Handbook on

Sexual Violence

Edited by

Jennifer M. Brown
and Sandra L. Walklate

Routledge

Handbook on Sexual Violence

This book contextualises the complexity of sexual violence within its broader context – from war to the resolution of interpersonal disputes – and covers a wide span including sexual harassment, bullying, rape and murder as well as domestic violence. Written by leading academics from a variety of disciplines, contributions also include commentaries that relate the research to the work of practitioners.

Despite advances made in the investigation of sexual offences, evidence still points to a continued belief in the culpability of victims in their own victimisation and a gap between the estimated incidence of sexual violence and the conviction of perpetrators. Adopting an implicitly and explicitly critical stance to contemporary policy responses that continue to fail in addressing this problem, this book focuses on attitudes and behaviour towards sexual violence from the point of view of the individual experiencing the violence – perpetrator and victim – and situates them within a broader societal frame. It is through an understanding of social processes and psychological mechanisms that underpin sexual violence that violence can be combated and harm reduced, and at this individual level that evidence-based interventions can be designed to change policy and practice.

The Handbook is split into four sections:

1. *Legacies: Setting the Scene* offers a critical overview of historical, legal and cultural processes which help to explain the origins of current thinking and offer steers for future developments.
2. *Theoretical Perspectives on Sexual Violence* examines contemporary thinking on sexual violence and reviews explanatory frameworks from a number of perspectives.
3. *Acts of Sexual Violence* reviews a number of specific types of sexual violence, elaborating the range of circumstances, victims and perpetrators with a view to addressing the general and pervasive nature of such violence, thus contradicting narrow cultural stereotyping.
4. *Responding to Sexual Violence* overviews and evaluates current policies and practices and offers new ideas to develop different types of interventions.

The editors' conclusion not only draws out the key themes and ideas from contributions to the Handbook, but also considers the nature and the extent of the progress which has been made in understanding and responding to sexual violence.

This will be a key text for students and academics studying sexual violence and an essential reference tool for professionals working in the field including police officers, probation staff, lawyers and judges.

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To Amanda Hart of Counsel
Carla Machado: an inspiration to all who knew her
and to the inspirational life and work of Corinna Seith

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Abbreviations

Acas	Advisory, Conciliation and Arbitration Service
ACPO	Association of Chief Police Officers
BCS	British Crime Survey
CA	Children Act 1989
CBT	Cognitive behavioural therapy
CDVP	Community Domestic Violence Programme
CEDAW	United Nations Committee on the Elimination of all forms of Discrimination Against Women
CER	Campaign to End Rape
CJS	Criminal justice system
CLAA	Criminal Law Amendment Act 1885
COSA	Circles of Support and Accountability
CPAG	Child Poverty Action Group
CPS	Crown Prosecution Service
CRB	Criminal Records Bureau
CWASU	Child and Woman Abuse Studies Unit
DASH	Domestic Abuse, Stalking and Harassment and Honour based Violence Risk Identification Assessment and Management Model
DSPD	Dangerous and severe personality disorder
EHRC	Equalities and Human Rights Commission
EVAW	End Violence Against Women
FGM	Female genital mutilation
FME	Forensic medical examiner
FMU	Forced Marriage Unit
FSS	Forensic Science Service
GEO	Government Equalities Office
GLM	Good Lives Model
GUM	Genito-urinary medicine clinic
IDAP	Integrated Domestic Abuse Programme
IDVA	Independent domestic violence adviser
IO	Investigating officer

IPPC   Independent Police Complaints Commission
ISVA   Independent sexual violence adviser
JCHR   Joint Committee on Human Rights
LGBT   Lesbian, gay, bisexual and transsexual
MAPPA   Multi-agency public protection arrangements
MARAC   Multi-agency risk assessment conference
MPFSL   Metropolitan Police Forensic Science Laboratory
MPS   Metropolitan Police Service
NGO   Non-governmental organisation
NPIA   National Policing Improvement Agency
NPS   National Probation Service (England and Wales)
OECD   Organisation for Economic Co-operation and Development
PACE   Police and Criminal Evidence Act 1984
PCL-R   Psychopathy Checklist Revised
PHA   Public health approach
PIP   Professionalising Investigation Programme
PTSD   Post-traumatic stress disorder
SANE   Sexual assault nurse examiner programme (USA)
SARA   Spousal Assault Risk Assessment
SARC   Sexual assault referral centre
SARN   Structured Assessment of Risk and Need
SART   Sexual assault response team
SDVC   Specialist domestic violence court
SIO   Senior investigating officer
SOA   Sexual Offences Act
SOE   Sexual offences examiner
SOIT   Sexual offences investigative techniques
SOLO   Sexual office liaison officer
STD   Sexually transmitted disease
STI   Sexually transmitted infection
STO   Specially trained officer
TDI   The Derwent Initiative
UKHTC   United Kingdom Human Trafficking Centre
VAW   Violence against women
VES   Victim examination suite
WNC   Women's National Commission
YJCEA   Youth Justice and Criminal Evidence Act 1999

Acknowledgements

This Handbook is the product of the research and scholarship of our contributors. We are grateful to them for sharing their enthusiasm for this project and for addressing their very considerable intellectual talents to the problems arising from sexual violence. Our practitioner commentators rose magnificently to the task we set them in looking at the practice implications of chapters in the various sections of the book. We very much wanted this to be an interdisciplinary text with a unifying thread connecting the chapters. We chose the continuum of violence conceived by Liz Kelly as the common element. Liz has worked tirelessly in the area of women and children's sexual victimisation and her research achievements go well beyond the boundaries of these pages. Scholars and those affected by sexual violence have much to appreciate from her endeavours. We wish too to thank Julia Willan for her assistance in preparing the book. We hope that the chapters will interest, provoke and contribute to more understanding, better policies, and full implementation of recommendations concerning interventions to prevent, investigate, prosecute and support those involved in sexual violence.

Standing the test of time? Reflections on the concept of the continuum of sexual violence[1]

Liz Kelly

Meet Liz Kelly

Liz Kelly holds the Roddick Chair on violence against women at London Metropolitan University, where she has been Director of the Child and Woman Abuse Studies Unit (*www.cwasu.org*) for almost 20 years. The Unit is recognised as a 'world leader' for its policy-relevant research and also runs the only MA in Women and Child Abuse in Europe. The concept of the 'continuum of violence' was developed during Liz's PhD research, and has been used – sometimes in ways not intended – by many around the globe since. It is perhaps the most satisfying contribution one can make as an academic to bring something into language which stands the test of time.

It seems appropriate in this preface to locate the concept of the continuum of sexual violence[2] (Kelly 1987) in my own and wider feminist thinking. In the 1980s the knowledge base and theoretical frameworks available were considerably less developed than today, and for much of the twentieth century violence against women was considered rare, committed by deviant men and/or in dysfunctional families, with a focus in theorising – academic and populist – on how the victims contributed to their own fate. Much of what we knew as feminists, therefore, originated not in research, but consciousness-raising (CR) groups and/or working in women's services, especially refuges and rape crisis centres. Both were spaces in which women told stories about their lives, and in the process questioned clinical and research constructions, which in turn led to making links between what in traditional discourses were considered disconnected events/experiences. There was not at this point, however, a strong sense of just how common violence was in women's lives, and many key feminist texts continued to differentiate men who used violence from the majority of 'normal' men (see, for example, Brownmiller 1975).

This was the context in which I began my PhD, within which the continuum concept emerged. The impetus to explore the range of forms of violence in women's lives was twofold: my own encounters with 'minor' intimate intrusions as an adolescent and listening to women in CR groups and workshops tell similar stories, including how they changed their behaviour as

a consequence; and a young Finnish au pair who sought out the refuge I worked in as a place to 'be' on her day off. She was the first to recount to me a story of sexual abuse by her father, and saw connections between her story and those of the women living in the refuge, which in turn raised new questions for me. The first issue raised the fundamental question of who decides what is abusive, what matters, what should be counted; the second, what is it that connects violations that take place in different relationships/ contexts/points in the life course? The concept of the continuum, and the thinking that informed it, was an engagement with both, and extended existing feminist analysis of particular forms of violence. Judith Herman (1981) had defined incest as an exaggeration of patriarchal family norms rather than a departure from them and Scully and Marolla (1985) argued that rape was the end point of a 'socially sanctioned continuum of male sexual aggression'. Both located sexual violence within the structures of patriarchy, and what would later be theorised as heteronormativity (Jackson 1999) and constructions of masculinity (Connell 1995).

The continuum concept

In the original formulation two dictionary definitions of continuum were drawn on (Kelly 1987): 'a basic common character that underlies many different events' – that the many forms of intimate intrusion, coercion, abuse and assault were connected. This is the meaning that has been most commonly used since. The second dictionary definition was 'a continuous series of elements or events that pass into one another and cannot be readily distinguished' – that the categories used to name and distinguish forms of violence, whether in research, law or policy, shade into and out of one another. This meaning has been less understood and/or used, but remains a challenge at both the level of women's experience – that they may name the similar experiences differently – and with respect to legal reform. The strongest example used in *Surviving Sexual Violence* (SSV) was the way in which women named unwanted sex, with many unwilling to use the concept of rape. Given that this was a qualitative study, seeking to explore the ways in which women made sense of their own experiences, this led to the concepts of 'pressurised sex' and 'coercive sex' being used for non-consensual sex which women did not name rape. This issue continues to trouble us in research and practice, as many chapters in this book illustrate. It is central to a debate in quantitative prevalence research – whether incidents which fit the legal definition of rape should be coded as such when the respondent does not themselves define it this way (Koss 2005) – and more recently in how non-consensual heterosex should be conceptualised (Gavey 2005). In my more recent work on trafficking (Kelly 2005) this meaning of the continuum has been explored in terms of the ways in which migration, smuggling and trafficking shade into and out of one another in complex ways in the lived experiences of women and men, while being constructed in law and policy discourses as mutually exclusive categories.

