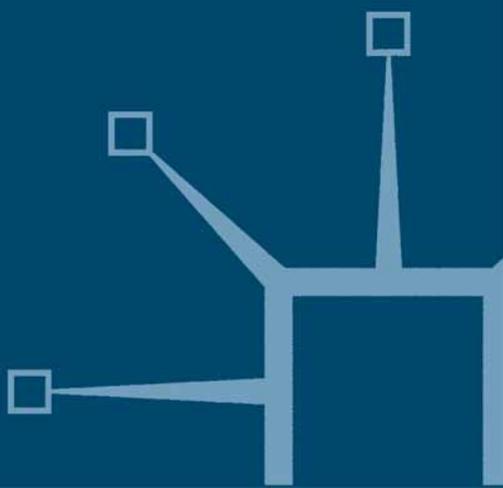


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Policing Urban Poverty

Chris Crowther



Women, Murder and Justice

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Women, Murder and Justice

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To my parents

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Responsibility for any errors or omissions in the text rests solely with myself.

Vancouver
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Introduction

In her book *The Second Sex*, Simone de Beauvoir argues that the condition of women 'is not dictated by her hormones nor predetermined in the structure of the female brain: they are shaped as in a mould by her situation' (1949: 608). The poignancy of de Beauvoir's claim speaks loudly still for many aspects of women's lives. As we enter the twenty-first century, the feminist struggle to document and improve the condition of women's lives continues. More than ever, issues surrounding women's poverty, childcare, abuse and reproductive rights dominate discussions in all realms of public life. Within feminist studies, accounting for the historical, economic, social and political practices that mould women's situation in public and private life has become all the more important in light of attempts to curb the backlash against women's access to fair and equal treatment during a period of increasing conservatism.

Women who commit violent acts such as murder do not rest easily alongside accounts of women's social and economic conditions. The image of women killing is anathema to prevailing conceptions of womanhood and femininity. Acts of violence have typically been regarded as belonging to the domain of the male species, for whom violent behaviour is regarded as more 'natural' and acceptable. Therefore, in having to confront women who engage in homicidal acts, the tendency is to fall back on prevailing stereotypes of the 'mad' or insane woman or the bad, 'evil' woman. Furthermore, the image of the violent woman has been bolstered by cinematic depictions of 'gun-toting' women 'running amuck' as seen in films such as *Thelma and Louise*, *Basic Instinct* and *Single White Female*, and media stories of women engaging in violent crimes.¹ In exchange for the titillation of seeing and hearing about women performing acts of aggression, scant

effort has been made to try to understand why a woman may choose to engage in violence.

Within criminological studies, the critique by feminist criminologists of the way in which our knowledge of women criminals has been configured is a significant contribution in documenting why women commit crimes. Research and studies about female criminality have contributed to alternative and competing explanations of women's deviant behaviour. In emphasising how women's differences are specifically and materially engendered in social conditions, feminist criminologists have developed theories of women's criminality that have exposed the discipline of criminology as male-centred (Klein and Kress 1976; Smart 1976, 1982; Bardsley 1987; Heidensohn 1987; Naffine 1987; 1996; Daly 1988, 1992, 1994; Edwards 1989) and challenged preoccupations with the image of female criminals as mentally diseased, morally bankrupt or conniving.

Yet despite the significant amount of research in the area of feminist criminology, the focus on violent women remains marginal as a topic of discussion and as a subject of research.² In particular, the lack of theorising about women who murder has contributed to our tendency to fall back on unchallenged perspectives and perceptions provided by the media of this category of women.³ Mainstream criminological writing has generally ignored this aspect of women's crime where any discussion of women's criminality 'has often ended up as a footnote to works on men that purport to be works on criminality in general' (Klein 1973: 3).

