

Feminist Criminology: Coping with Success

When people started telling ‘feminists and light bulb’ jokes I thought we had made it. Quite suddenly, feminists had joined the ranks of the feared, powerful elites — lawyers, economists, psychotherapists — reduced through humour. There were other indicators of cultural shift. The press started to take voyeuristic interest in the personal and intellectual disagreements between feminists. When the press reported that Germaine Greer didn’t like her colleague Suzanne Moore, her clothes sense and use of lipstick, it was hardly evidence of ‘feminism tearing itself to bits’ (Gerrard quoted in Neill 1995). Rather, the disproportionate coverage of feminist disagreements was another version of popular fascination with the tiffs of a royal family. In the same way, the apparent feminist generational divides reflected in the robust disagreements about Helen Garner’s book *The First Stone*, are less about the fracturing of feminism than its revitalisation. Feminism is old enough and establishment enough to engage in public battles of succession. The younger generation’s gloss on feminism is the extension of feminist ‘begat’ histories documenting the successive ‘waves’ of feminism and tracing our lineage back hundreds of years to the writings of ‘early’ women philosophers and radicals. In short, the indications are that feminism is no longer treated as a fly-by-night movement — we have a past and a future.

Like many radical movements, feminism has been loathe to relinquish the political advantage of the revolutionary highground. Feminists have had trouble reconciling themselves with their absorption into the mainstream. In this paper, I argue that while feminism still has a long struggle ahead, we now devote a disproportionate amount of intellectual energy to analysing our apparent marginalisation.

Susan Faludi’s chronicle of feminism’s pyrrhic victories and loss of hard won ground is a ready but cheap taunt. The populist notion of ‘backlash’ is predicated on a naive assumption of the linearity of progress and the irresistibility of ‘rational’ change. The atheoretical invocation of backlash echoes too loudly in academe. That money and power jealously resist feminist advances is, at best, a crude political and psychological conspiracy theory. Feminist theory can, and needs to, do better.

Feminist criminology should turn the concern with defeat on its head and explore the causes and implications of feminism’s relative success. We must also honestly admit that our success is not generalisable — we are only now coming to terms with the inter-relationship of race, class and gender in multi-layered and interlocking systems of power. Our theoretical and political future depends upon a reflexive awareness that the criminological applications of feminism cannot be controlled by ‘good’ feminists. Acceptance by the mainstream brings with it power, but also capture. This is a particular problem for criminology because of our discipline’s sorry history of deployment for instrumentalist ends.

The attractions of failure

Criminologists have always been obsessively interested in their failures. They boast about their theoretical inadequacies and the limitations of their instruments. Failure is so important to the discipline that we shower praise and prizes on its greatest critics (Cohen 1988:8). As Russell Hogg (1996) suggests, failure is the leit motif of criminological discourse.

The generous interpretation of the pervasiveness of failure discourse is that it is the closest that our instrumentalist discipline comes to reflexivity. Criminology’s failure literature forces us to confront the limitations of our own theories, methods and politics. Frequently,

failure is the catalyst for the development of new (but not necessarily more successful) strategies for imagining crime and responses to it. The most notable example is the recanting and reformation of the United Kingdom 1960s radicals as Left Realists. But as scientists well understand, setting out to prove failure is an intrinsic part of the culture industry. Successfully proving failure creates space for new ideas and people. Feminist criminology's successes have come, in part, from its ability to capitalise on the failures of main (male) stream criminological theory.

Feminists have convincingly demonstrated that traditional criminological thought fails to take account of the startling gender ratio discrepancy in criminal behaviour. Crime is committed disproportionately by males in all societies at all points of time for which data exists (Smart 1976)¹. This obvious but profound feminist contribution is now formally acknowledged as one of the few empirical criminological 'facts' (Braithwaite 1989). The related problem addressed by feminist criminology is the inadequacy of mainstream theories of crime when subjected to the 'generalisability' litmus test of gender analysis (Daly and Chesney-Lind 1988). These failures of traditional criminological thought have forced a re-consideration of old theories as well as the development of new models by feminists and non-feminists alike to account for the apparent 'maleness' of crime.