There was in the original formulation no implication of linearity or

seriousness, with the crucial – and sometimes forgotten exception – of violence that results in death. The only 'more or less' referred to prevalence: that most women recalled encounters with harassment while sexual and physical assaults were less common. It is here that I think that much has been lost in the intervening years, as a focus on crime has meant that research, policy and practice has concentrated on intimate partner violence and, to a lesser extent, sexual assault. The everyday, routine intimate intrusions which were so key to the continuum have dropped off many agendas – leading to the oft-quoted cliché that domestic violence is the most common form of violence against women. It is without question the most researched and counted, but where prevalence surveys include a series of questions on harassment, as recent French and German studies did (European Commission 2010), it emerges as considerably more common in women's lives. A further example of this loss involves a current Child and Woman Abuse Studies Unit (CWASU) PhD student who is revisiting the continuum through the lens of street harassment: in the first draft of her questionnaire neither she nor I noticed that key questions which might illuminate ambiguous experiences were missing.

There are further consequences for the extent to which the continuum within forms of violence is attended to, and understood in terms not only of behaviours, but also their consequences. Here one of the original interviews stands out, of a woman whose father was a lawyer and never did anything that would constitute a crime (at the time), but sexualised his relationship with his daughter throughout her adolescence, including requiring her to dance with him so that his erection pressed against her body. The consequences of this for her, including understanding as an adult the deliberateness through which he orchestrated his own safety while endangering hers, were so similar to those other women talked about where their experiences included repeated rape that it led me to question simplistic notions of seriousness. I still stand by this, but the evidence base on sexual abuse in childhood and its links with subsequent elevated risks of revictimisation (Messman-Moore and Long 2000) does suggest that repeated penetrative assaults are especially harmful. That said, the consequences of the extent of violence and everyday intrusions mean that women, far more than men as a social group, have to factor personal safety into their routine decision-making (Stanko 1990), limiting their 'space for action' (Kelly 2006). We have yet to adequately document the continuum of impacts and consequences[3] – physical, psychological, financial, social and cultural – of violence against women (VAW) in the lives of individuals and with respect to gender equality (see the final section of this preface), although some chapters take up this challenge.

Limits and potentials

Subsequent critiques of the concept have raised a number of issues, some of which are valid, others are a matter of ongoing contention. Sexual exploitation in the sex industry and forms of VAW often referred to as 'harmful traditional practices' (female genital multilation/cutting, forced marriage and honour-based violence) were not included in SSV, but there is no reason in principle why the continuum concept cannot accommodate them and, arguably, recent discussion of the overlapping of arranged and forced marriage with respect to

consent and coercion (Anitha and Gill 2009) does precisely this. It could also be used to explore women's accounts of prostitution: that women within, and having exited, define and understand similar experiences differently along the continua of choice and coercion, agency and exploitation. Current debates on the sex industry tend to work with these concepts and contexts as binaries, and in the process do a disservice to the complexity and ambiguity in many women's accounts (see also Coy 2009). Using the continuum in diverse national and regional contexts would undoubtedly require adjustments in which forms of violence were more or less common.

It is undoubtedly the case that there is little exploration of intersectional issues in women's experiences – especially the ways in which ethnicity inflects with experience and meaning – in part because the sample in SSV was drawn from an area of England which had a homogeneous population, and because of my uncertainty, at that time, about interviewing minority women and interpreting their experiences. Again, there is in principle no reason why the concept could not be developed to embrace intersectionality, but doing so would require a sophisticated layering of data and analysis.

In a strong critique Lynne Segal in *Slow Motion* (1990) argues that the continuum blurs boundaries so much that all heterosexuality is problematised, all men are deemed guilty, and violence is presented as inherent within masculinity.[4] The latter two points are clichéd, while endlessly recycled, responses to any radical feminist perspective, which invariably misrepresent the position of the author and deny that feminists of many hues share a social constructionist epistemology (see also Cameron and Scanlon 2010). I make no apology for questioning 'heterosexuality as usual', of having played a minor part in developing a critical gaze which was deepened subsequently (see, for example, Richardson 1996; Jackson and Scott 2010), theorising the intersections between the construction of gender and sexuality. Lynne Segal revealingly develops her argument for a differentiation of men and violences, stating explicitly that 'violent rape' and those in relationships (p.248) should be separated. Here she reveals limited knowledge of the evidence base on rape – that those by ex/partners are among the most likely to involve weapons and result in additional levels of injury – and reproduces the 'real rape' stereotype which, as several chapters demonstrate, has proved so difficult to shift in policy and practice (see Kelly 2002 for a review of the research and discussion of stereotypes of rape and Munro and Kelly 2009 for how they are implicated in the attrition process). Much of the sound and fury surrounding the Julian Assange case,[5] which continues as I write, turns on precisely these issues – what counts as rape/sexual assault in law and life, and whether it has to be 'violent' in order to qualify. Few commentators have used the ideas underpinning the continuum, nor registered that it was one element in the reforms of recent sexual offences law in Sweden, where violation of women's bodily integrity, rather than force, became the underlying principle.

What counts and what we are measuring

One of the implications of the continuum, which was only clear in retrospect,

was the potential to move beyond the drama and trauma constructions of violence which suffuse media representations, and are at times reproduced in some feminist discourse. To borrow a phrase from Dorothy Smith (1990), it was the everyday and everynightness of violence that was foregrounded, that these more mundane encounters with gendered power relations were connected to the extremes which are deemed worthy of legal regulation and media attention. The loss of this interest in the fabric of women's everyday lives has already been noted. In this section some of the consequences for research and measuring violence are explored.

Prevalence research requires the creation of a methodology which can measure and analyse events in ways which make clear distinctions between what is included and excluded from analytic categories, and in crime victimisation surveys this has always been organised around documenting 'incidents'. In terms of VAW this has been most strongly developed with respect to domestic violence (European Union 2010), which is arguably the least amenable to this approach. Domestic violence tends to be repeated and most definitions of it emphasise the combination of physical, sexual and psychological abuse. Measuring it as 'incidents' of crime fails to capture this reality, which is more accurately defined as a 'pattern of coercive control' (Stark 2007), not least because from a policy and practice perspective, it is those subjected to 'abusive household gender regimes' (Morris 2009) who need – and seek – protection and support.

It is possible to analyse data in ways which are closer to lived experience – combining, for example, frequency, injury and fearfulness[6] – but even here the questions currently used in surveys are rarely sufficiently nuanced since they tend to be constructed to reflect existing crime categories. Psychological abuse is the clearest example here, since it does not constitute a crime in the nations of the UK,[7] although it does in other EU member states (European Commission 2010). Yet in qualitative studies women invariably speak of it as not only commonplace but undermining and more difficult to move on from: as one of the women interviewed for SSV commented, 'bruises heal but a broken spirit is another thing.' Again the questions arise of who decides what counts, what is 'serious' enough to be worthy of measurement, not to mention protection and justice. Similarly, few surveys, even when they are cast as on VAW and/or health, ask about the everyday intrusions in which women's personal space and being with their self is intruded upon: what is measured counts, and not counting means the everydayness of violence is again hidden, minimised and trivialised. This 'normalisation' has been a strong theme in Nordic theorisation of violence against women (see, for example, Lundgren 2004).

There are profound challenges here for prevalence research, if it is to have a better fit with what we know from qualitative studies and from practice, with respect to questions which ask about a wider range of behaviour, its meanings and consequences, and developing more sophisticated analysis. This is not an argument for collapsing the distinction between quantitative and qualitative research; they are different approaches to knowledge creation and there are philosophical and practical defences of each. Rather, in recognising that the underlying argumentation of the continuum is more difficult to integrate into

prevalence research, without more reflection on how it could be better accommodated, measurement will be skewed in ways that move further and further away from lived experience.

Law, crime and harm

Just as there is tension between the continuum concept with measurement, so there is with the concepts of law and crime. The structure of law has been rooted in strict demarcations between what is and is not permissible, and in the case of criminal law, therefore, what constitutes a crime. Law with respect to violence, throughout most of Europe, is built through gradations of seriousness framed in terms of behaviour (and in some instances levels of injury) applied to discrete incidents. These fundamental building blocks of law and crime sit uneasily with those underpinning the continuum concept, not to mention that wider concepts of harm and how repetition contributes to this are difficult to accommodate. That said, however, there are legal reforms which are more attuned, with the most obvious being the 'course of conduct' offences which have developed to address stalking and/or harassment (see European Commission 2010 for a discussion of legal responses across the EU). Here there is recognition of an accumulation of intrusions, some of which, in and of themselves, may appear innocuous and would certainly not constitute a 'crime'. Sending someone a red rose is normatively viewed as an act of affection; it becomes an act infused by malice only when its meaning can be discerned through prior threats or unwanted interactions.

Sweden has gone a step further through the 'gross violation of integrity' offences, which have some direct connection to how the continuum concept was understood and adapted by feminists lobbying for legal reform, and more accurately reflected the realities of both domestic violence and child sexual abuse. Here the repetition and compounding nature of experiences of violence was linked to human rights concepts of harm and physical integrity, with explicit recognition that this progressively erodes the agency and fundamental freedoms of the victim. The charges can be made separately, or alongside more traditional offences linked to specific incidents.

