims and their aggressors.

Nor is the problem confined to rape cases. Since the contention is that it is the 'femaleness' of victims which plays a significant role in their admittedly harsh treatment, then this implies that the law and its enforcers are prepared to entertain certain disvaluing and insulting presumptions about gender, which are sufficiently powerful and ingrained to override anticipated concern for the victims of violent and degrading offences. There are groups other than rape victims who then become vulnerable to the importation of similar prejudice, again because of the fact that they are female. Most significantly, this will affect the victims of incest, who are predominantly female. It will be concluded, therefore, that the unreasonable prejudice attached to the female victim in crimes which are perceived as sexual, stems primarily from something to do with the combination of this perception and the fact of being female.<sup>180</sup> Regardless of the circumstances, therefore, and however many symbolic expressions of abhorrence society makes in respect of these offences, even children who are sexually molested may find that it is assumptions about female sexuality which predict the level of care and concern which they can expect when they become victims. The example of rape will predominate in this chapter. However, the victims of incest will often find themselves viewed in much the same way as the victims of rape, and indeed their treatment draws heavily on the attitudes generated and reinforced by the assumptions made about the one crime which, in many jurisdictions, remains exclusively the province of males to inflict on females.<sup>181</sup>

Moreover, in failing to recognise the true character of rape – its basis in aggression and in the struggle for domination over the 'weak' and the vulnerable – other groups who are also vulnerable are generally excluded from even the symbolic impact of the rape charge.<sup>182</sup> Furthermore, victim precipitation and

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178 See L Snider, 'Legal Reform and Social Control: the Dangers of Abolishing Rape' (1985) 13 *International Journal of the Sociology of Law* at 337–56.

179 Hanmer and Stanki, 'Stripping Away the Rhetoric of Protection' (1985) 13 *International Journal of the Sociology of Law* at 357–74.

180 For discussion of incest and its impact, see KC Meiselman, *Incest* (Jossey-Bass Publishers, 1979); S Forward and C Buck, *Betrayal of Innocence: Incest and its Devastation* (Pelican, 1981).

181 Sexual Offences Act 1956 (England); Sexual Offences (Scotland) Act 1976. See now s 142 of the Criminal Justice and Public Order Act 1994.

182 See Snider, *op cit*; see also (1986) *Guardian*, 22 January, for discussion of male 'rape'.

participation have become well used 'explanations' for unjustifiable behaviour. In other words, if rape is seen solely or primarily as an act designed (with or without encouragement) to achieve the sexual gratification of the offender, and for as long as it remains tied to heterosexual intercourse (which could otherwise be a pleasurable experience) then fantasies that the victim 'seduced' the attacker or 'enjoyed' the experience can be maintained, and the sexual rather than the violent motivation for the crime is rendered more credible.

This is not to suggest that there is no sexual element in rape, but, such as there is, it is 'sexual' in a manner somewhat different from that which is often presumed. In all rape, the use of sex as a weapon is significant as a means of manifesting the inherent violence of the crime and achieving dominance. The fact that rape involves vandalising the human sexual organs does not deny that sex is a significant aspect of the crime. If anything, it reinforces the significance of sex to all human beings. The ultimate degradation inherent in such violence lies in turning what could be a good and pleasurable act into a nightmare – by abusing these particular parts of the human physiology and psyche, total insult is achieved.

*Legal management of rape*

The law and its agents inevitably play a highly significant role in crime and its management. It has already been suggested that the terminology of the law in many jurisdictions can unwittingly import gender assumptions which are irrelevant to the fact of violence. Moreover, the attitudes of the law enforcer will have a major impact on the reporting of crime, on detection rates and on conviction rates, all of which are important if the system of justice is to operate in the desired fashion. Whilst most victims of, for example, assault or theft will report that they have been the victims of an offence, and can expect the instigation of certain procedures by the police and the courts, the victims of rape (and incest) cannot guarantee this, nor can they even be sure that they will be treated politely – far less with compassion. Thus, '[the] problems of victims of sexual assault who are courageous enough to identify themselves as such are notorious'.<sup>183</sup>

The initial question to be answered, therefore, is, why is this so? The answer is complicated and concerns the victim as much as it does the law. For example, in an increasingly violent world it is relatively common to read or see statements from the police to the effect that a particular person whom they are seeking is known to be violent and should not be approached by the public if sighted. Bank tellers are warned merely to hand over the money in the event of a robbery – resistance is seen as neither necessary nor sensible. The life of the individual takes precedence. However, if a woman is raped by this same dangerous individual, she is required to establish that she did resist him in order to prove that the intercourse was not consensual. The bank teller need not establish that he resisted the robber in order for it not to be assumed that he was complicit in the offence. The victim of a rape, however, must show this, otherwise a conviction will not be secured, and institutional abuse will be added to the physical and emotional violence of the initial attack.