But feminism's engagement with the failure motif goes beyond theory testing. The constant feminist political rebuke is that mainstream criminology has failed to sufficiently acknowledge the significance of feminist intellectual contributions to the discipline. A major theme in feminist criminology is the continuing exclusion and marginalisation of feminism and feminists within the discipline. We have failed because our views are not taken seriously enough by the dominant sections of the profession. Proof of this failure to influence the malestream has produced its own body of empirical literature — the journals we are not in, the positions we do not hold, the prizes we fail to get. Even when we are there, gender analysis, woman and feminism is, we lament, 'added on' as a token last chapter or relegated to the footnotes (Roseneil 1995:196).² While the observations might be accurate, they now constitute a genre which seldom advances the struggle, although there is political purpose in emphasising the continuing marginalisation of women. The feminist movement, contrary to myths about its unity, (Daly and Chesney-Lind 1988) is marked more by divergence rather than congruence of views. There is, therefore, an ongoing need to artificially reinforce commonality of purpose to preserve the fragile alliance of

- 1 There were of course some early rumblings but the only systematic attempt to account for the gender ratio discrepancy has been the hotly contested debate over the adequacy of criminal justice chivalry as an explanation for the phenomenon.
- 2 Nor is there universal support for the absorption of feminist knowledge into the mainstream. As Sasha Roseneil argues 'do we want feminist knowledge transmitted to students by colleagues who are hostile to it, as just another position or theory, another element in the cannon? Do we want the complexities and debates and contestations within feminism smoothed out, taxonomized and presented to students as just another dish on the sociological menu? If feminist sociologists agree on little else, do we not agree that feminist sociology is above all a project committed to the transformation of knowledge and thereby the transformation of gender relations? What then are the implications of treating feminist knowledge as just another theoretical perspective on x or y? Does the mainstreaming of feminist sociology undermine its radicalism and lead to its perception by students as part of the disciplinary apparatus of power? Is feminist sociology in danger of incorporation (or indeed has it already been incorporated simply by existing within the confines of the academy, as early critics of academic feminism suggested would happen)? Should we therefore deliberately confine ourselves to the margins of the academy?' (1995:196).

personalities, politics and theoretical persuasions. 'Marginalisation talk' is a form of in-group solidarity.

As Laureen Snider observes, another explanation for the apparent self-absorption of feminism is that women have become much more conscious of their history and have 'realised the extent, viciousness and pervasiveness of misogyny in western institutions and cultural practices over private and public spheres, they have become justifiably angry. Rage is a usual companion of social movements ...' (Snider 1994:76). Ironically, 'reformers typically get more angry as movements succeed, because the rage comes to be seen as increasingly legitimate and the dangers of expressing it openly lessen' (Snider 1994:76).

Political movements are inevitably preoccupied with the present and are impatient for the future. There is, however, a difference between political complacency and maintaining historical perspective. Despite the predictions of feminist Cassandras there is little real prospect of the formal abandonment of the notion of equality for women. Rather, the pressing need is for analytical scepticism. The question we should be asking is, 'why have they suddenly started letting us in?'

Rhetorical success

Together with Marxism and psychoanalysis, feminism (despite its rejection of the concept and the terminology) is one of the master narratives of the twentieth century. Feminism provides a monocausal and therefore marketable explanation for oppression — patriarchy. The mechanisms might be complex and vary across time and space but there is no doubting the cause. As with other grand theories, the solution is self-evident — the elimination of patriarchy. The attraction of feminist ideology is that it simultaneously provides the basis for critique and reform. As a field of intellectual enquiry feminism embodies all the possibilities of 'rhetoric as politics' (Lacey 1995).

There are dangers in *ex post facto* historical analysis which sees the present as an inevitable outcome of earlier historical forces. We therefore need to interrogate quite specifically the rise of feminism at this moment in post-industrial Western society and the causes of its general acceptance. Here I offer a micro analysis of the relative success of feminist criminology in both academe and within criminal justice agencies as a small mosaic in that larger pattern.

Feminism in academe

Criminology has fared well within the university, growing at the expense of other sections of the humanities and social sciences. As a multidisciplinary field criminology has consistently been able to reinvent itself to attract students, and therefore money. Its apparent practical bent also has secured competitive university research funding and lucrative external research opportunities for criminologists (Ericson 1996). The affiliation of the discipline with the criminal justice system, another major growth sector of the economy, has helped ensure its success. The President of the American Society of Criminology's quip that the membership of the organisation had grown in direct proportion with the American prison population was no mere jest!