Gendered realities

One of the conundrums addressed in this volume is whether anything has really changed in the three decades in which attention has been paid by states to the issue of sexual violence, with a number of chapters documenting contradictory processes. The greater willingness of women to report is one theme here, but we need to reflect more on the complexity of speaking out. It is not simply a question of whether responses are effective and appropriate, which all too often they are not, but what it means to make private troubles public. In much of Europe violence and abuse is no longer 'unspeakable',[8] yet to speak in some contexts can create further danger/vulnerabilities. Where women come from families in which 'honour' is a strong cultural value, to

reveal sexual violence risks more than reputation or social exclusion; it can place the woman herself at risk of further, potentially lethal, violence (Hossain and Welchman 2005). Being 'dishonoured' could be considered a continuum, with its meanings more or less explicit depending on cultural contexts. Here the example of women who give public testimony, including to human rights campaigners, about rape in conflict is instructive. Rather than being viewed as heroines in their own communities, the all too frequent response is rejection and exclusion, resulting in many finding the only livelihood option is selling sex (Stiglmayer *et al*. 1994). These are more extreme examples of the potential negative consequences of telling; as some chapters in this volume note, women continue to weigh the benefits and losses, including being seen and treated differently by friends and family, in deciding whether and who to tell. 'To be a victim', for a woman, continues to carry stigma and reputational risks, which persist despite feminist efforts and agency engagement.

Gender inequality is a durable inequality (Tilly 1998) with efforts to address it stalling across Europe, and potentially deepened by aspects of globalisation (Walby 2009). The barriers to progress are many, but include a failure to locate violence as one of the core 'pillars' of gender regimes/orders (Walby 1990). Exploring sexual violence in this way is revealing. There is no simple link between women having more financial autonomy/economic resources and decreasing violence – in fact the reverse appears to be the case in the short term across a range of societies. The Nordic countries, for example, are consistently rated at the top of all conventional measures of gender equality (equal pay, paid employment, political representation), yet the levels of violence against women are as high, and on some measurements higher, than in countries where less progress has been made. Similarly, development programmes are increasingly aware that channelling economic resources through women, while more effective in promoting income generation, often has the unintended consequence of heightening tension and violence in interpersonal relations. These examples raise the troubling policy issue that violence might actually increase in response to efforts to create more gender equality, at least in the short/medium term. These disturbing examples illustrate that neither recognition nor redistribution (Fraser 2003) provide an adequate framework for understanding the persistence of gender inequality, VAW and the intersections involved. Nor are they sufficient to explain why decades of reform, new policy and practices have made such little difference in the overall picture, albeit that for many individuals having access to safety and support, and being treated with respect, makes a considerable difference in their lives.

To analyse these tensions and contradictions, we need new theoretical framings which place the continuum of violence at the core of gender inequality, while allowing for change, retrenchment and unintended consequences at multiple levels. In the MA on Women and Child Abuse at London Metropolitan University we encourage students to draw on and develop Connell's (2009) theoretical framework which distinguishes between the overarching 'gender order', 'gender regimes' (more localised within institutions, including the family) and 'gender relations' between individual women and men. While the levels are connected, convergences and

divergences between them are not only possible, but to be expected and explored. This is just one potential framework; we undoubtedly need more, if we are to create conceptual maps which enable us to make sense of the paradoxes of violence against women in the twenty-first century.

Notes

1 I wrote this in the weeks after the death of my life partner, Dr Corinna Seith. It was remembering her insistence and desire that I should return to theory and conceptualisation that gave me the strength to complete what on many days seemed an impossible task.

2 In *Surviving Sexual Violence* (SSV) (Kelly 1987) the concept of 'sexual violence' is used, within a gender analysis, to mean all forms of violence against women, albeit that not all forms were researched explicitly: subsequently in the Nordic countries the term 'sexualised violence' has been used in a similar way. In the intervening years 'sexual violence' tends to be used more narrowly and 'violence against women' or 'gender-based violence' have become the preferred overarching terms.

3 I continue to use impacts and consequences rather than the more limited concept of 'effects' for reasons that were outlined in *Surviving Sexual Violence*.

4 In some parts of her discussion she vacillates between critique and accepting some core parts of the conceptual analysis – that everyday sexism is connected to more obvious assaults, that flashing and harassment are intrusive and exacerbate women's fear, especially in public space.

5 Julian Assange, founder of Wikileaks, has been charged with sexual offences against two Swedish women – one charge of rape, two of sexual molestation and one of unlawful sexual coercion. While there is no dispute as to whether sex took place, the legal charges turn on refusal to wear a condom and having sex while one woman was asleep. Much of the resistance to the possibility that there might be a case to answer conflates the issue of the US contemplating charges for publishing thousands of classified documents with his sexual behaviour. As with the Bill Clinton case, an either/or position proposes that either there is a case to answer or the accusations are being used solely for political ends – the possibility that both may be the case is seldom contemplated.

6 This is done to an extent in the British Crime Survey (Smith *et al.* 2010), and was done in more depth in an Irish study (Watson and Parsons 2005), and it is these analyses which reveal gendered disproportionality in victimisation and perpetration. The headline figures, however, which are those that enter popular and media discourse, continue to be based on those reporting any incident – which can be limited to a push – producing similar prevalence findings for women and men. The one in four headline prevalence finding is rarely accurately qualified, meaning it is widely misunderstood as referring to repetition and multiple forms of violence.

7 In *Yemshaw (Appellant)* v. *London Borough of Hounslow (Respondent)* [2011] UKSC 3, the Supreme Court ruled that 'domestic violence' in section 177(1) of the Housing Act 1996 includes physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may give rise to the risk of harm. This has yet to be extended to criminal law.

8 Swati Pande (2009) has shown that in Hindi there are literally no words with which to name sexual violation.

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Introduction

Jennifer Brown and Sandra Walklate

Meet Jennifer Brown

Jennifer Brown is a visiting professor at the London School of Economics where she is the Deputy Director of the Mannheim Centre for Criminology. She is enjoying what might be considered an extended sabbatical, catching up on writing and publishing, having spent the last several years as head of Surrey University's Department of Psychology. Her earlier work looked at sexual harassment, which was stimulated by observations of the experiences of policewomen when she was the research manager for Hampshire Constabulary. More recently Jennifer has been involved in research projects looking at rape, and has supervised several PhDs including one on police decision-making and another on drug-assisted rape. In 2010 she helped put together the literature review for Baroness Stern who, at the last government's invitation, examined the investigation and prosecution of rape in England and Wales.

Meet Sandra Walklate

Sandra Walklate holds the Eleanor Rathbone Chair of Sociology, a title she holds with particular pride, not just because it is a Chair but also because of the name it honours. Eleanor Rathbone was an active campaigner for social justice that included campaigning on issues relating to women. While sexual violence is not exclusively experienced by women, it is the commitment to social justice that links the work Sandra has been involved with in relation to victims of crime to her involvement with sexual violence. Having spent a good number of years working with a range of victim-oriented organisations as a volunteer, trainer and adviser and having also worked with a number of police forces on training officers responding to sexual violence, Sandra's concerns on these issues are not purely academic. They also stem from trying to understand and help individuals deal with the real problems they may face in their working lives in the best interests of those with whom they are working.

Central themes

When Liz Kelly published *Surviving Sexual Violence* she gave voice to women against the backdrop of an environment in which society was at best reluctant to admit the extent of the violence and the harm it wreaked on its victims and was at worst victim blaming (Kelly 1988). The book's central themes were that sexual violence is part of many women's lives, that a wide range of male behaviour is abusive to women, and that the social context of sexual violence is men's power and women's resistance. In the two decades since that book was written, important reforms and advances have been made in reforming ways of dealing with complaints of sexual violence. In England and Wales, the Sexual Offences Act of 2003 was a major overhaul and consolidation of legislation. The Youth Justice and Criminal Evidence Act of 1999 introduced special measures to protect vulnerable witnesses including video links and screens in court. Police training has been updated as described in Horvath and Yexley's Chapter 5 and Sharon Stratton's practitioner commentary in Chapter 6. They refer to the introduction of sexual assault referral centres (SARCs) and independent sexual violence advisers (ISVA) where victims of sexual violence can receive medical care, counselling and support throughout the criminal justice process (see Westmarland's Chapter 13 for a discussion of these initiatives). Rape shield legislation designed to curtail the use of questioning about the past sexual history or character of complainants has been introduced in the UK, Australia, New Zealand and the United States of America (see for example Jordan 2008 about developments in New Zealand). So, is the battle won in recognising and reducing sexual violence and processing its perpetrators through the criminal justice system? Or, as Jan Jordan opines in Chapter 12, this volume, do women's voices remain muted? The story of John Worboys is instructive when considering the answer to these questions.

