# The criminal justice response to women who kill

An interview with Helena Kennedy Sheila Quaid and Catherine Itzin

## Introduction

This chapter is based on an interview with Helena Kennedy QC by Catherine Itzin. It has been edited into the form of a narrative, covering a range of issues relating to women and the criminal justice system, and in particular explores the question of 'Why do women kill?'. In Helena Kennedy's experience of defending women, she asserts that most women kill in desperation, in self... defence or in the defence of their children. Women's experience of violence and escape from violence has received much critical comment and campaigning for law reform over the past few years and some cases such as Sara Thornton, Kiranjit Ahluwalia and Emma Humphreys have achieved a high public profile as campaigners have fought for their release from life sentences. All three women had sustained years of violence and abuse from their partners and had killed in their attempts to stop the violence.

## Who women kill

Women are rarely involved in serial killing and they almost never go out and plan the anonymous killing of a victim with whom who they have no connection at all. For the most part women kill people they know and primarily these people are men. They kill within the domestic arena: they kill their husbands, their lovers, their boyfriends and sometimes they kill their children. Occasion... ally it might stretch beyond the domestic parameter, but the numbers are incredibly small, and when women kill it is when something is going very wrong with their domestic environment.

I've often thought it rather interesting that women don't kill indiscriminately such as poisoning beer in pubs or killing large numbers of men willy...nilly, particularly given the way women can become so damaged by what they have gone through as children at the hands of male family members. There are men who kill women who are complete strangers, coldly and systematically. However, women rarely ever do that. They actually kill their nearest and dearest, they kill their family members. For this they are regarded as monstrous, as if it were somehow worse to do it to people who are close to you, when in fact the killing of a stranger is more pathological and more bizarre. The business of actually losing control, and feeling that you can't take any more from your partner, or from your child, is far more understandable, and the psychology of that for me is much more comprehensible than going for the stranger on the High Street.

Women are still stereotyped in the caring, caretaker role and that's one of the reasons why in Victorian times it was considered one of the most heinous of crimes for women to poison the food of their men. The female poisoners somehow went down in the annals of criminology as being the most feared of offenders, because there is something perceived as particularly awful about feeding poison when you are supposed to be nurturing. Through food, one is supposed to be giving sustenance and love to those for whom you care. So there is something particularly offensive about the idea that the woman who is supposed to be the caretaker of the hearth, the home, and the children, the lover and the husband, should in some way provide the opposite of nurturance. It goes against the grain, because of the profoundly accepted notion that women have a nurturing role, and that to subvert that role is somehow offending against more than the criminal law. It is also offending against nature and some moral order, and the fear is that the female offender undermines the very fabric of society.

Most of us have experienced dealing with a crying child, but something usually stops us from actually shaking it so that its brain becomes damaged, or from actually hurling it against the wall, or, with a partner, actually taking the knife out of the drawer. But there are sometimes situations in which that line is crossed because circumstances come together which are so traumatising that no more can be taken. I don't think this points to the inadequacy, or indeed even the monstrosity of women. It's usually the culmination of a whole series of circumstances. Very often, it's also about a sense of powerlessness, a sense of having no control over the circumstances that someone has found themselves in.

For most of the women I have represented who have killed their partners, they became unable to take either any more physical abuse or any more psycho-logical abuse. A point of no return is reached where they know that their own physical integrity is actually at risk, and that they are not going to survive. Often they've used very complicated mechanisms for survival, and then, sadly and ironically when they come into court to do the trial, the very mechanisms the women have used to survive are turned around and used against them. For example, I experience an enormous sense of irritation and frustration in cases when, time after time, I hear prosecuting counsel say to my client, 'If you were so badly beaten you would have left. You're exaggerating this account now in order to discredit your husband to get sympathy from the jury and you're a liar, a calculating liar.'

Of course, we know that the measure applied by men at the Bar is based on the assumption that if it were so terrible the woman would have left. This is the eternal question that comes up in the history of cases where women have been battered, and it does not take account of the reality of the lives of those women. For many different and complicated reasons, women try to sustain relationships. They try to keep it going, they do hang on in there and they do so because on the practical level few alternatives are available to them, of where to go with young children.

Living with violence

Women who sustain physical and psychological abuse usually have numerous strategies for dealing with the stress and the demands made on them. The contradictory nature of women's lives, and of the legal framework dealing with domestic violence, contribute to a situation where women have few possibilities for escape. Once your autonomy is being eroded continually with physical and psychological abuse, your ability to start taking decisive action is undermined. Those kind of controlling men are not going to let you walk away very easily and women know that.