The paucity of homicides committed by women is what makes them so interesting. The Home Office crime statistics reported that between 1992 and 1997, women murderers constituted approximately 10.7 per cent of all homicide offenders (Criminal Statistics 1998), of whom many are women who kill their partners.⁴ Domestic homicide statistics reported that women who killed their partners between 1992 and 1997 comprised 24 per cent of all spousal homicides.⁵ As a legal and social issue, the subject of women who kill has generated some of the most strongly held opinions regarding the crime of murder. Media reports have highlighted the divisiveness that characterises the issue of women who kill their partners through celebrated cases such as Sara Thornton and Kiranjit Ahluwalia. Supporters advocating for women who kill have claimed that the punishment meted out by the criminal justice system has been unduly harsh. Specifically, in cases where women kill their abusive partners, they argued that many of these women acted in desperation and as a matter of survival.

The topic of women who kill, particularly battered women who kill, has consequently become an arena of intense conflict. Feminist scholars have advanced the argument that the legal standards defining adequate provocation and self-defence have reflected men's view of 'understandable' homicidal violence (Fiora-Gormally 1978; Rosen 1986; Boyle 1990). Taylor suggests that 'female homicide is so different from male homicide that women and men may be said to live in two different cultures, each with its own "subculture of violence"' (1986: 1681). That the articulation of gender differences has rarely been made in the state's investigation of killings, even when it has been acknowledged that women do not kill as often as men, has reflected the sex-specificity of acts which the state 'notices'. As a result, it has been suggested that female homicide defendants encounter legal categories that do not accommodate their behaviour and a court system that ignores or misunderstands their actions and motivations.⁶

Any attempt to understand women who kill is a recognition that women's murders are not simply an aberration to their world. It reflects also a need to recognise, as Beatrix Campbell does, that 'while feminism has contributed to the reinterpretation of women's behaviour, it has also shared some stereotypes of femininity rather than challenged them.'⁷ Typically, women are viewed as the victim in a criminal act. Campbell argues that it is time that women who murder are given authorship of their acts, thereby recognising that the murder must be located in the context of the personal relationships between men and women. The failure to locate women's violence in the crisis of personal relations is the failure to understand the domination and subordination in which men and women live, thus rendering the matter as one of the perpetrator's abnormal character.⁸

Women, Murder and Justice attempts to bring to the forefront the issue of women who kill their partners. To date, there has not yet been in Britain an in-depth discussion of the circumstances of women who kill their partners. Neither has there been an in-depth analysis of the legal treatment of female homicide defendants who have submitted a plea of provocation or self-defence. Feminist literature in this area has concentrated on engaging in the legal debate about the criteria governing the law of provocation and self-defence by focusing on current cases highlighted by the media. Non-feminist literature has focused on conducting quantitative studies of women murderers generally. As a result, there is a gap in the literature due to the lack of a penetrating examination into the circumstances of women who kill their partners and their treatment in the criminal justice system. The limited amount of

literature available in Britain has also hindered discussions and debates on possible legal reforms surrounding the law of murder and defences to homicide. This book represents an effort to fill in this gap by providing an in-depth discussion of homicides between partners through an examination of homicide files from the Crown Prosecution Service.

My aim in this book is to highlight gender differences in the act of murder, to demonstrate the criminal justice system's mediation of these differences, and to examine feminist strategies developed to alter the legal structures for women murderers confronting the criminal justice system. By encouraging critical discussion of how women who murder are treated in the justice system, my hope is that this will foster further public discussions about how criminal justice policies and laws deal with the problem of conjugal homicides. As this book will document, the issues are many and complex. Traditional applications of homicide defences combined with the rarity of these crimes by women allow the courts to dismiss the consistent demand for a review of women's access to homicide defences. This is further compounded by the tendency to pathologise the individual in such cases, rather than adopt a broader, more group-focused approach to the issue of access and appropriate treatment.

By focusing on homicide files of ordinary men and women in Britain, I also hope to dispel some of the myths created by the media about women who kill their partners. Not all these women are 'evil' or 'cold-blooded'. Rather, many of them are women attempting to manage difficult personal relationships. Homicides between partners and the problem of domestic violence are not unrelated phenomena. The death of a partner by the other is the logical outcome of a relationship marred by long-term physical and emotional abuse. How we as a society deal with the problem of conjugal homicides says as much about our attitudes towards domestic violence as it does about the appropriate behaviour between men and women.