Worboys was the driver of a London black cab. London cabbies are licensed and enjoy something of an institutional reputation as trusted commentators on London life. A number of women made complaints of an assault that took place in a black cab in different parts of London. It appears that the women passengers were invited to share in the cabbie's windfall by drinking a glass of champagne that, unbeknownst to them, was spiked. Once the woman was insensible, Worboys sexually assaulted them. Not only were these complaints not collated so that a pattern could be seen to be emerging, but also as the subsequent Independent Police Complaints Commission's investigation revealed, the detective constable in charge early on in the enquiry was of the opinion that, given the victim could not remember anything past getting into the cab, it would seem unlikely that a cab driver would have alcohol in his vehicle, let alone drug substances (IPCC 2010: 10). The IPCC was of the view that a mindset had been formed 'that a black cab driver would not commit such an offence. This mindset would have meant that the cab driver, rather than the victim, had been believed, and it would have damaged the victim's confidence in the police handling of her allegation.' In another instance, case papers relating to a complaint were lost. Worboys was first identified as a suspect in July 2007 but it was not until February 2008 that he was charged with a large number of sexual assaults dating back to October

2006. He was found guilty and sentenced in April 2009. Some 80 victims contacted the police after Worboys' arrest, many not previously having reported their assault to the police.

The Independent Police Complaints Commission (IPCC) charted the progression of the Worboys enquiry. After the July 2007 arrest it was decided there was insufficient evidence to take the case to the Crown Prosecution Service (CPS). The IPCC noted that there were not only failures to comply with standard operating procedures for the investigation of rape but also systemic failures to identify and link offences. The IPCC concluded that there had been a poor initial investigative response, a failure to trust victims, failures in front line supervision, and a lack of facility to cross-check systems to link similar offences. They did not substantiate a complaint that a particular complainant had been dealt with in an insensitive manner, or that she had been given misleading information by the sexual offences investigative techniques officer, but they did find that the detective sergeant missed crucial investigative opportunities. Such a story is not peculiar to the UK. Jordan (2008) relates a similar catalogue of disbelief and premature closure of a rape investigation that led to a Commission of Enquiry into the conduct of the New Zealand Police which revealed major flaws within the police and the wider criminal justice system. Her chapter invokes the concept of 'silencing' to argue the case for systemic failures of the criminal justice system, and indeed the academic community for failing to hear the voices of those suffering sexual violence.

This is not a singular failure because embedded in the Worboys case are patterns of the bigger picture relating to sexual violence: underreporting, attrition of cases as they drop out at key stages of the criminal justice process, disbelieving of complaints and giving men's explanations greater credence than those of the women complainants. In England and Wales the British Crime Survey reveals that a significant number of victims tell no one about their assaults with only 11 per cent making a report to the police (Povey *et al*. 2009). The voices heard in Liz Kelly's book seemed to have been muted again and the chapters in this Handbook revisit the issues raised by Kelly's text.

Scale of sexual violence

Statistics on sexual violence demonstrate the universal finding that more cases occur than are dealt with by the courts (see for example Kelly and Lovett's 2009 analysis of European data). By way of illustration of this point, it can be shown that the UK Home Office rules for recording sexual crime counted 43,579 serious sexual offences in 2009/10 (Flatley *et al*. 2010). This represents a 7 per cent increase compared with the 40,748 recorded in 2008/09. Previously there had been a decrease in reporting.
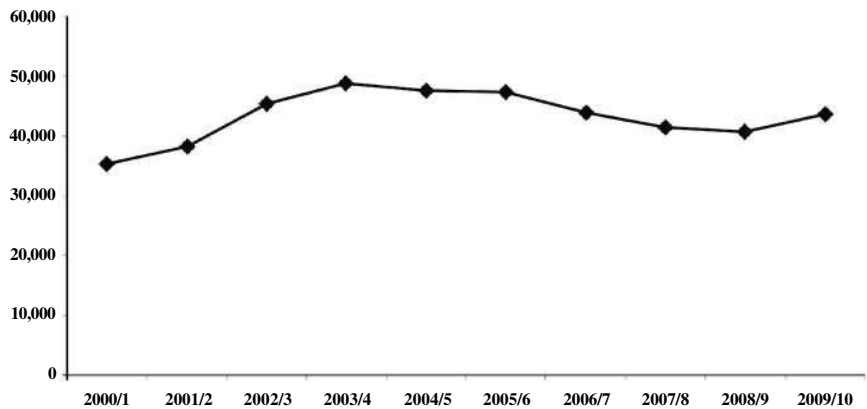
Figure I.1 Recorded crime in England and Wales of the most serious sexual offences 2000–2010

Within this 2009/10 total, police-recorded rapes of a female increased by 15 per cent to 13,991 offences, and sexual assaults on a female increased by 1 per cent to 19,873 offences. Rapes of a male increased by 22 per cent to 1,174 offences and sexual assaults on a male decreased by 2 per cent to 2,270 offences. This trend also reverses a previous downturn.
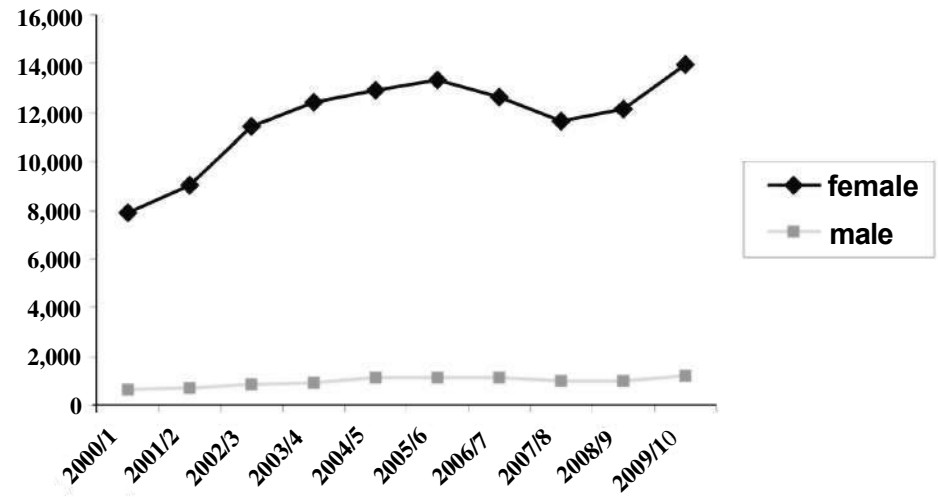
Figure I.2 Recorded crime of rape of males and females in England and Wales 2000–2010

But if the Crown Prosecution Service's statistics for the number of domestic violence and rape allegations reported to the police that are actually charged and for which a guilty verdict is recorded are examined then the attrition rate is clearly visible (see Table I.1).

Table I.1 Police and CPS data on numbers of domestic violence incidences and rapes 2006-2009

	2006/7	2007/8	2008/9
Domestic violence			
Reported to police	336,600	376,550	337,450
All dealt with by CPS	66,639	74,065	80,423
Charged	36,957	47,115	52,412
Convicted	19,978	19,842	18,629
Rape			
Recorded by police	12,624	11,629	12,140
All dealt with by CPS	6,590	5,722	6,597
Charged	1,963	2,220	2,565
Convicted	1,778	2,021	2,018

The number of suspects charged for domestic violence and rape is a fraction of the number of reported or recorded cases. The rates of convictions for domestic violence as a function of those reported to the police are about 6% and about 17% of all recorded rapes (this figure is about 6% of all reported rapes).

Walby, Armstrong and Strid discuss at length in Chapter 4 the meaning and implications of measuring sexual violence. In England and Wales the British Crime Survey measures self-reported victimisation across a range of different crime types on an annual basis. Rape is part of a special self-completion module on intimate violence. Myhill and Allen (2002) calculated prevalence for sexual victimisation and estimated 0.4 per cent for rape and 0.9 per cent for sexual assault, i.e. one in 250 for rape. More recent data from the 2007/08 British Crime Survey (Povey *et al*. 2009) showed that nearly one in four women (23.3 per cent) and one in 33 men (3 per cent) had experienced some form of sexual assault (including attempts) since the age of 16. For rape (including attempts) the prevalence was nearly one in 20 women (4.6 per cent) and one in 200 men (0.5 per cent) since the age of 16. Rand (2007) calculated a sexual victimisation rate for rape and sexual assault in the United States as one per 1,000 persons in the United States. Worldwide estimates suggest one in three women have experienced rape or sexual assault, and in some countries up to a third of adolescent girls reported forced sexual initiation (George Mason University Sexual Assault Services 2005).

Notwithstanding the scale of sexual violence, there is still evidence of the public holding victim-blaming attitudes. For example, a Home Office survey reported that a large proportion of respondents thought a woman was at least partially responsible for being raped or sexually assaulted, especially if alcohol or drugs were implicated (Home Office 2009). All the evidence points to the continued presence of sexual violence within a society which retains beliefs in victims' culpability in their own victimisation. These issues are looked at in some detail in the first section of the Handbook.

Policy changes

Despite the many enquiries and recommendations (the latest in the UK is Baroness Stern's report) there has been a failure of implementation and a preservation of what has been termed 'the justice gap' (Temkin and Krahé 2008) whereby many complaints of sexual violence are dropped out of the criminal justice process.

In an overview of the impact of legislative and policy changes within England and Wales, Brown *et al*. (2010) concluded:

- There is as yet little evidence to show that the 2003 Sexual Offences Act has helped to secure a greater number of convictions against sex offenders;

- Rape shield provisions have not stopped the practice of attempting to discredit complainants because of their sexual histories;

- Only a small number of vulnerable witnesses who might benefit from the application of special measures in court are identified by the CPS;

- Victims were more likely to complete the initial investigation process in SARC areas compared to non-SARC areas and the conviction rate was higher in SARC areas.

This implementation failure is frustrating and is an issue discussed in the final chapter of the Handbook.