Lawyers and judges are often genuinely puzzled by women's response to violence. It is necessary to get across the social demands women feel and their belief that the violence is their failure. The business needs to be understood of not telling the world because of your shame and your sense of not living up to the ideal of a perfect wife and mother whose husband would be satisfied with her. The idea that somehow if I were a better wife he wouldn't be hitting me; if I met the high standards that he's setting, then he wouldn't be feeling so angry, he would not come in making impossible demands. I'm obviously not good enough in bed, as a housewife, as a mother. Women end up blaming themselves and they don't want the world to know. They also minimise their own physical symptoms again because the sense of failure is so strong. Women will not visit the doctor, will not confide in their sister, or their mother, will not talk to friends and will actually hide or give false accounts of how they came by their injuries.

Interpretations in court

When the account of violence is challenged in the court room, prosecutors say 'Here is the medical record and it says here you had an injury to your ankle but you fell down your back stairs as you

were going to hang the washing out.' She says, 'Well that is just what I told the doctor.' The prosecution will then argue the truth of the record, and that she's now making up the story to discredit her husband's character. At every turn these strategies for survival are hoisted up and used against women in court. It is very frustrating for those of us who are doing these cases. We are on a learning curve ourselves about domestic violence, but we are still amazed by the ignorance of colleagues about the issue. A major problem is in trying to use the defence of provocation for women who kill their partners. At the moment we are slowly beginning to shift the ground, and are creating a climate in which there is more listening being done.

One of the ways I have sought to do this is by challenging the stereotypes and misperceptions. For example, when using the defence of provocation, there is a 'reasonable man' test. The measure is this: Stage 1, in the face of provocation did the accused have a sudden and temporary loss of self control? and Stage 2, would a reasonable man in those circumstances have lost self control?

The general public doesn't know, and even those campaigning on this issue don't realise, that there are two stages in the provocation argument. One is the subjective test, the second is the objective test. The reasonable man test asks, 'Would a reasonable person have responded in this way?' The rational prosecutor would say to the rational juryman, 'If someone was doing this to you, you would get your coat and hat on and you would be out the front door.' To wait and retaliate seems like an act of revenge. Unless the person on the jury knows and understands the complexities and effects of domestic violence, then the defence of provocation is never going to work properly for women.

Our argument now is that when it comes to the objective test, the jury have to consider the enduring characteristics of the person in the dock. In cases of women killing violent partners, the enduring characteristics of the woman who sustains battering should be taken into account: to consider what the whole history of battering can do to somebody. The jury must be entitled to know that. On this basis we argue for the calling of expert witnesses in court to talk about the effects of long, term abuse in general, and the particular effects upon the woman on trial. I have found that this approach raises some awareness. Not only does it have an impact on the cases of my individual women clients, but it is actually educating those who are involved in the process, because judges are hearing experts in the held talking about domestic violence in a way that they have never heard discussed before.

Let me explain the legal antecedents for this. The case of *Regina v. Camplin* decided that the test of the reasonable man could affect injustice if very particular aspects of a defendant were ignored, e.g. age or race or gender. In the 1960s there was concern about race: that it was unfair to ask an all,white jury whether a reasonable man would have been so affected, if the man in the dock was a black man, and the provocation he was subjected to was racism. What is provocative to a young black man may be very different because taunts about race relate so profoundly to his particular being. The court decided in the case of Camplin that a jury must attribute to the reasonable man the enduring characteristics of the person in the dock.

A line of cases has now developed, including some which allow battered women to invoke their experience of battering as an enduring characteristic. The question as to whether there are particular features that lead women to kill is difficult. It is hard to say, as cases are so different. What is much more con, stant is the similarity of the behaviour of the men. I hear stories about men who are extremely possessive, who imagine that their partners are interested in other men, or who imagine all kinds of slights and all kinds of ways in which their women, even by a look or a glance, are being unfaithful to them. They are usually profoundly insecure themselves, but can appear to the world as charming and attentive partners. Repeatedly, I hear about obsessional behaviour in relation

to cleanliness and standards of behaviour, expectations of how proper women are supposed to behave, not just in terms of how they must look after the household, but how they are supposed to behave and look after their children. I am told of men who tour the house, running their fingers along the furniture to see that their house is kept spotlessly clean, that their children are turned out in pristine condition. If the women dress themselves up, they are whores and tarts, and if they don't, they are slags and unattractive. So they can never win.