Of course, there are differences in the nature of the offences which, at first sight, might seem to be so significant as to render the analogy unhelpful. In particular, it might be said, such examples have no relevance to the crime of rape, because in this case – unlike the others – consent is actually central to the offence itself.

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183 E Hilberman, *The Rape Victim* (Basic Books, 1976) Introduction.

The fact that a person intended to rob a bank will still render him or her guilty of the offence, even if the bank teller waives every assistance, and is actually hoping that the bank will be robbed. If a woman encourages or consents to intercourse, then there is no crime.

However, when considering the treatment of the victim, the real interest is not in whether there are differences in the nature of the crimes (which admittedly there are), but rather in the approach to their victims. For example, except in unusual cases, it will not routinely be the assumption of the police that the bank teller – or the bank itself, whichever is deemed to be the victim – was a participant in the commission of the offence, whereas in the case of rape it often seems that there is a clear presumption by the administrators of justice that an element of complicity or actual willing submission was present or likely. In practice, this is often the first assumption made when rape is reported, and its implications linger insidiously throughout the whole treatment of the victim. The fact that consent is central to the crime of rape, and not to the other used in the illustration, is, paradoxically, precisely what makes them useful comparisons. In the interests of crime detection, if the police can justify the presumption of consent in the rape victim as a useful device in identifying ‘real’ crime, then why is it confined in its use to rape? The bank teller who actually is complicit – and this must happen – might equally be treated with suspicion, since, if he or she is complicit then he or she is personally guilty of a crime, and the interests of justice would be served by detecting this. It appears, however, that assumptions about victim participation are only, or predominantly, made when the crime alleged falls into particular categories.

There are, therefore, problems for the victims of rape which do not exist in other cases, not least the attitudes of those with the responsibility for pursuing justice disinterestedly. Again, the differential treatment seems to be based not only, or even substantially, on the consent requirement in rape, but on assumptions about the victim herself. Is it really reasonable to assume that women hitch-hikers are likely to welcome intercourse with complete strangers? Is it rational to presume that women enjoy sex only if they are badly beaten by strangers (or ‘friends’)? Does the woman walking down a street really hope that she will be accosted by a stranger, and does she have no higher aspiration than to be abused by him? These questions may seem extreme, but they reflect the reality of the basis of prejudicial treatment of rape victims. However different those acting on these sorts of assumptions may regard their particular attitudes as being, it is factors like them which lie at the root of the mistreatment of victims of rape. Assumptions about the victim inform the attitudes of law enforcers to many aspects of the situation, not least the credibility of the victim’s statement. As has been noted:

Whereas testing the validity of a victim’s story is agreed to be a legitimate police function, the criteria by which validity is determined and the means employed by the police in so doing [in rape cases] are both open to question.<sup>184</sup>

The significance of the heterosexual terms of the crime itself is equally apparent. The assumptions which have been given as examples are derivative from the fact that heterosexual intercourse is, in most experience, an enjoyable activity. Therefore, and without any logic, it must always be desirable. Thus the victim

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184 TW McCahill, LC Meyer and AM Fischman, *The Aftermath of Rape* (Lexington Books, 1979), p 103.

must have wanted or enjoyed it. Since women are also often seen as passive sexually, then it should come as no surprise that they are seen as having enjoyed the experience of being 'taken' against their expressed will, or without regard to it. The emphasis on sexuality which this definition perpetuates, permits the traditional (male) views of female sexuality to be neatly incorporated into the treatment of the victim. Women are passive (and therefore, being ladylike, do not want to admit that they want sex), and dependent on male sexual recognition (therefore they tease or encourage male sexual activity). This is perhaps a convenient, but nonetheless unacceptable, manner in which to dismiss the claims of victims that they are indeed victims. It is here, too, that the significance of the female – only victim group, based on legal definition, can be seen. As Hilberman says: 'The profound impact of the rape stress is best understood in the context of rape as a crime against the person and not against the hymen.'<sup>185</sup>

However, since the common characteristic among the totality of raped women is their gender, it becomes apparently more tempting to make generalisations about the group, based on this factor. The characteristic which makes them a group – since it is not yet established that they also share the common characteristic of being a victim – is that they are female. By implication, their involvement in the alleged rape will have something to do with this characteristic. When this implication is combined with the assumption that rape is a sexual offence – implying sexual gratification – the door is wide open to stereotyping victims on the irrelevant criterion of gender, including the presumed sexuality of females as a group. Moreover, discrimination is completed by the failure to individualise – the group insult to all women which such stereotypes create and perpetuate completes the process of devaluation and abuse.