Outline of the book

This Handbook speaks to the complexity of sexual violence, situating that complexity within a broad arena from war to the resolution of interpersonal disputes. Liz Kelly in her preface sets scholars the challenge of finding more comprehensive frameworks for understanding these complexities. The focus of the Handbook's chapters is attitudes and behaviour of individuals placed within a broader societal frame. The reason for this is because both individual perspectives and societal levels of analysis are required if evidence based interventions are to be designed to change policy and practice. It is through an understanding of social processes and the individual's psychological mechanisms that underpin sexual violence that it can be combated and harm reduced.

There are four parts to the Handbook.

Part One: Legacies: Setting the Scene provides a critical overview of past practices and policies which help to explain the origins of current thinking and offer steers for future developments.
Part Two: Theories and Concepts examines contemporary thinking and explanatory frameworks from a number of perspectives.
Part Three: Acts of Sexual Violence reviews a number of specific types of sexual violence, elaborating the range of circumstances, victims and perpetrators with a view to addressing the general and pervasive nature of

such violence and contradicting narrow cultural stereotyping.

Part Four: Responding to Sexual Violence evaluates current policies and practices and offers some new ideas to develop different types of interventions.

The distinctive aspect of the contributions will be to try and draw out the range of manifestations of sexual violence from the mundane and everyday to the death of a victim. We also want to try and signal the range of victims within each chapter rather than have specific chapters categorised by gender, race or age of victim, or adult women or men, and where possible to identify cross-cultural dimensions to the research. We wanted a multidisciplinary exposition with an underpinning unifying theme to give a sense of coherence to the chapters but without impeding individual styles of writing and emphasis that the contributors wish to take. We thought that Liz Kelly's idea of a continuum of sexual violence, articulated in her book *Surviving Sexual Violence*, is a helpful common reference point. Kelly notes the difficulties of defining sexual violence and she opts for the following definition (Kelly 1988: 41):

> Any physical, visual, verbal or sexual act that is experienced by the woman or girl at the time or later as a threat, invasion or assault that has the effect of hurting her or degrading her and/or takes away her ability to control intimate contact.

Clearly her focus is on women as victim of sexual violence. So, as a starting point, this definition is helpful, but part of the project of this Handbook is to extend the definition to incorporate other victims and potential perpetrators.

Kelly makes it clear in her book that there are ranges of behaviour defined by those experiencing sexual violence that are not reflected in legal codes nor in analytic categories defined by research. She conceptualises sexual violence as a continuum. Continuum is used in two senses: generic and specific. There are many different behaviours, for example abuse, intimidation, coercion, intrusion, threat and force, and Liz identifies the following:

- threats of violence;
- sexual harassment;
- pressure to have sex;
- sexual assault;
- obscene phone calls;
- coercive sex;
- domestic violence;
- flashing;
- rape;
- incest.

She makes the point that these specific forms of sexual violence do not have strict boundaries between categories and that the continuum does not imply either a linear progression or progressive seriousness. It is a continuum of

prevalence. The contributors were invited to use the concept of the continuum of violence to extend, critique or propose an alternative when developing their particular approaches.

We also wanted the Handbook to offer some practical guidance. Arlene Vetere's Chapter 9 is a description of the programme she and her colleague, Jan Cooper, pioneered working with offenders, victims and families subjected to violence. In Chapter 21 Rebecca Campbell presents an evaluation of the sexual assault nurse examiner (SANE) programme running in the United States which sees a shift from a solely criminal justice response to a partnership between health and justice personnel.

In Part One, Chapter 1, Shani D'Cruze lays out the historical heritage, showing that the idea of sexual violation implying the loss of a woman's reputation is located in Anglo-Saxon times but still has resonance today. D'Cruze's view is that the continuum of violence provides a powerful critique of the insidious presence of sexual violence in contemporary society. Joan McGregor (Chapter 3) adds a legal dimension to this understanding. In perhaps an unusual contribution to a social science text, Bell, Finelli and Wynne-Davies in Chapter 2 provide insights from literature to deconstruct victimhood and pose the question of whether, in order to restore power balances between men and women, the latter themselves have to become violent. Their analysis resonates with but also offers an intriguing take on individual and societal attitudes towards sexual violence.

Walby, Armstrong and Strid take us in Chapter 4 through the various ways in which sexual violence is measured, i.e. victimisation surveys, official police records and academic studies. In trying to disaggregate data, they make the point that, depending on what is the basis of the calculation, different rates of success or improvement are reported. This is not simply a semantic discussion, but is important if we are to track the results of policy changes. In Chapter 5 Miranda Horvath and Mark Yexley analyse the reforms in police practice and show huge improvements since the 1980s. There can be little doubt that much has been accomplished in instituting more humane approaches to victims of sexual violence. There are some grounds for optimism insofar as more women are reporting greater satisfaction in the manner with which they are being treated by the police (Temkin 1999) although it was still the case that women attacked by a stranger seemed to be treated more sympathetically than those who knew their attacker. Felson and Pare (2008) report satisfaction levels from a secondary analysis of the US National Violence Against Women (and Men) Survey in which 35 per cent of men and 41 per cent of women victims were dissatisfied with police and 23 per cent of men and 39 per cent of women were dissatisfied with the way the courts dealt with their cases. The main issues of contention were perceived leniency of punishment, scepticism, insufficiency of the investigation and insensitivity. This study too found that, if the perpetrator of the violence was known to the victim, the complainant was less satisfied with their treatment.

In Part Two of the Handbook, a number of theoretical perspectives are described and discussed. Thus in Chapter 8 Helen Jones examines sexual violence from a sociological perspective by looking at the functions it serves and its structural foundations. She also looks specifically at sexual violence in

war, adding a dimension of analysis to Kelly's continuum. Jennifer Brown also adds a further dimension to the Kelly conceptualisations by asking us in Chapter 7 to think about different forms of sexually violent behaviour from a psychological perspective. She argues that there is a common core of behaviour, physical threat, linking all forms of sexual violence; thereafter, more specific behaviours are associated with its different manifestations. Jo Phoenix's Chapter 10 is perhaps most challenging to Kelly's continuum by arguing it is disassociated both historically and socially. Her analysis of the economics associated with selling sex requires a greater degree of specificity in situating sexual violence. In Chapter 9 Arlene Vetere offers a clinical psychological perspective in which she and her colleague, Jan Cooper, have pioneered a working model within which the victim and violator can meet in the same space and work through the reasons for and consequences of violence.

In their way each of these contributions grapples with the problems of definition and measurement. Walby, Armstrong and Strid suggest that Kelly's definition does not help us disaggregate the different kinds of sexual violence, while Brown attempts to show common and distinctive behaviours within its varied forms. How sexual violence is defined dictates how it is measured and the accuracy of that measurement. The continuum idea is subjected to scrutiny and contributors offer an extension in both breadth and depth to increase its explanatory and predictive power.

Part Three of the Handbook changes the focus of attention to acts of sexual violence. In Chapter 12 Jan Jordan takes on the challenge of examining the assumptions implicit in 'having done rape' meaning that, as reforms are now in place, might we expect to see a diminution of instances and better criminal justice response? Jordan uses the concept of silencing to review, somewhat pessimistically, how victims themselves, criminal justice professionals, the courts, and indeed researchers, mute women's voices, which is in stark contrast to Kelly's project of placing women's voices at the centre of discourses about sexual violence.

Nicole Westmarland in Chapter 13 traces the changing policy context in respect of domestic violence. Like Jordan, Westmarland notes that domestic violence appears to be occupying a more central position in policy terms, having moved from the margins. She details various initiatives and the increases in funding and innovative practices. Along with Vetere in Part Two, Westmarland also examines the role of the perpetrator in sexual violence, along with programmes that incorporate them into the solution to this intractable problem. One noteworthy shift of emphasis is the idea of information sharing, rather than preservation of strict boundaries of confidentiality, between involved agencies. It is often these communication failures that give rise to the problematic instances as described earlier and lead to formal enquiries. This is a theme we pick up in our concluding thoughts.

Anette Ballinger takes a case study approach in Chapter 14 when examining sexual murder comparing the investigation of the Peter Sutcliffe series in the 1980s with that of the more recent Steve Wright murders of prostitutes in Suffolk. At the heart of her analysis is Kelly's notion of the ordinary, i.e. sexual violence arises out of the routines of everyday life, and its perpetrators, rather

than being monsters, are themselves often 'ordinary'. These killers are at the extreme end of sexual violence – they fatally silence their victims – but they are also the proverbial man next door, your neighbour, or someone you say good morning to in the supermarket. Steph Petrie, in Chapter 15, continues the silencing theme by looking at whose voices are heard and listened to in the case of child sexual abuse. She too examines the normalisation of violence and gives a voice to children, as does David Shannon in Chapter 16 on Internet offending. Shannon looks at the kinds of sexually abusive behaviour children are exposed to on the Internet where the continuum notion is a helpful analytic device.

Part Four of the Handbook addresses responses to sexual violence. In Chapter 18 Helge Hoel and Duncan Lewis draw on their research on bullying at work to review how organisations cope, especially focusing on the lesbian, gay, bisexual or transsexual worker. In Chapter 20 Hazel Kemshall compares public and voluntary sector responses to offenders, while Kate Cook's focus in Chapter 19 is on supporting victims, as is Becki Campbell's in Chapter 21. Campbell summaries her extensive series of studies evaluating the Sexual Assault Nurse Examiner (SANE) programme in the United States, offering a reciprocal continuum of violation of survivors of sexual violence. A recurrent theme through these chapters is ideas about risk and how this is defined and managed.