The abuse can be very different, though. On the one hand, I have represented Pamela Sainsbury whose husband used to treat her like a dog. He used to put a dog chain around her neck and used to make her eat from a bowl on the floor. He beat hell out of her, humiliated and degraded her most of the time. Her life was wretched and in the end she garrotted him. She put a rope around his neck when he was asleep in bed, looped it around his head, went to the other end of the room and pulled. On the other hand, June Scotland's husband had hardly ever raised his hand to her, but he was a tyrant who persecuted her mentally. She lived in terror of him until she discovered that he had been sexually abusing her daughter and could take no more. This case was the basis of the Brookside story of a battering, abusive man who was killed and buried under a patio. The time comes when a woman somehow knows she has reached the point of no return. The point where all her usual strategies for coping will not sustain her, where she cannot be confident she is going to make it, she feels that she will end up dead or have a breakdown, she is not going to be able to carry on. Often in these situations, there is a real terror of what that would mean for her children, that she is the one who has to care for them.

Abusive relationships destroy a woman's self worth so that she ends up believing it is her own fault and she deserves no better. The abuser becomes all powerful in the eyes of the abused. Even when women kill their husbands they can't believe he is dead. It's totally irrational, but they come running down stairs and get into the car and they think he is going to come down after them. Even if they have taken a 12 bore shotgun to him, they still think he is omni... potent. In the case of Pamela Sainsbury she ended up cutting her husband up to get rid of him. She still thought it was all a bad dream and that he was going to come and get her. This is about being so controlled by someone, that you cannot imagine that you might have taken some action to reverse that.

The concept of the 'battered woman syndrome' has come to be used to explain what happens to women in these circumstances. The best description is contained within a Canadian case, called Regina v. Lavallee. In the Lavallee case, judgment was given by Madame Bertha Wilson, a wonderful Scottish woman judge on the supreme court of Canada. Until recently three out of nine on the court were women, and they say that in fact now, the women don't have to protect women's rights, the men are as active as any of the women in that court. I think it's because the discourse of that court has been changed by the presence of women.

The judgment in the Lavallee case offers a fine presentation of what domestic violence is all about, and how it affects the person living with it. The judgment explains that it is about an abuse of power and the exercise of control. The syndrome is a subcategory of post-traumatic stress disorder and involves a constellation of symptoms engendered in abused women, including depression, feelings of hopelessness, learned helplessness, heightened arousal in relation to anticipated violence, belief in the omnipotence of the abuser.

In Lavallee, the accused had shot her husband as he was walking out of the room with his back to her. The prosecution maintained that it was a clear act of vengeance. The pathologist's report made it very clear that this was a man who was certainly not attacking her at the time. He was in retreat when she fired at him. She did not give evidence at the trial, but a psychiatrist testified that she was

suffering from 'battered woman syndrome'. There was also evidence that she had sought injunctions against him and was in terror of him. Although he was not coming at her at the time of killing she felt unable to take any more. Knowing that he was in retreat at that moment did not mean he would not be coming back for more. She felt unable to leave him, believing he would find her, wherever she went. They allowed the expert witness to explain what long term abuse can do to women and how, in the face of the violence, the woman knows that although Round 1 is finished, Round 2 will be starting soon.

The 'battered woman syndrome' is now used here in Britain. I am conscious of its weaknesses, but I also think it has helped me secure the acquittal of many women who might previously have been convicted of murder. Instead they have been found guilty of manslaughter and sentenced with compassion. It has also been a powerful tool in educating judges, lawyers and juries about domestic violence. But it does have shortcomings.

The risk is that women who do not have the 'full syndrome' are assumed not to be really battered. It is also not popular with very orthodox psychiatrists who readily come to court to be dismissive of its validity. Many feminists also feel it pathologises women who are actually responding perfectly rationally to life threatening behaviour. In other aspects of their lives, battered women can be effective and not helpless. They can be perfectly good mothers and hold down responsible jobs. The temptation is for the court to stereotype victims of abuse as passive, meek women when often battered women are feisty, capable women ground down by their experiences. However, good experts are able to meet such challenges and can give a real authority and weight to the reality of battered women's lives.