This is not insignificant as a conclusion, since it seems that gender differentiation is common in legal process, however irrelevant or degrading it may be. As Edwards notes, for example:

Instances of sex-gender division, that is occasions of the disparate treatment of 'men' and 'women' in their particular sex roles and the accommodation of men and women in their social and gender roles are readily observable features in both criminal law and the operation of the legal justice process.<sup>186</sup>

This does not merely mean that the law recognises men and women as biologically different – in itself not necessarily discriminatory – unacceptable. Rather, it permits of the incorporation as fact into the legal process of arguable, prejudicial and often degrading assumptions about the nature of males and females, and of role stereotyping based on simplistic presumptions about gender and its impact on behaviour. In particular, female victims of 'sexual' crimes are vulnerable to the application of these unreasonable presumptions. Myths about female behaviour and sexuality inform the treatment of both the victim and the offender.<sup>187</sup>

*The mythology of 'sexual' offences*

The sexual explanation of rape remains predominant, and is incorporated into the very definition of the crime. Myths about the victim are perpetuated and a relevant response to the situation rendered more difficult. As has been noted, in

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185 Hilberman, *The Rape Victim*, Introduction.

186 SSM Edwards, *Women on Trial* (Manchester University Press, 1984), p 4.

187 *Female Victims in the Criminal Law*, pp 195–200.

the case of rape, these myths inevitably centre on the common element in the victim – that is the fact that she is female. Victimologists may use this common characteristic to define or explain the victim in ways which stereotype both her and her sexuality, and expectations of the behaviour typically associated with males and females inform the explanation of the crime. For example, women may be seen as sexual teases, inflaming men to a point at which they cannot control themselves. This, of course, is not an uncommon ‘explanation’, and it is impressive in its cleverness, since it achieves two objects simultaneously.

The first is that it suggests that the intercourse in question is neither morally nor legally culpable. The man is, therefore, the victim of female stimulation of his sexuality, and entitled to the gratification which he seeks. However, if that line is a little lacking in credibility, the second strand of the ‘explanation’ can serve to isolate the man in question. Thus, if it cannot be accepted that all women are teases in this way, at least it is possible to concentrate on the outrageous sexual appetite of the offender, thereby distinguishing him from ‘normal’ men who would, of course, never do such a thing. Criminologists and others can then explain the offender in such cases as ‘over-sexed’ and, therefore, more susceptible of treatment than punishment, whilst at the same time distinguishing this group of men from the rest. As Illich has pointed out, in another context,<sup>188</sup> there is great value in this kind of approach, since every society seems to need people it can label as ‘strange’ or ‘different’ in order to reaffirm its own normality. So efficient is this ‘explanation’ of rape that it may seem scarcely surprising that it has retained a dominance in current thought (at least current male thought).

However, victims in these cases may find this ‘explanation’ less than satisfactory – not to say, offensive. In legal terms it also is significant, since it and related presumptions present a hurdle for the victim of rape (and of other offences classed as sexual) which does not exist for victims of other crime. Again it seems likely that there is something about the nature of the offence, or the nature of the victim, which stimulates this differential treatment. It has already been suggested that the categorisation of the offence as sexual leads to problems. But what of the victim?

One obvious distinction between the victims of rape and those of other crimes is, as has been noted, their gender. Indeed, any other similarity in rape victims is difficult, if not impossible, to find. However, unless gender is being used *per se* as a characteristic which leads to suspicion, mistrust and hostility, it is difficult, at first sight, to understand why it should be seen as relevant at all in a legal context. It would be good to think, then, that it cannot be this common factor which leads to the unusually harsh treatment of victims in these cases, but, unfortunately, to believe this is to demonstrate excessive naïveté. The history of the crime of rape and the treatment of victims, coupled with the extensive discrimination against females which exists even in so-called civilised communities, suggest that mere membership of the female sex is sufficient reason to restrict rights and freedoms, to disvalue contributions and to minimise autonomy.