Criminology has further strengthened its power base within the university through its institutional location within law schools (Carson and O'Malley 1989).³ For feminists this institutional base proved to be a particular boon. In Australia, law schools were the training ground for a significant number of feminist criminologists, later providing them with employment opportunities (Alder 1995). Women fared well because law schools throughout

Australia in the 1970s and 1980s were in expansionist mode. In a professional school, women were disproportionately likely to forgo the higher status and salaries of work in the profession in favour of academic appointments.

Feminist law teachers were drawn to the issues which constitute the 'bread and butter' concerns of criminologists, rape and sexual offences, family violence and, more generally, the practical and theoretical limitations of the purportedly 'neutral' legal subject. Feminist legal theory was often one of the few optional subjects taught in an otherwise traditional positivist law curriculum. Though female academics remain concentrated in the lower echelons of the university hierarchy, the growing popularity of feminist legal theory has ensured a power base for feminist legal scholars.⁴ The first Australian textbook in feminist criminology, Ngaire Naffine's *Female Crime: The Construction of Women in Criminology* (1987) emerged from the teaching of feminist legal theory within a traditional law school.

The benefits of locating feminist criminology in law schools should not be underestimated. It has provided an influential base from which to combine intellectual interests with direct influence on law reform and policy design. For example, feminists have had a profound impact on the reform of sexual offences and rape in particular (Egger 1994) and have been influential in the reconsideration of the artificial dichotomy of the 'private' and 'public' sphere of law (Thornton 1995). At the same time, the dominance of legal thinking within feminist criminology has also skewed feminist criminology's research agenda.

Martha Minow has argued that the main problem for feminist theory is that it has become 'parasitic' toward the main structures of domination that it seeks to critique. We are entranced by what we seek to displace. These tendencies are exacerbated in feminist legal theory because feminism wants to be heard and acknowledged by a conservative legal establishment (Minow 1990:238). Imperceptibly, feminists trained in the legal tradition have slipped into the black/white, win/lose dichotomies of adversarial modes of thought. Thus, feminist criminologists have been at the forefront of victimology and particularly strong in what Kathleen Daly refers to as 'victim-centred advocacy' — 'a single-minded focus on individual victims' rights of redress without a broader consideration of the social conditions conducive to violence' (Daly 1995:7).

The less obvious manifestations of the influence of legal thinking, though, is evident in feminist criminology's focus on the individual case as the basis for action. Like good common lawyers, we tend to reason upwards from the predicament of one woman rather than downwards from the many. The campaigns for legal change here and elsewhere, have been the product of outrage about the defences available to male offenders (*DPP v Morgan*) and self-righteous justifications of the special defences for women (battered wife syndrome, premenstrual syndrome). There are two problems with this focus. First is the problem of priorities — while rape and sexual offences law reform is important, it comes at the expense of political activism for, say, the larger number of women being prosecuted for social security fraud in order to make ends meet. The second difficulty with the individual

3 Richard Ericson's observations about the strategic advances of criminology departments' affiliation with law faculties in North America (Ericson 1996) was well understood much earlier in Australia.

4 The grass roots student movement assisting the expansion of women's studies should not be underestimated. At one university, a deputation of undergraduate and post-graduate students lobbied for the introduction of women's studies and the appointment of a tenured member of staff in this field and, at another it was women students who again agitated for the introduction of feminist legal theory into the curriculum, attending an intensive two week early morning class when this was the only way to fit the new subject into the existing timetable.

case approach is its scepticism of empirical research. The argument that reform is justified even if only 'one woman suffers' is rhetorically powerful but anti-intellectual. When the New South Wales Bureau of Crime Statistics and Research reported that the risk of domestic homicide and therefore the incidence of family violence was probably higher in lower socio-economic areas of Sydney, the researchers were lampooned and pilloried. Likewise, David Brereton's thoughtful research for the Law Reform Commission of Victoria's report on rape was resisted and ultimately rejected (Brereton 1994).

Finally, the influence of legal modes of thinking is evident in the preoccupation with procedural rather than structural reform as a way of redressing inequality. Once more, the problem is one of priority — feminists have campaigned vigorously for reform of evidentiary rules dealing with examination and cross-examination of victims of sexual assault but there has been significant resistance to research and policy intervention aimed at reducing the levels of male violence in the general community (Frances et al 1994).