Chapter 1 provides, in the first half, a general overview of the literature on the topic of women murderers from both a contemporary and an historical context. The present-day legal position of women who kill their partners emerges from wider discussions by historians and other feminist writers about women's social status generally. Their documentation of women's lives, along with the myths and stereotypes about women's condition, continues to find resonance in the examination of women's legal position at the end of the twentieth century. It is these theoretical and historical connections that will provide the basis for the detailed examination of domestic homicides in England. The second

half of this chapter continues with the contextualisation of domestic homicides. Feminist theories in a variety of social science disciplines have forcefully argued that to be a woman in late capitalist society involves living under political, economic and social conditions which are inherently gendered. By highlighting the way in which women's acts of homicide are born out of the conditions in which they live, my aim is to argue that these types of homicides are deeply gendered. The failure to make this connection in much of the contemporary research on women who kill is a shortcoming at both the theoretical and methodological level.

In Chapter 2, the methodology of this research study is laid out. Given the lack of qualitative studies on women who kill their partners, a detailed discussion of the methodology is provided. This is followed by a descriptive quantitative overview of the homicide cases in this study which contextualises the discussion that follows in the next several chapters.

Each of the three subsequent chapters that follow involves a substantive discussion of the homicide cases gathered from the Crown Prosecution Service. Since the initial research questions and interest that initiated this study concerned whether or not female homicide defendants were denied access to pleas of provocation and self-defence, the discussions are structured around the pleas of the defendant. This provides the opportunity to examine the application of defences to homicide and the legal treatment of defendants who kill their partners. Given that the main focus of this study is to provide a detailed exploration of women murderers' circumstances and their relationship with the criminal justice system, and to demonstrate that the act of murdering one's partner is a distinct event inscribed with its own particular narrative and form, the use of cases involving male defendants is referred to for comparative purposes only. Although the materials collected constitute a rich source of information for discussions about male homicides, these research questions are beyond the scope of this book.

Chapter 3 examines issues related to the determination of intent in criminal law. The definition of intention has been the subject of much debate, particularly in discussions of the crime of murder and how murder is to be distinguished from manslaughter. Drawing on cases involving defendants who plead no intent to kill and not guilty, the discussion demonstrates how criminal liability becomes a balancing act between respect for liberal individualism on the one hand, and the concern for social control on the other. Mediating between these competing interests involves criminal justice agencies moving beyond

criminal law doctrine and making judgements about the circumstances of the homicide and the parties involved. I argue in this chapter that establishing criminal liability in these cases necessarily entails the more subjective inquiry, evident in the comments made about the case itself and in the legal outcome.

In Chapter 4, I explore the relationship between gender, murder and madness. Prevailing stereotypes about what causes madness for men and women shape current conceptions about homicide offenders pleading diminished responsibility. In fact, many female homicide defendants rely on these stereotypes about what causes their madness for a successful outcome. The introduction of the battered woman defence, made initially in America, is an attempt to break through these stereotypes. Yet, as the American experience has demonstrated, feminists are divided over the merits of this strategy. In Britain, the debate about whether or not to introduce expert testimony on the battered woman syndrome has added fuel to the fire about how women homicide defendants should proceed. What does seem clear from the cases examined is that while violent abuse is the cause of mental illness for female defendants, acts of violence are typically regarded as a symptom of mental illness for male defendants. I propose that greater emphasis should be given to social rather than biological causes in both female and male defendants' mental health problems, therefore recognising that these acts of homicide can also be the outcome of dysfunctional social environments.