The suspicion of the law and its enforcers towards (female) victims of rape, is encapsulated in resistance to legal reform. Suggestions that the corroboration requirement is a major hindrance to the effective safeguarding of women, since it renders conviction very difficult, are met (reasonably) with fears that the legal

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188 I Illich, *The Expropriation of Health: Medical Nemesis* (Penguin, 1977).

process is thereby rendered more susceptible to abuse and unsoundness. This is a major concern, but arguments based on it lose some of their credibility when one considers that the present system can scarcely claim to be any better – merely it seems to favour one group (the male attacker) over the other group (the female victim). In any event, as has already been suggested, it may be that compassionate treatment of victims would lead to a situation where alternative corroborative details might become available. Equally, were the assumptions that women consent to intercourse with strangers in bizarre situations to be removed, then the circumstances of the offence might themselves provide an element of probity.

Unfortunately, another commonly held myth comes into the arena at this stage. Resistance to legal reform is not merely based on the difficulties of maintaining legal principle, but also – sometimes quite overtly – on the further fantasy that women routinely ‘cry rape’. Convictions based solely on their evidence, and with no proof of force to provide corroboration, are, therefore, instantly suspect. Given the assumptions about male sexual gratification and female sexuality, this barrier to reform of the law – or of attitudes – is scarcely surprising, and heralds the emergence of yet further problems for the rape victim.

It is, as Toner cogently points out, no longer rape which is under consideration, but ‘real’ rape. As she says:

Rape occurs when a woman’s consent to intercourse is disregarded but the more closely it resembles seduction the more easily it is forgiven. Any indication of sexual aggression on the part of the victim – in her dress, her language, even in her failure to remove herself from the threat in time – mitigates the offence. She will be judged to have stepped out of line and to have forfeited her victim status ... The clearer her sexual neutrality, the more violent her assault, the ‘truer’ a victim she is seen to be.<sup>189</sup>

The assumption that females are only truly raped when they can prove their innocence of this ‘sexual aggression’, is both generated and reflected by viewing rape as a sexual offence. If it is a crime of violence, then the attitude, sexuality or sexual attractiveness of the victim are all irrelevant. Failure to remove yourself from the scene of a possible assault – for whatever reason – does not render the intention of the assailant less culpable. Studies have shown that many rapes are accompanied by threats of the use of weapons which would make flight dangerous or impractical.<sup>190</sup> Nonetheless, the victim of rape is obliged to attempt escape or violence, or run the risk of being disbelieved. Moreover, failure to do so may well influence the assessment by the law enforcer, either as to the victim’s willingness, or the reasonableness of the assailant’s belief that she consented.

If rape continues to be viewed as a sexual offence, then the failure of the victim to maintain permanent suspicion – of all men in the street, in her home, on the bus and at work – can be – and is – interpreted as a covert and unspoken acceptance of sexual advances. Such an approach is almost too outrageous to have credibility, but the overtones of sexual mythology (about females and males) which remain inherent in both the historical and the contemporary views of rape, make it apparently acceptable. Thus the view of the victim as precipitator or participator is reinforced and the behaviour of the male who ‘just got carried away’ is explained and decriminalised. Indeed, it is bereft even of more

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189 Toner, *The Facts of Rape* (Arrow Books, 1982), p 108.

190 Walker and Brodsky, *Sexual Assault* (Lexington, Mass: DC Heath & Co, 1976), p 50.

opprobrium. And, of course, in those situations which cannot be neatly fitted into this latter explanation, then the man who behaves in this way can conveniently be separated from the 'normal' man, and his behaviour explained away in other terms. Moreover, such perceptions seem often to have influenced what should otherwise be informed comment on the crime itself. As Toner says:

In identifying victims and rapists, researchers concern themselves with the contribution of the victims to the crime and the motives of the men who commit them. Undoubtedly these are important questions. Those who seek to answer them satisfactorily, however, are apparently hampered by an unhappy predilection to apportion blame to the victim and find excuses for the rapists – succumbing to the always popular belief that men are driven to rape women who lead them on.<sup>191</sup>

*Rape and incest*

Many of the comments about rape and its victims also apply to those who are the victims of incest. Although rape and incest are often considered as separate offences, the differences between the crimes are not necessarily major. Of course, some incest is clearly rape, but much of it is apparently consensual. However, even a moment's consideration of 'consensual' incest will show that the pressures on children to participate in sexual activity of this sort may often be similar to those on adult women not to resist a rapist. In other words, the quality of compliance should be considered, rather than the lack of apparent resistance. Both sets of victims share a number of common characteristics which are significant both to the contention that such offences are power and violence motivated rather than the outcome of sexual desire, and to the argument that gender may significantly affect the quality of treatment of the victim.