Many of these limitations of contemporary feminist preoccupations are illustrated in the events and debate over Helen Garner's book *The First Stone* (1995). What went almost unremarked in the responses to the events was that the two young women who pursued their allegation of sexual harassment against the Master of Ormond College were law students. Significantly their main support and advice came from within the law school. The underdeveloped argument in the debate was the apparent trust of the young women in law as a means of obtaining individual redress and social change. I may be wrong, but I suspect that their views were shaped by the inherent contradictions of feminist legal theory as taught in law schools. Consciously or unconsciously, students never resolve the contradiction between their experience of feminist legal theory as a sustained critique of legal ideology and the legal order, but at the same time absorb its optimistic message that change is possible through law. I suspect that a background in social science may have produced a much more sceptical attitude to law and legal institutions.

Feminist legal theory and (by extension) feminist criminology have made *a priori* assumptions about the symbolic power of law as an agent of change. We have based arguments about the need for more stringent penalties and enforcement of the law on questionable models of specific and general deterrence. Too often, there is a naivete about the pessimistic social science research findings concerning these theories. Instead, we seek continued agitation for the extension of forms of social control in order to achieve behavioural and attitudinal change in the community. At the very least, feminist criminologists should use their skills to refine these ideas to see when, under what circumstances and for whom particular kinds of legal intervention are going to prove effective. Without this kind of research, feminist demands for law reform will be rejected as ineffective and counter-productive in the way that Susan Faludi suggests but inadequately explains.

The symbolic role of law, nevertheless, has been an appropriate and successful strategy in arguing for gender balance in the judiciary. Leaving aside the vexed question of whether or not more women judges transform the practice of justice, there has been ready acknowledgment that the judiciary should be seen to be more representative of the community as a whole. In the light of a series of highly publicised and controversial decisions by judges in rape trials throughout Australia, the government took quick action to review the criteria for appointment of judges in order to restore public confidence in the judiciary (Attorney-Generals' Department 1993). The appointment of women judges and magistrates is now a clear political priority for governments at both state and federal level. But again, we need to interrogate this development a little more carefully. Why has a conservative institution like law conceded ground and decided, that after all, the symbol of women as judicial officers is an asset?

Women in criminal justice: the feminisation of social control?

The first entree of women into the public domain was justified on the grounds that as 'mothers of the race' women had a particular interest and skill in participating in the moral development of society as a whole. Opportunities for women became available as they marketed themselves as effective agents of social control (Schlossman and Wallach 1978). In more subtle ways the same pattern is once more emerging.

Women have done very well in carving out career opportunities in criminal justice agencies. In some cases, the employment of women has been adopted as a preferred strategy to, for example, change the culture of policing and to normalise and reduce violence in prisons. It must be acknowledged, however, that even at a simple individual level, women are not necessarily advantaged by these moves. For example, they confront quite specific stresses when saddled with the responsibility of being agents of change (Morash and Haarr 1995).

Unfortunately, women 'do' social control only too well. The trends in the criminal justice sphere are more overt in the commercial sector. Affirmative action and the employment of women in non-traditional work has been embraced by companies seeking to create a more malleable labour force. Joan Eveline's study (1996) of the apparently innovative hiring strategies of a multinational company in remote parts of Australia suggests that affirmative action is a conscious management tool — the presence of women makes men behave (and therefore work) better. But, the strategy is so transparent that women workers are targeted by their male colleagues because they are perceived to represent a new stage in the perennial tussles between management and labour in a difficult economic climate.

The employment of women in criminal justice agencies is also quite explicitly strategic. Giving the prosecution of O J Simpson to a woman lawyer was a deliberate tactical decision. Probably for similar reasons the first application for an indeterminate sentence under Victoria's revised draconian sentencing laws was also put in the hands of a woman prosecutor. Women are succeeding, but not without cost to themselves as individuals and to the ideals of feminism as a transformational politics.