One of the positive outcomes for women living in violent situations is the increased awareness of the effects of violence. What's become very clear is that many of the actions taken by my clients are rational, normal responses, which are seen as normal in the face of abnormal behaviour directed at the recipient of abuse. If somebody is actually continuing to abuse you over and over again, to eventually say 'no more' is not abnormal behaviour. One has to challenge the idea that there is something not quite right or inherently susceptible in women who get into these relationships. The reality is that all manner of women can end up in situations where they are being abused. It may be right that women who have low self-esteem may be sought out by men who are violent, but it is by no means always the case. I have represented strong, interesting women who have slowly had their self-esteem eroded by abusive men.

One of the problems in all this is that it is undoubtedly true that 'cycles' do exist, and when I go into Holloway Prison to talk with women there, it is becoming clear that the majority of women who are incarcerated in prisons for killing their husbands, end up being in abusive relationships because of the damage of abuse they have previously experienced. This can mean that women's own value of themselves becomes such that they will settle for relationships in which they are badly treated very often thereafter. Retrieving that, helping people to get whole again often involves work, and few women are given that opportunity. So that 'cycle' is there. However, it has led many people who are involved in psychiatry and psychology to somehow imagine that those who are treated badly by men must themselves have some kind of propensity in that direction. These assumptions feed into the idea that women who are battered are women who ask for it. Alternatively, it can feed the idea that some women, because of ill treatment in the past, actually expect it and therefore set up that dynamic in whatever relationship they have. These assumptions exist in the field of psychiatry and certainly run around courtrooms. However, it is the case that they themselves have been previously abused, perhaps in the home as a child. This is very often the case, but not always. I have concerns about rejecting the theory of 'cycles' because there are clear connections between the effects of

abuse and further abuse. There is a tendency among feminism to reject the idea of 'cycles' of abuse, which is understandable if the inevitable conclusion is that there is a trap in which women are continually victimised. It seems to me that we have to accept certain patterns.

At the beginning of the second wave of feminism, women of our age didn't want to take any hostages, because we knew that we would be penalised. If we wanted to work and have a family, you could never be allowed to say it was hard. If you did, the response could often be 'Well get back to the kitchen'. We had to go into denial about a lot of things then, but we cannot carryon doing that about some issues. For example, saying that every woman who alleges rape is telling the truth about it. The majority of women who allege rape are telling the truth, but some are not. I have represented women who have made stories up. They are few and far between, but they do exist. That is why you have to have serious protection for the men who end up on trial.

As advocates of change, we have to be careful not to distort the truth, yet still tell the very serious tale about how women have been treated and about how institutions deal with women. For example, I feel that if we do not tell the truth about the cycle of abuse patterns that do exist, we have great difficulty in getting the state to take this on, and to put some serious money behind it. There is so much talk about 'law and order', but the Home Secretary needs to see that the seeds of violence are often sown within the home, within the domestic environment and that if you deal with domestic violence you will deal with all manner of other crimes too. Not only do you confront the fact of what is happening to women and children, but you also confront other ways in which men start acting out their violence in the public domain as well.

If you talk to men in Brixton prison, you'd find that they have often been brought up in homes that were violent. So if they want talk about law and order, let's talk about domestic violence. It is at the heart of all this, and if we don't tell the truth about how damage is passed on, then I think we're not doing a service to women either. There are many stories in this, and the more I am in court, the more I hear, but it is very difficult to draw out simplistic theories. Every woman's story is unique, but there will always be features and aspects that are very similar too. Actually the women I represent are the most incredibly extraordinary women. Most of them can be seen as heroic in some way rather than victims. Most of them hold things together, and want to hold the family together. If you think about it, women down the ages have done that and it's not to be discredited. It is actually a story of quite heroic proportions.

Legislation and policy implications

The more you attach stigma to the idea of women going it alone with their children, the more you are imprisoning those women in abusive relationships. If bringing children up on your own or deciding to get away from a violent partner is frowned upon, you're a second class citizen. Such moralising will mean that fewer women will take the step. We just cannot let them get away with idealising the family in a way that is dishonest.

I think to really confront family violence is quite difficult because of denial that violence is perpetrated in all social groups and in very different ways. Middle class men may be abusive in more subtle ways than others. Another problem is that men have more difficulty talking about violence, and women are more prepared to actually give voice to their pain. Once you can get past the initial resistance, some men will talk about it, will actually be able to speak the unspeakable about their abuse as children, or living in a household where their mother was battered, but there is far more denial by men.