Given our commitment to bridging the gap between the hallowed groves of academe and the messy world of the practitioners, we invited four people actively working in the area of sexual violence to comment on how the work reported by academics has helped or may help them. Sharon Stratton is a serving Metropolitan Police officer, specialising in the areas of domestic and sexual violence. In Part One, Chapter 6 she notes that notwithstanding changes in procedures, policies and practices, 'traditionally police training has had little input from external sources'. It is her view that specialist training should include an understanding of rape myths, typologies of rapists, and an appreciation of the impacts of sexual violence on victims and family members, particularly children. She was of the view that the chapters contextualising sexual violence from historical and legal points of view were helpful resources for police officers to develop their appreciation of the origins and persistence of social attitudes. Ruth Mann works for Her Majesty's Prison Service and in Part Two, Chapter 11 she asks challenging questions of academics: how can practitioners be helped to distinguish good practice from quackery, and does research extend knowledge in relation to risks, need and responsivity principles in intervening with offenders? Mann finds the discussion of individual and societal responsibility helpful in thinking about working with offenders as is the discussion of differentiating motives into different manifestations of sexual violence.

In Part Three, Chapter 17 Stephanie Kewley offers a perspective from the Probation Service and describes divergent pathways for interventions with sex offenders and domestic violence perpetrators. She is not entirely convinced that this divide is particularly helpful, especially as the research and academic analysis show much in common between the offences and the offenders. She is asking for a deeper analysis of treatment needs and for the challenging of

men's propensity to distance themselves from their use of violence as a way of coping. Vetere's clinical approach in Chapter 9 is premised on the notion that perpetrators have to take responsibility for and 'own' their violence and its consequences. Both Kewley and Mann find this chapter especially appealing, informing practitioners as it does about means to access the issue of responsibility.

Sheila Coates is Director of South Essex Rape and Incest Centre. It is fitting that her practice commentary in Chapter 22 gives voice to survivors. These are raw and difficult testimonies to read and they do tell of both positive as well as negative experiences. When professionals are good, the experience is enormously supporting but when they are impatient, indifferent or sceptical it can be very damaging, and as Rebecca Campbell vividly describes, is felt to be a second violation. Coates is asking for consistency in service provisions and a multilevel attack on prevention, and makes some key recommendations.

Our concluding chapter discusses the challenge laid down by Jordan and by Westmarland, in respect of rape and domestic violence, that these have been 'done' and are no longer at the margins of policy. We note that there have indeed been reforms in police training and in service provision to help and support both victims and perpetrators of sexual violence. In particular there have been attitudinal shifts in terms of a decline in complicity in the violence, with more victims reporting what happened to them. There has been an explosion of research since Liz Kelly undertook her pioneering research in the 1980s. However, the justice gap – the estimated number of cases of sexual violence compared with the number of convictions of perpetrators – persists. One of the reasons we postulate for this in our conclusions is the other gap, i.e. of implementation. We suggest that failure to define what improved communication is for, and between whom, leads to a lack of clarity of purpose. We also argue that risk assessment has become a policy mantra and its presence can represent a device for managers to deflect organisational responsibility for systemic failures rather than necessarily to provide a means to improve service provision. We offer a new definition of sexual violence, because definition is critical to what is measured, and in the present climate, measurement is inextricably linked to resourcing.

We end, we hope, on a constructive note, offering an analysis that identifies some key ideas for both better and more informed communication between all the constituencies who have an interest in reducing sexual violence and supporting those whose lives are caught up in the havoc caused. We were inspired by the crucial work of Liz Kelly, whose research has proved both enduring and capable of expansion and refinement.

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Part One

Legacies: Setting the Scene

Introduction

Jennifer Brown and Sandra Walklate

Context

In this first section of the Handbook there are five essays providing a context for thinking about sexual violence, especially in understanding the attitudes which help to shape the modern criminal justice system's responses. The first three chapters – Shani D'Cruze on the historical heritage; Liam Bell, Amanda Finelli and Marion Wynne-Davies, who give us a critical literary analysis; and Joan McGregor's legal legacy work – provide a temporal frame, not often used as an analytic dimension when considering sexual violence. Halford *et al.* (1997: 19) argue that 'historically established modes [of behaviour] are vitally important in shaping current activities'. It is their position, and one we share, that present practices do not exist in a time warp, but rather are derived from past forms of agency which are stored, retrieved, reworked and reactivated in the present. By salvaging the origins of thinking about sexual violence, how this is sedimented in literature, enmeshed in culture and reflected in law, we can see the durability of past prejudice.

Notwithstanding the advances made in the investigation of sexual offences, documented in Horvath and Yexley's Chapter 5, there is a preservation of myths about rape, and the maintenance of a belief that there is a greater harm rendered to men wrongly called rapists than to women wrongly called liars when making complaints of sexual assault or rape. But they are rather more optimistic that changes in policing practice have wrought changes in attitude and improved police and medical procedures for victims of violence which in turn encouarge more to come forward. Bell and colleagues offer a more sanguine analysis of the preservation of myth through the medium of fiction. Walby and colleagues' Chapter 4 though reminds us of the starkness of the numbers of those suffering sexual violence and the relatively few whose aggressors are brought to book. Solutions that these authors offer come with a price and certainly imply a more radical shift in thinking in order to close what has been termed the 'justice gap' (Temkin and Krahe 2008), i.e. the failure of the Criminal Justice System to protect victims of sexual violence and bring its perpetrators to justice.

Sharon Stratton's practitioner commentary in Chapter 6 provides further

details of the improving practice by police officers when investigating sexual violence. She discusses the professionalising of the police sexual violence investigator and a shift in the ethos of policy, which has become one where the victim's fundamental right is to be believed.

The 'deserving' victim

Shani D' Cruze's chapter presents an historical overview and locates the idea that rape was a loss to a woman's reputation in Anglo-Saxon times. She notes that the notion of more deserving victims also emerges very early, whereby the rape of a virgin heiress exacted higher penalties than that of poorer, lower status women and bondswomen (servants), who were excluded from the protection of the law altogether. Prosecuting a case of rape has always been arduous and early legal requirements included prompt and 'rational' action after a rape, displaying of the violated body to appropriate (male) authority figures, and the need to make repeated visits to court to demonstrate causation of the violation. D'Cruze points out that the chance of a successful prosecution was rare, partly because the law gave husbands unfettered rights of access to their wives' bodies and partly because of issues of credibility for younger, lower status women. She argues that husbands' entitlement to their wives' bodies generalised to men's sexual access to women, with women being held responsible for remaining chaste and faithful. So these ideas of prompt reporting to appropriate authorities, and having to demonstrate that the violation occurred, has resonances for modern-day beliefs and practices. This almost mirrors Susan Estrich's 'real rape' scenario where she identifies differences in treatment for those who have experienced an 'aggravated' rape, i.e. one in which a stranger waylays an unsuspecting and unknown woman, compared to the majority of rapes that take place between people who know each other, often in social situations (Estrich 1987). Estrich also points out that failure to report in the immediate aftermath of rape can give rise to serious doubts about the credibility of the complaint. D'Cruze historically locates Estrich's evocation of the notion that rape resides in women's failure to avoid the rape, put up a fight or report promptly.

There is also a modern version of the 'deserving' victim. In a review of rape and rape prosecutions in contemporary London, Stanko and Williams (2009) presented an analysis of rape complaints made to the Metropolitan Police Service. They found that of 697 rape allegations made (i.e. during April and May 2005) only 5 per cent resulted in a prosecution, a statistic more broadly supported for the successful prosecution rate achieved in England and Wales (Stern 2010). Thus achieving successful prosecutions still remains difficult. Secondly, Stanko and Williams developed the idea of the vulnerable victim, who, in terms of their criteria, may be thought of as especially deserving of support and protection. The factors Stanko and Williams identified were comparative youthfulness i.e. under 18 years of age at the time of the attack; having some kind of mental health issue; consumption of alcohol or a drug immediately prior to the attack; and a previous intimate relationship with the attacker. They found that the more these vulnerabilities were present, the

more likely it was that the allegation would not be formally classified as a crime and so progressed through the criminal justice system. Stanko and Williams (2009: 218) conclude that 'most reports of rape are experienced as a ''private'' encounter, in situations that are not too dissimilar to consensual sex.' Thus, where women find it difficult to articulate 'non' consent, men are given the benefit of the doubt. This benefit is conferred by jurors both in mock jury studies and in real trials (Finch and Munro 2008). Page (2008) reports the results of a study of police attitudes in the United States and found that if a prostitute reported rape 14 per cent of officers were very unlikely and 30 per cent unlikely to believe her.

Joan McGregor in Chapter 3 discusses some of the reasons why the law still fails to protect women and appears to protect men's sexual autonomy at the expense of the former. She too argues that men [still] have privileged access to women's bodies; that assumptions are made about the manner and nature of consent to sexual intercourse; that women still face the test of the amount and kind of resistance they put up to avoid being subjected to sexual violence, and the presumptions by men that they had a reasonable belief that the woman had consented to sex. In addition, McGregor notes the maintenance of victim-blaming attitudes by the public and the 'when does ''no'' mean ''yes'' problem'.