Furthermore, evidence of the way in which incest victims are treated shows such clear parallels with the treatment of rape victims that it is difficult not to conclude that the experience of the rape victim has significantly affected that of the incest victim. At first sight, however, it might seem difficult to explain such apparent similarities since, even if the view of adult females already described is unacceptable, at least the person is adult, and might be expected to be able to take care of herself. However, in the standard case of incest (at least as far as incomplete statistics can show) the victim is often young, and it might, therefore, be expected that the specially protected status usually accorded to children would lead to the victims being dealt with compassionately and with great concern in the face of the traumatic effects of another's behaviour. Society's concern for children – concern which is used to limit their rights in potentially exploitative situations – could be expected to move into top gear in situations of this sort. However, the evidence does not suggest that this is routinely the case. The incest victim may run the same gauntlet of hostility which is the lot of the rape victim. It has been suggested that apparent vulnerability marks certain groups out for potential victim status. Whilst it might not be obvious why adult, sane, fully fledged human beings should be regarded as inherently vulnerable, as is apparently the case with the female of the species, there may seem to be good reasons for regarding children in this way. However, as with adult females, vulnerability – an apparent predictor of the likelihood of abuse in a power relationship – should result in additional protection, if it is indeed such a predictor. Given the treatment of rape victims, it is clear that if vulnerability pure and simple were what made them victims, then it certainly does not lead to

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191 Toner, *The Facts of Rape*, p 108.



protection. Rather, vulnerability makes them exploitable, whilst at the same time they are deemed to be fully fledged participants when that is convenient in explaining this exploitation away.

This is no less true of the victims of incest, even although they are often children. The question, therefore, is, what is it about the victims of incest which provokes society into rejecting its otherwise benevolent stance in their respect? Why should the child victim of incest be subjected to the institutional abuse which seems to be built in to the treatment of rape victims, in addition to the trauma of involvement in the offence itself?

The answer to these questions may not be so difficult as at first sight appears. The treatment of the rape victim and the incest victim shows similarities for two very obvious reasons. Firstly, that the offence is categorised as sexual rather than violent, and assumptions about the sexuality of the participants can therefore be built-in to the treatment of the offender and the victim alike. Secondly, and crucially, the average victim of incest shares what has been claimed to be a fundamental predictor of treatment by the legal process, that is, the female sex.

Although males may be the victims of incest, it remains the case that – as far as the, admittedly incomplete, figures can show – vast majority of incest is father-daughter incest.<sup>192</sup> As with rape, the aggressor is male and the victim female. Moreover, in incest cases the power struggle involved in the deliberate abuse of another's sexuality is even more clear than it is in cases of rape. That fathers use their daughters in this way seems to demonstrate that the concept of property (including the capacity to use property) which so bedevilled attempts at female emancipation, is alive and well and living in the nuclear family. Despite the powerful emotional mysticism surrounding both sex and the family unit, the privacy and sanctity of the female participants are regularly, and often violently, disregarded and abused.

Nor does the pattern of abuse stop there. As with the victim of rape, the incest victim will often find her allegations treated with suspicion, and the evidential requirements are equally problematic. The sex of the victim permits of perpetuation of theories about their behaviour, which bear striking resemblances to those used to stigmatise the victim, and to explain the offender, in rape cases. In showing that incest may be generated by a need for affection on the part of the aggressor, by showing that sexual feelings between adults and children are normal, the fundamental point is missed.

Moreover, the former of these also may serve to implicate the wife in the offence, thereby doubling the female guilt in the process. As with explanations and theories about offender and victim in rape cases, it is of course important that sound theoretical views are stated and tested. However, the crucial question of why, in the case of incest, the aggressor turns to the particular victim is often lost in a morass of conflicting and confusing emotions.