I have just been chairing a commission for the Howard League for Penal Reform into young offender institutions. Bullying is a serious problem in them. When talking to some of the boys, I see there is so much bravado, machismo and all that awful male stuff which is the bread and butter of everyday life in these places, and violence feeds off it. The whole regime from the officers to the boys is based on machismo notions of power and authority. There is a pecking order and all the men fall into line underneath the screws: older boys bully the younger ones and so on. When a kid comes in, his trainers are often forcibly removed from him by other boys and he loses everything he owns from his tobacco allowance to his phone card. It's Lord of the Flies.

The problem is that it is an environment in which the prison officers deal with the bullies by bullying them. Occasionally you would get a boy talking and get beyond the formalities and the boorish front. Then the story would emerge of how awful it was at home, and how his mother is getting bashed. These young men often end up replicating these patterns, because when they deal with stress and problems in their own relationships they will handle them in much the same way they have seen it handled in their own families. They will also deal with their frustrations and anxieties in the outer world in the same way. We have got absolutely nowhere in beginning to confront these notions of masculinity.

Acknowledging the effects of violence and abuse in the home and domestic violence is actually a key to unravelling a whole range of social violence, not just a women's issue. It is critical that we persuade Government of the bigger picture. In Canada they have made a commitment to deal with domestic violence and put it at the heart of legal and social policy: from the same standpoint that the Zero Tolerance Campaign started in Edinburgh. The Zero Tolerance work is particularly effective. It does not involve vast sums of money, but it means a real commitment to public education on domestic violence. It promotes the view that it should be outlawed and is unacceptable, and that this message has to filter through everywhere.

I am married to a surgeon, a head and neck surgeon. He deals with congenital deformity or cancer of the face, or trauma, and every so often he will have a woman who comes to him whose face is smashed. Her orbital floor has been cracked like an egg, her jaw or her cheekbone will have been smashed up. Until he learned about domestic violence through my work, he rarely investigated the possibility that the woman was being battered. It was not part of his training. He will now actually write in his notes: 'She says she fell against the fridge, looks more like a blow to me, seems anxious when talking about it?'. He has heard me talk so often about the problems of doctors just writing notes on the basis of what they are told, even when they have suspicions. He now makes a point of saying: 'You don't deserve this, you are too good for this, you have got to realise that you don't have to take this.' To have that sort of affirmation from a male professional person can make some people feel better. The possibility of one word to help someone make a resolve is so crucial, and I think we have to find ways to do this. Health carers have to learn about domestic violence and have protocols for dealing with it. We have to make sure that on every front we educate people as we are doing with child sexual abuse.

One very clear area where there would be an impact, for example, could be the acknowledgement of domestic violence in GP surgeries. Making links in a social way between different types of abuse is very important because there are links. If men physically abuse, the chances are that they also sexually abuse, are more likely to demand sex from an unwilling partner, and likely to rape their partners. There is also a link between abuse of women, and abuse of children, both physical and sexual. It is important to recognise these links, because too often one hears judges say that 'Just because he hits his wife does not mean that he hits his children and of course he does not mean it.' It is equally important to challenge some of the more incredible explanations such as 'I only hit the

wife because she deserves it and she's an adult, but I wouldn't do it to the children.' In actual fact, what we are beginning to see is that once those inhibitions and barriers are gone, then people tend to abuse in other directions as well. I do not want to overstate this but we should be vigilant. The main point here is to recognise that this is a possibility. As soon as a social worker knows that a woman is being battered, then there should be questions in their mind about what is happening with the child in the family: they should be very concerned. It is not an automatic thing, but it certainly should be raising questions. In the same way it should be happening for lawyers in those kinds of cases.

With regard to social policy areas, I believe that we have had a breakthrough with the Children Act which says that in family courts children's voices have to be heard. The welfare of the child should be paramount in the considerations of the courts over access, custody and so on. Whether or not they are taken away from their parents, the children should be listened to. The child centred approach has not penetrated the criminal courts, and if you are about to imprison a primary carer of children, which is invariably a woman, then I think the court should have a report about the welfare of the children, the impact on the children and how the separation will affect them. I know it is important to neutralise the language around this and not to assume that the primary carer will be a woman. But the fact remains that in most situations the one with the primary responsibility for children is women. Why do we have judges sending women off to prison, when one is actually passing on the terrible effects of incarceration to the children in cases of minor crime like shoplifting? I see the awful effects of mothers' imprisonment on children and it is terrible. It should only be in the most extreme circumstances that we should be doing that. Judges do it far too regularly, and I think there should be a law which requires a report on the children.