Mad or bad

McGregor suggests that rape laws were designed to protect men's interest in their daughters or wives but not so much as to constrain male sexuality. D'Cruze adds to this analysis by proposing that women's autonomous sexual pleasure was tainted by ideas of wantonness, being a whore, or indeed witchcraft. Women who failed to preserve their chastity until marriage or their faithfulness within marriage were considered fallen. The Faustian bargain was that women relied on men for protection but it was their responsibility to reserve sexual access to their bodies to those who had entitlement. If they failed they could no longer rely on male protection. There are several consequences of this chivalric heritage. First, sexual attractiveness is seen as provoking, with the potential of unleashing uncontrolled desire in men. Thus women are seen as the causal agents in their own victimisation. Second, there was a demonisation of rapists whereby men who raped and thus fell below the chivalric ideal were brutish. Third, there was a societal expectation that women would preserve their honour to the death. D'Cruze charts a shift by the nineteenth century towards marginalising men who fall short of chivalric standards as being morally degenerate monsters, which leads to the pathologising of perpetrators. She cites the work of the Italian criminologist Cesar Lombroso who thought criminal types could be identified by their physiology. Thus rapists, he thought, have sparkling eyes, delicate features, and swollen lips and eyelids. D'Cruze sees the pathologising of violence based on these nineteenth-century ideas as society's protection against the notion that sexual violence can and is indeed perpetrated by the ordinary, not the monstrous; a position outlined by Liz Kelly in her continuum of violence

conceptualisation, which D'Cruze comments is a powerful critique of the insidious presence of violence in contemporary society that does not necessarily work in the same way in every historical epoch.

This psychological process of inferring characteristics of the individual from facial features has been termed 'metaphysical generalisation' by Paul Secord. Secord *et al.* (1960) describe how impressions can be formed of people based on relatively little information. Thus coarse skin may be associated with coarse behaviour, thin lips with meanness, eyes that are close together with deviousness. Cultural associations provide the link between the feature and the attribute. There is also a tendency for the perceiver to maximise congruency; in other words to make the impression fit the attribute even if this means some adjustment in the interests of creating a unified impression. One example of this is the so-called halo effect, whereby a positive feature of an individual is generalised and other attributes are made to fit this overall impression. The opposite is also observable when a negative feature generalises to attributions of behaviour to fit the negative impression. So, as Joan McGregor describes in the rape allegation made against William Kennedy Smith, the discussion of his accuser's underwear cast her as a woman in search of sex, undermining the credibility of her complaint. Advice to defendants by their counsel is still likely to be 'turn up to court looking presentable in a suit', to give the impression that a good-looking and smart young man would have no need to force a sexual encounter.

Blaming the victim

The idea of blaming the victim can be found in Victorian ideals which suggested that to have unsanctioned sex outside marriage was such a blow to respectability that it was a fate worth fighting literally to the death to preserve. The belief that chastity should be protected at all costs meant that failure to do so implied consent. The victim is blamed both for precipitating her own victimisation through her sexual attractiveness and also through her failure to resist when attacked. As Horvath and Brown (2010) point out, this places the victim between a rock and a hard place: greater believability is attached to notions of 'real' rape – the stereotype stranger attacks in the dark alley with a knife, which is actually relatively rare – whereas the more frequent, contested consent cases involving allegations against someone the woman knows tend to be more often disbelieved. In that latter instance, successful prosecution relies on scrutiny of the consent rather than the behaviour of the attacker (Stanko and Williams 2009). Blaming the victim and exonerating the perpetrator is a prevailing rape myth which experimental social psychological studies by, for example, Bieneck and Krahé (in press) show to be attributable to schematic information processing, i.e. when people judge social information on the basis of their generalised beliefs and knowledge that are stored in their memories. They found that this tendency was more pronounced in cases of rape rather than other crimes such as robbery, when the issue of prior relationship and being drunk seemed significantly less related to the attribution of blame. Rape, they concluded, represents a special case. Brown and Horvath (2009) then

argue that the operation of such culturally embedded myths acts to attenuate the perceived harm experienced by women and actually creates a reversal whereby men become the victims of sick, vindictive or vengeful women by virtue of belief in the number of false allegations that are thought to be made.

There is a commonly held belief that many women offer only token resistance to sex and that when they say no they actually mean yes (Muehlenhard and Hollabaugh 1988). Young college women (N=610) completed a questionnaire designed to measure their explicit verbal behaviour and behavioural intentions whether to engage in sex. Muehlenhard and Hollabaugh report that 40 per cent of women indicated saying no to sex when actually they meant yes. The reasons for this were: fear of appearing promiscuous; feeling inhibited about sex; or more game playing. The conclusion drawn from this study was that although there was a substantial minority who did say no when they meant yes, this could be attributable to perceptions of the attitudes embedded in cultural expectations about sex. Most women did not engage in token resistance, thus 'when a woman says no, chances are that she means it regardless of the incidence of token resistance; if the woman means no and the man persists, it is rape' (Muehlenhard and Hollabaugh 1988: 878). Brown and Horvath (2009: 333) argue that culturally embedded sexual scripts, which dominate the negotiation of sexual encounters, make it difficult for women to change their minds. Such scripts tend to cast men as the sexual pursuer and initiator of sex while women are the gatekeepers whose role is to grant permission for sex to take place. Reliance on such scripts can lead to some confusion because if women fail to signal no clearly, or men fail to understand, there is a perception by men that the confusion is the result of miscommunication. This represents blame shifting, whereby the woman becomes responsible for the apparent communication problem.

Communicating is at the heart of Liam Bell, Amanda Finelli and Marion Wynne-Davies's Chapter 2. Their starting point is the notion of the commonality of sexual violence, a point which resonates with Kelly's continuum of violence concept. Their point of departure is Brownmiller's notion of women 'fighting back' and the idea that rather than violence being an act of self-defence, women may actually initiate it, a point the Kelly continuum does not concede. Their gripping analysis deconstructs the victim–perpetrator relationship through the medium of the novel. Using Angela Carter's *The Passion of New Eve* they challenge the concept of the self-defending woman by examining the violating woman. They also discuss the idea of responsibility for violence and the excuse given by a male character in the novel, Zero, that the notion of repressed sexual dissatisfaction gives rise to sexual violation. Interestingly David Canter, in his exposition of the rapes and murders committed by John Francis Duffy, notes that Duffy blamed his wife for his escalating levels of violence perpetrated on his victims. Canter writes: 'John Duffy had found out that he was infertile and some of his most violent assaults took place after he discovered that his ex-wife had become pregnant by another man after she had left Duffy' (Canter 1994: 51). In court, Duffy's former wife explained that 'he [Duffy] said he raped a girl and said it was my fault.'

Are things getting better?

All this sounds pessimistic and rather bleak. So has there been any progress? In Chapter 4 Sylvia Walby and her colleagues map the occurrence of sexual violence over time through a self-report victimisation survey (the British Crime Survey), police-recorded crime and academic research results. They discuss the problems of accurate measurement of the extent of sexual violence and the continued problem of attrition, in other words the pinch points at which cases drop out of the justice process. A major pinch point is the failure to report sexual violence to the police in the first instance and the high percentage of cases in which the police decide to take no further action.

Miranda Horvath and Mark Yexley's Chapter 5 charts the development of police training in sexual offences investigations. They start with the 'bad old days'. In the 1970s the attitude of police towards sexual offences was one of suspicion and disbelief of the victim. This was epitomised by a comment by Detective Sergeant Alan Firth of the West Midlands Police, who wrote in the *Police Review* of 28 November 1975 (page 1507):

> Women and children complainants in sexual matters are notorious for embroidery or complete fabrication of complaints ... It should be borne in mind that except in the case of a very young child, the offence of rape is extremely unlikely to have been committed against a woman who does not immediately show signs of extreme violence ... If a woman walks into a police station and complains of rape with no such signs of violence, she must be closely interrogated. Allow her to make her statement to a policewoman and then drive a horse and cart through it ... call her an outright liar. It is very difficult for a person to put on genuine indignation who has been called a liar to her face ... Do not give her sympathy. If she is not lying, after the interrogator has upset her by accusing her of it, then at least the truth is verified.

Horvath and Yexley move on ten years to 1985 and the now notorious scenes from the Thames Valley Police fly-on-the-wall documentary by Roger Graef which showed the oppressive interviewing of a rape complainant. This sequence emphatically illustrates the points being made by both D'Cruze and McGregor as, in the documentary, it was the woman's reputation as a prostitute which minimised both her credibility and the harm she was believed to have suffered. The ensuing outrage resulted in women's groups, The Women's National Commission and the Home Office working to create new principles of good practice when dealing with sexual crime. Specialist training had begun in the Metropolitan Police Service in 1984 with officers being made more aware of the criticality of forensic evidence and the need to support the complainant through the courts process. By 2008, the approach had become a co-ordinated response with officers being familiarised with the special measures that can be undertaken to support or protect vulnerable witnesses.

Sharon Stratton, herself a serving police officer specialising in sexual violence investigation, argues in Chapter 6 that training and guidance have

improved dramatically in police forces in England and Wales. She suggests that the establishment of specialist teams, known as Sapphire units, illustrates the importance attached to police investigations into rape allegations. Certainly in England and Wales there has been a steady increase in the numbers of reported rape cases. Notwithstanding these developments, the Metropolitan Police Service was severely criticised by the Independent Police Complaints Commission (2010) over two specific serial rape investigations involving John Worboys and Kirk Reed. The IPCC concluded that the investigative shortcomings were not just of individuals but were also systemic failures of supervision and cross-referencing of reports. The Commission stated (p. 16): 'there is a widely held perception that women reporting rape and other sexual offences have not been taken seriously, either because of the nature of the offence or because priority has been given to other offences such as burglary.'