It has been claimed that vulnerability is not *per se* a sufficient explanation for the abuse of women or other groups. Nor is the sexual drive of the aggressor either an explanation or an excuse. Indeed the emphasis on such explanations fails to challenge the apparent assumption that sexual gratification or solace can be achieved by non-consensual intercourse. In fact, what seems to be crucial in the treatment of victims is the sexual stereotyping which their gender routinely seems to import. The dangers of such assumptions can be clearly seen when such

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192 See S Forward and C Buck, *Betrayal of Innocence*; Meiselman, *Incest*.

stereotypes are translated into the case of incest. In fact, in this case, the element of power or domination can be seen most starkly. Indeed, in the case of incest, the very factors used to explain the choice of victim, might equally have been expected to be the crucial elements which would prevent its occurrence – that is, the proximity of the victim and the relationship of trust which is thought to exist between, for example, fathers and their daughters. Even if convenience is an explanation for the choice of victim, it is not convenience pure and simple. The taboo surrounding incest is powerful in many societies, and generally must be overridden. Is it not more likely that the explanation relates rather to the control which fathers perceive themselves as having in respect of their daughters, and the assumption that female sexuality is there for male enjoyment – factors which are evident in the history of male treatment of females in general? Nor can sexual deprivation explain the offence in the face of these other considerations, unless the assumption that male sexual desires take precedence over those of females – which was evident in the case of rape – is also imported into thinking about incest and its victims.

The conclusion that incest, like rape, is an act of male domination and a demonstration of power and aggression, is again forced into the forefront. It may be concluded that '[to] rape is not a fundamental instinct, nor is it a sexual act. It is an act of aggression and hostility and it flourishes where cultures encourage it'.<sup>193</sup> Sexually to use your daughter shows characteristics of striking similarity.

#### *Conclusions*

Whilst it may be true that '[all] democratic countries have as one of their highest aspirations the attaining of equality among their citizens'<sup>194</sup> it is also true that 'in no democratic country in the world do women have equal rights with men'.<sup>195</sup> Thus, although adult females may be formally accorded full citizenship of a country, and female children may apparently be equal members of the family unit, they remain second-class citizens in many vital ways – not least, in their rights to freedom of choice in sexual matters. Their freedom in this vitally important area is, and will remain, limited, for as long as men continue to view women as sex objects, and the enforcers of the law remain predominantly male.

An overview of the crimes which are characteristically inflicted by males on females, and which are completed by sexual violence highlights a number of troubling, but important factors. First, that non-consensual sexual activity is very much a part of the history of most cultures, and, even more strikingly, that the victims of such abuses are predominantly those who can be characterised as weaker, more vulnerable or subject to the power of those who represent society's dominant norm – that is, the heterosexual male. This is a damning, but unavoidable, conclusion.

Moreover, there is a major paradox in the fact that laws expressly designed to protect those groups which are most commonly abused have succeeded – through their terminology, interpretation or enforcement – in perpetuating and reinforcing the problems which make these groups vulnerable. The terminology of rape ensures a tightly defined victim group, around whom fantasies degrading to all women can be spun. Furthermore, these same fantasies lend themselves to other situations where females form the vast proportion of the

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193 Toner, *The Facts of Rape*, p 50.

194 J Mitchell, 'Women and Equality', in J Mitchell and A Oakley (eds), *The Rights and Wrongs of Women* (Penguin, 1976), p 381.

195 *Ibid.*

victim group. Whilst gender may be a relevant factor in certain situations, as indeed it was in the development of the outlawing of rape – expressly designed to protect one gender group – it is an irrelevant factor in the treatment of victims of violent and traumatic abuse. The conclusion that the fact that a victim is female explains the hostility, aggression and disbelief with which the victims of rape and incest are treated, is one which right-minded citizens would hope not to have to reach. Yet there is no other factor which obviously links them. The violence inherent in these crimes is thus disguised, both by the concentration on sex and sexuality which is contained in their definitions, and by the theories offered to explain the offender, or to justify caution in believing the victim.

Clearly, however, improvements in the treatment of victims cannot be achieved by legal change alone. Although the definition of rape may have contributed to the problems of the victim, and the consequent treatment of female victims may have had significant impact on the victims of incest (at least where they are also female), there is clearly much more at stake than mere legal terminology. When flatly stated, the assumptions about female sexual behaviour, which generate maltreatment and hostility, seem so ridiculous as to defy belief. They are, nonetheless, deeply rooted in the treatment of women in general, and the victims of 'sexual' offences in particular. To discriminate against females seems so endemic to society that mere legal rules or legal change cannot bring about the emotional and intellectual revolution which would be required to change the situation, although they may go some way towards improving it.

However, for as long as societies do not question the assumptions on the basis of which members of a particular sex are treated, and do not challenge the relevance of gender in these matters, the pattern of abuse is complete and seemingly permanent. Not only will females be vulnerable to abuse and attack, but the acceptance that gender is relevant imports into the management of victims – inferences – degrading both individually and collectively – which preclude compassionate and effective treatment. Gender may make females vulnerable, but it is irrelevant to the fact of abuse, and should be seen as such in the treatment of victims.