It is important to draw attention to the role of women in specifically gendered terms, because the criminal law was never framed with women in mind. Before we examine the law's failure to women, we have to look at where the law comes from. The law is built upon case after case after case, on judgments made in higher courts where women were not present either as lawyers or judges until comparatively recently. The commentators on law, scholars who write about legal developments, have not been women. It is very recent that we have had women academics looking at the law with women's lives in mind. It is not surprising, therefore, that women's experience is not there in any of these tests that we have referred to: for example, the 'reasonable man' test in the defence of provocation. The legal norm was male. The potential criminal was a man in even handed combat with another man, and so the tests and rules have failed women. I do not think the legal norm can be made gender neutral. I have come to believe that neutrality is a fiction.

Gender neutrality is unachievable because it does not exist. The process of gendering involves asking the question: what are the gender implications and are there any differences for men and women? I think the answer is to argue for context, placing the accused in their real social context and acknowledging, for example, the ways in which women have suffered discrimination and paternalism.

In Canada, the Charter of Rights made an enormous difference for women, and I think we could have those sorts of changes here with our Human Rights Act even though it is a more restricted piece of legislation. If you look at what has happened in Canada, and in other common law jurisdictions, they are starting to talk about not just women's rights but ameliorative rights. I was trying to explain to someone recently, it is not enough to talk simply in terms of rights, without taking account of previous disadvantage and the history of disadvantage. If the next step after the Human Rights Act were to be the creation of a Bill of Rights including gender equality, we could draft it so that it becomes a corrective to past laws. This is what I am seeking to do in these cases where expert

testimony is required to give visibility to women's experience. There is a disagreement between feminists on this question. Some argue against this approach, and question why we need experts to construct women into somebody they are not. My argument rests on the fact that until we are really equal we need some mechanism to bring specialised knowledge into the court which brings women up to the same level. We cannot talk about the 'reasonable man' or the 'reasonable person' without somehow making up for the past disadvantage.

There is recent work on domestic violence from the Law Commission with suggestions about giving greater powers to the magistrates courts, about making sure that local authorities act upon that, so it is easier for women to retain tenancies. Cutting across professional lines is important, where police, courts and social services work towards a consensus approach on how to deal with abusive men and what you do in those circumstances: everybody working together in the way they work on childcare together. It is also important to draw attention to the need for good judicial training. There is a great deal of resistance. We have certainly made some headway, however, on the issues of 'race' and there are now seminars and training programmes on 'race'. The same is beginning to happen on gender issues.

I think we should be amending the defence of provocation as a priority. They have done this in New South Wales and I would like us to monitor how that is working. The Law Commission could easily do that, and evaluate its success there. The main point is to remove the word 'sudden' from the phrase 'sudden and temporary loss of self control'. There is a fear amongst many campaigners that this removal would be used to the advantage of many defendants, not just women who had sustained violence and abuse. It is not an unreasonable fear to think that the plethora of men who kill women and others could easily use this change to their advantage. It could be used by professional criminals. This is one of the major problems with changing the law. It is not as straightforward as we all might wish. You have to be really quite careful about changing the law, and that's precisely why we should monitor what is happening in New South Wales to see whether it is working for women and also whether it is working to the advantage of some, in a way we would find unsatisfactory.

Amending the defence of provocation

The issue is the role of the criminal justice system in restricting the number of possible options for escape for women who have sustained years of violence and abuse. Women's relationship to the legal framework for defence is different to that of men as a result of societal and patriarchal attitudes towards women who kill. The question here is: how do we reform or change the law to take account of women's experiences?

In cases of domestic homicide the legal defences that can be offered in an attempt to reduce sentences can include: provocation, self-defence and diminished responsibility. The 'rules' of self-defence are narrowly defined and women's experiences of violence do not fit neatly with the prescribed definition. Diminished responsibility reduces murder to manslaughter. It is defined as 'suffering from such abnormality of the mind as substantially impaired his responsibility for his acts or omissions in doing or being party to the killing'. The 1957 Homicide Act created the special defence where the offender's criminal responsibility was diminished because of impairment (Kennedy 1992: 103).