Some feminist advocates have alleged that of the available defences to homicide in England, female homicide defendants experience the greatest difficulties in making successful pleas of self-defence and provocation, particularly when compared to male homicide defendants. In Chapter 5, I trace the historical development of these homicide defences. Following this, I provide an examination of cases where a plea of provocation and self-defence has been submitted by the defendant, beginning first with an outline of some of the arguments submitted by feminists who allege that the law of provocation and self-defence discriminates against women. The cases of female defendants pleading provocation and self-defence in my research do not involve circumstances where battered women do not respond immediately to an attack by their provoker. None the less, these cases highlight an important difference that has not always been consistently emphasised in the debate over access to provocation and self-defence. The cases in this study demonstrate that where female defendants *do* respond immediately to an attack, their behaviour conforms with the present criteria, and the law does not appear to be discriminating against them. The

problem female defendants have with the law of provocation and self-defence seems to arise when women *do not* respond immediately to an attack. Therefore, the assumption made by some feminist legal commentators that female defendants have difficulty making a successful plea of provocation or self-defence does not apply to all female defendants who kill their partner. As stated, although the cases in my study do not involve circumstances where women have killed in a non-confrontational setting, they have informed and inspired my engagement with the feminist debate over the law of provocation and self-defence.

In the final two chapters, I interrogate the issues of law reform and the inclusion of women's differences in law. The concern over revenge killings by women towards their abusive partners has clouded the possibilities for enacting change in the legal system. In part this can be accounted for by the fact that much of the discussions around women who kill their partners have been misunderstood. However, as I demonstrate, the situation in which many women who kill is not unique. It is the predictable outcome of a society which continues to grapple with the problem of violence against women.

Many feminist groups have proposed changes to homicide defences. Chapter 6 scrutinises the implications of these feminist proposals. Beginning with a presentation of four reform proposals to the defences of provocation and self-defence, my argument is that the reform of current defences would positively acknowledge that men and women's acts of homicides are gendered, and that men and women do not always act and react to violence in a similar manner. However, the difficulties of achieving changes to the law are compounded by the concern amongst some feminist legal theorists that engaging with the law in an attempt to improve women's legal status may be a misguided endeavour. The debate over whether or not feminists should engage with the law is presented, and I argue that reforming current defences to homicide is an important strategy for countering the allegation that the legal treatment of male and female homicide defendants is unequal and unfair. The inclusion of initiatives such as the training of judges or the provision of sentencing guidelines are broader approaches worthy of consideration as well.

How the law negotiates gender difference on issues like homicides between partners reveals the extent to which substantive equality can be found in the justice system. Yet what the recognition of gender difference encompasses, and its integration into legal rules, is not always clearly understood. In the final chapter, I defend a conception of 'difference in law' which locates differences in the context of social

relationships and social interactions. I argue that this approach allows for greater sensitivity to 'differences' in the application of legal rules. Women and their experiences have been excluded historically from the legal arena. The demand by some feminists for the inclusion of women's experiences in law is an attempt to highlight women's differences in the act of murder and to redress the interpretation and application of legal rules in cases where the rules appear to be discriminating against women. The notion of 'differences' is not incompatible with law, and I argue that the scope for the inclusion of women's differences is both possible and desirable.

1

Contextualising Domestic Homicides

Traditionally, the act of murder has been viewed as a crime committed by men. The subject of women's violent crimes has received only cursory attention in past academic research, and media attention typically focuses on high-profile or sensational cases such as those of Sara Thornton and Kiranjit Ahluwalia. As a result, there has been a tendency in discussions about women's acts of murder to view their crimes as an aberration or to stereotype women who kill as inherently evil. In doing so, they are no longer viewed as ordinary women, but are now categorised as violent offenders. This has led to allegations of discriminatory treatment of women murderers in the legal system. Whilst scattered non-feminist research has been conducted in this area, it has not offered an analysis of the treatment of women murderers in the criminal justice system. It was not until the mid-1970s that feminists' research in this area became significant and began to address the issue of legal discrimination against female homicide defendants. Yet, in an attempt to understand the actions and motivations of women in England who kill, writers have had to rely on the few feminist studies emanating primarily from America and Australia. The absence of a detailed analysis highlighting the circumstances of women who kill their partners in England has arguably hindered the debate about the legal treatment of women murderers in England.¹

While the rate of domestic homicides committed by women in England and other western industrialised nations pales in comparison to that committed by men, the question of why women do murder their partners and how the legal system effectively deals with this issue is none the less significant. Homicides between partners are rarely isolated events. Moreover, our responses to these events are shaped by both contemporary and historical understandings of men and women's