At this stage of feminism, we require much more carefully crafted tools of analysis. Crude measures such as whether more or fewer women are being employed and at what level are less helpful than more textured accounts of what the inclusion of women means. My own work with Roger Douglas on the employment of women in significant numbers as magistrates in the summary jurisdiction suggests that gender essentialism underscores even apparent equality. We argue that the advent of 'technocratic justice' has been rendered more palatable by appointing decision-makers who are able to translate the harshness of efficiency into a softer ethos of accountable consumerism. In the process, justice has been re-legitimated because in Foucault-esque fashion, dominant interests have found new ways of asserting and maintaining power (Laster and Douglas 1995). Increasingly, what feminist criminology and theory needs to occupy itself with is the realignment of power which now frequently represents itself as 'gender balanced' and therefore fair.

Relative success

The success of feminists is not generalisable; cultural acceptance of feminism has been within the limited context of Western Enlightenment ideology. Feminism has made the glove of equality ideology fit better — equality is now understood to include women too. But in Australia, the challenge of multiculturalism could only be dealt with in terms of a universalist Enlightenment declaration of the fundamental precepts underlying Australian

law and society. The Australian Law Reform Commission (ALRC), for example, identified the Constitution and the rule of law, tolerance and equality, parliamentary democracy, freedom of speech and religion, English as the national language and equality of the sexes as being core Australian values (ALRC 1992:9). Cultural diversity could be tolerated only up to a point — the universalist and problematic standard of equality of the sexes.

Second-wave feminism was grounded in the notion of the universality of women's experience and the demand for formal equality of the sexes. Women all shared their common experience of oppression under patriarchy, in various degrees and forms. Increasingly, though, in Australia as in America and Britain, mainstream feminist theory has been attacked for its inability to accommodate diversity and the multiple identities and allegiances of minority women arising from their different experiences of exclusion and subordination. Adrienne Rich accuses white feminists of slipping into 'white solipsism' — the tendency to 'think, imagine and speak as if whiteness described the world' (Rich 1979:229). In Australia, Aboriginal women have accused white feminists of cultural insensitivity and intellectual colonisation (Huggins 1994). Feminism is confronting its own generalisability crisis.

For criminology the theoretical and practical challenge of diversity is best illustrated in the debates over violence against women in Aboriginal communities. Aboriginal women are ten times as likely to be victims of homicide as are non-Aboriginal Australian women (National Committee on Violence 1990:xxiii). Aboriginal women are more likely to be attacked with weapons than non-Aboriginal victims which may account for the more serious nature of their injuries (Bolger 1991). The range of perpetrators of violence against Aboriginal women goes well beyond spouses and includes sons, grandsons and other family members. Aboriginal women, according to these kinds of calculations, suffer more at the hands of their menfolk. But, the solutions which may work for white women are recognised as inappropriate by Aboriginal people, including women.⁵ The success of white women's advocacy exacerbates their cultural marginalisation. Yet policy-makers look to the new successful class of feminist criminologists in academe and in criminal justice agencies to find solutions.

Feminist methods have come closest to documenting the multidimensional, interconnected and contingent nature of individual women's identity and their consequently complex relationships with the social world. Some branches of feminism achieve this better than others — feminist novels, poetry and oral history consciously represent the subjective realities of women as they create and traverse their identities. Feminist and post-colonialist literature, for example, manages to capture the textured experiences of minority people in dominant cultures.

Feminist criminologists, though, in their new positions of power are stuck with an impossible bottom line. What do we do about harm and oppression — crime, however defined? More significantly for feminist criminology, how do our insights prevent us from being captured by traditional criminal justice thinking, which finds crude solutions to complex multi-layered problems?

5 The same practical and theoretical problem applies in another area of criminology — sentencing. One of the major theoretical paradoxes identified by Kathleen Daly is the different outcome of equal treatment policies. She argues that 'in general all women may fare better under weaker versions of gender 'equality' with some attention to gender differences, whereas male members of racial and ethnic minority groups may fare better under stronger versions of 'equality' and a muting of racial differences' (Daly 1995:17).

Mainstream criminology for a long time sought to bury feminist theory. In the end it has come to acknowledge success through faint praise. When Paul Rock concludes that British feminism has yet to achieve the 'mature point of being a well-rounded critique' (1994) he probably means that we have not managed to come up with a new general theory which provides the solution to all of criminology's problems. Yet neither has any other theory in criminology. The importance of the feminist perspective is that it highlights the limitations of grand theory and the cruelty and injustice which it may be used to justify. Because feminism reveals how complex the criminological enterprise really is, its success may be better measured by the fears it generates, rather than acceptance by the mainstream.

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