Where self-defence does not succeed as a plea, provocation can be raised. This also reduces the charge from murder to manslaughter. At the moment, the judge can decide whether or not domestic violence can be put in front of the jury. Provocation requires the response to be in the 'heat of the moment'; for the defence of provocation to be successfully used in reducing the

sentence from murder to manslaughter: 'the victims' words or conduct have to render the defendant so subject to passion as to make him for the moment not master of his mind.

The issue of domestic violence as evidence of provocation is made invisible so often in the cases of women defendants as 'the immediacy principle makes no sense when the provocation takes the form of long..term abuse'. In the field of domestic homicide the relationship between the law and psychiatry is under new scrutiny as a result of the debate about the role of the expert witness. I have observed that, in the USA and Canada, some women have gone free after expert witnesses have testified to the effects of the 'battered woman syndrome'. The role of the expert witness and the admission of evidence such as a 'syndrome' have clearly altered the outcomes of some appeals. The influence of such changes is such that three women in Britain - Kiranjit Alhuwalia, Emma Humphreys and Sara Thornton, have been released following appeals on the grounds of diminished responsibility with the use of the 'battered woman syndrome' as evidence.

I have observed that the use of the expert witness and psychiatric evidence is problematic in the long term. On the issue of provocation, women will continue to have a weak defence unless the defendant is constructed as a woman who acted rationally in the face of the irrational levels of violence in her life rather than a woman with a 'disordered' mind. This is because the 'rules' of provocation restrict the admissibility of psychological evidence, because the defence relates to the actions of a reasonable woman and not to a 'disordered' one. In addition, the rules limit the defence to killings done almost immediately after the last provocation.

The rules of law surrounding domestic homicide assume men as the norm. Minor amendments to the definitions can be seen as part of a process of change in favour of women, but to reach a point of equity for men and women in the criminal justice system, much has to change first. As a woman who defends women, my observations are focused on two issues: challenging the unfairness of the sentencing patterns and reframing parts of the law to take account of domestic violence and its effects. In order for women and men to be treated in a more equal way by the courts, some would argue for the law to be rewritten around women's experiences. One suggestion is to construct a new defence of self preservation (Radford 1992; see also Chapter 8).

The dilemmas in changing the law are numerous. The unified framework of the law is the main problem for the redefinition of rules around women's experiences. In other words, if you change the law for women, it is changed for men, hence the possibility of new laws being used in ways that women would see as unsatisfactory. This is always a possibility in a system that is written in a gender neutral framework. In the shorter term, this could challenge the unfairness of the sentences for women. The rewriting of law on the basis of women's experience of violence could offer more possibilities for women's defence than the present rules governing the defence of provocation.

## The future

The gender bias in the legal system is illustrated in a number of ways: the different sentencing patterns for women and men; the different experience in court, but also in the gender breakdown of victims of domestic homicide. Edwards (1989), in an examination of statistics of domestic homicide for England and Wales, illustrated a pattern of a much higher proportion of female victims in relation to male victims being killed by their spouse or co-habitee. Figures provided by the Home Office confirm that 'women are most vulnerable from spousal homicide (which accounted for around 40 per cent of all female homicide victims in 1982,1983,1984,1985 and 1986 ... )' (Edwards 1989: 125).2 Such patterns raise fundamental questions about the gendered structure of the criminal justice system and women's relationship to it. The reasons for this are on different levels: the rules work

against women, they are 'malestream' in their design and content, the differential treatment of women in the courts is due to deeply held patriarchal attitudes towards women. The way in which women who retaliate against violence are constructed as cold, greedy and malicious represents a deeper concern. That is to say, that women who retaliate are considered deeply threatening to society and to men in families in particular. For women seeking a 'fair' sentence and for women campaigning for change on this, there is rarely only one issue. There is an urgent need for an integrated approach to change. Without campaigning and reform the violence experienced by women in the cases referred to becomes invisible in the criminal justice system. Greater recognition of the reality of living with violence could be brought about by rewriting the law around women's lives. In addition the integrated approach would need to include gender awareness training for the judiciary. Training, positive action in facilitating access into the legal profession, to encourage the entry of more women, and an inter-agency based practice in responding to and dealing with abusive men are all measures which could be introduced. All of these would represent the possibility of a fairer legal system for women.

Notes

1 Kennedy, H. (1992) Eve Was Framed.

2 Between 1987 and 1996 an average of 8 per cent of all men killed were killed by a current or former spouse, cohabitant, or lover, and for the same years an average of 43 per cent of all women killed, were killed by the same current or former spouse, cohabitant or lover (Criminal Statistics for England and Wales 1996).

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