Reforms in police investigations may have had some limited successes but because of the adversarial nature of the prosecution system complainants are also witnesses and often face hostile cross-examination designed to destroy their moral character; a strategy which, as D'Cruze and McGregor show in their chapters, was at the heart of men's and society's upholding of the established social order.

Conclusions

The first five chapters in the Handbook offer some historical and cultural grounding to ideas about the perpetration, perpetuation and victimisation associated with sexual violence. Contemporary issues around complainants' credibility as a victim, the need to have resisted and to have made an early report of the assault have resonances with historical precedent outlined by D'Cruze and with their embedded nature in popular culture as discussed by Bell *et al.*. Ideas such as that of the more deserving victim have their modern-day counterpart in victim vulnerabilities. Modern medical technologies have been something of a double-edged sword. The contraceptive pill liberated women from the risk of pregnancy following sex, but that very freedom signalled her sexual availability without the previously almost inevitable consequences of conception. DNA analysis has shifted the contested grounds of an allegation from whether or not sex took place, and with whom, to whether or not what took place was consensual. Sylvia Walby and her colleagues suggest that it is crucial that accurate measurement of the extent of sexual violence is undertaken if effective monitoring of policy changes is to be undertaken. They suggest a standard definition of conviction rates in order that there is both a clear and commonly used metric whereby agencies and the public understand what is being measured.

Joan McGregor's suggestions of more radical reform, such as relabelling sexual assault to conform to the rules of physical rather than sexual assault, might at least see more defendants in the dock but risk obscuring the unique harm of rape. Differential penalties for unaggravated assaults could imply some rapes are worse than others. Liz Kelly's pioneering work in the 1980s

argued against such comparisons. The essays presented in the chapters here find her continuum of sexual violence helpful in so far as it shows its emergence out of the routines of everyday life, and its ubiquitousness, but that level of generality limits its explanatory power.

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Chapter 1

Sexual violence in history: a contemporary heritage?

Shani D'Cruze

Meet Shani D'Cruze

Shani D'Cruze first found herself researching the history of sexual violence when the 99 per cent male academic department where she was a junior researcher proposed a project on that topic. The department soon gave up the idea, but she went on eventually to publish a monograph, *Crimes of Outrage: Sex, Violence and Victorian Working Women* (UCL Press 1998). Most of her academic publications are on gender and the history of violence. After a career based in English universities she has run away to Greece where she combines academic research and writing with Cretan rural living. She is currently Honorary Reader in the Research Institute for Law, Politics and Justice at Keele University. Recent publications include: *Murder: Social and Historical Approaches to Understanding Murder and Murderers* (with Sandra Walklate and Samantha Pegg, Cullompton: Willan Publishing 2006) and *Women, Crime and Justice since 1660* (with Louise Jackson, Basingstoke: Palgrave 2009).

Introduction

This chapter reviews the social and cultural history of sexual violence between the medieval period and the new interpretations of Second Wave Feminism in the late twentieth century. Many of the sources historians use come from the law, the courts and the police. Therefore, much of what can be known about sexual violence in the past becomes visible when it became a matter of criminality; something that occurred only rarely. Historically, there were very few rape, attempted rape or indecent assault cases (around 1 per cent of known felonies in the Early Modern period) and much sexual violence has remained socially and criminologically opaque (Walker 1998: 1). This is perhaps especially true for sexual violence experienced by men and boys; until very recently a different legal framework was applied and the constraints on speaking publicly were often even heavier.

Recorded interpersonal violence in Western Europe declined significantly between the medieval period and the mid-twentieth century (Gurr 1981; Eisner 2003). This has been explained by increasing control through legal sanctions and a growing criminal justice system to enforce them combined with the shaping of modern social identities which privileged restraint over all kinds of bodily excesses. Consequently this 'civilising process' reduced interpersonal violence, mostly public violence between males intended to resolve disputes and preserve personal honour (Elias 1978; Carroll 2007). Sexual violence qualifies the 'civilising process' concept. Although there is a 'dark figure' of undisclosed and unprosecuted criminal activity of all kinds, the extremely low levels recorded since medieval times make sexual violence a special case.

In the UK in the early twenty-first century a range of studies indicate that only something like 5 per cent of rapes reported to the police end in conviction. Furthermore fewer than half of rapes are ever reported – in some studies the non-reporting figure is between 80 and 90 per cent (Bourke 2007: 390–94). While we do not have comprehensive crime figures for earlier historical periods, the very low numbers tried, together with the appearances of sexual violence in the records of different offences, suggest persuasively that there has been a consistent historical continuity in non-reporting. For this reason alone, it cannot be assumed that sexual violence has followed the long-term downward trend of other kinds of interpersonal violence. Furthermore, crime statistics have numerous shortcomings in documenting the incidence of sexual violence, and shifting perceptions and categories of sexual violence over time mean that we cannot know how much of what would now be thought of as sexual violence took place at any historical period. In fact, recent historical investigation is demonstrating that sexual violence has long been an opaque matter for criminal justice systems; both symbolically highly transgressive but difficult to read in particular instances. We cannot assume that behaviours which would now count as sexual violence were always considered as such. The injuries that laws on sexual violence were intended to punish have also changed over time. The sexed body, and violence directed towards it, are therefore produced historically at the intersections of discourse, power and pain (Scarry 1985; Bourke 2007).

The chapters in this volume each engage in different ways with Liz Kelly's feminist concept of sexual violence as a continuum of behaviours that are threatening, degrading, or humiliating within the context of intimate contact (Kelly 1987, 1988). Historically, the criminal justice process since the medieval period, the Early Modern church courts which policed sexual matters as sin rather than as violence, and the medico-legal constitution of offenders and victims especially since the nineteenth century, have all tended to define sexual violence both narrowly and imprecisely. Those who have experienced sexual violence have frequently been held as at least in part culpable. Of course, it was central to the feminist politics of Liz Kelly's research to demonstrate the limitations of pre-existing definitions and to place the blame for sexual violence emphatically with the perpetrator. However, the idea of a continuum of violence does have some limitations in historical analysis. It is a concept that emerges out of feminist readings of modern sexual identities and

as such mounts a powerful critique of the insidious presence of violence in contemporary sexual culture. Superficially, the same kinds of things seem to have happened through history. As a feminist researcher one recognises and empathises with the stories of those who have experienced sexual violence, even in the far distant past. However, it is also important to distinguish this emotional and political reaction from historical analysis. Historians are now sensitive to the histories of superficially timeless aspects of human existence. The body, sexuality, reproduction, intimacy and emotion are physiological and psychological 'facts of life' but they are also culturally produced and reproduced and shift over time in meaning and how they are experienced. It is therefore questionable how far we can read back modern formulations of sexual violence into past societies in which both violence and sexuality figured rather differently than they do today.

This is not to say that modern feminist theory, such as the idea of the continuum of violence, has been ignored in historical analysis. Recently, gender historians have read the historical material against the grain, looking outside of the criminal justice system's own definitions and boundaries. The historical record is inevitably incomplete and these interpretations are always contingent and often tentative, though they are expanding knowledge about the intersections of violence and sexuality over time. Furthermore, the changing nature of the sources means that different questions can be asked and answered for different periods and also the varying concerns of historians researching specific eras means that sexual violence crops up rather differently in their writing. Nevertheless, it is possible to detect changing perceptions of sexual violence in the law, medicine, psychiatry and later psychology from the nineteenth century which, by the twentieth century, coincided with recognisably modern sexualities. In the later twentieth century, a new generation of feminists challenged the blind spots about power and gender in these dominant perceptions both theoretically and politically, not least by developing concepts such as the continuum of sexual violence.

Rape law and medieval society

Research on the medieval period has explored the origins of the laws on sexual violence. These differed from current formulations, but established principles and assumptions which proved historically enduring, despite the changes in the social contexts of sexual violence which were brought about by centuries of historical change. Social experience of sexual violence and people's uses of the medieval courts are harder to recover, but there are indications of tensions between the written law, legal practice and individuals' sense of injury (Carter 1982, 1985).

There were few cases of sexual violence in the medieval legal system and the conviction rate was significantly lower than for other crimes (Jones 2006: 78). This period saw the growth of written law and the development of criminal justice. The individual harm to women and girls was de-emphasised in new statute law on rape (Gourlay 1996). The trend was to conflate laws against rape (bodily sexual assault) with the punishment of *raptus* or

ravishment (the abduction of women, in particular of virgins). *Raptus/* ravishment was a crime against property, and as such it attracted severe punishment (Bashar 1987). It was also sometimes used to prosecute the abduction of male servants, or to discipline clergy who had reneged on celibacy (Hawkes 2007: 126; Jones 2006: 77; Bullough 1982). These laws were a complex and uncertain amalgam of two evolving legal traditions. Roman law, as adopted in continental Europe, also underpinned the ecclesiastical law enforced in the English church courts. This gave greater emphasis to the element of abduction. A more oral Germanic tradition, originating in Anglo-Saxon England, distinguished rape from abduction and treated rape as personal injury and the loss of a woman's sexual reputation – something vital for her social worth. In post-Conquest England the formal (rarely applied) penalty was castration and blinding (Saunders 2001: 73–6). The law on *raptus* did not address sexual violence against men and boys. Sodomy, a moral crime for which both parties were triable, was a matter dealt with, if at all, by the ecclesiastical courts (Bray 1990).

Two key statutes known as Westminster I and II of 1275 and 1285 first codified the shift in the law on rape (Post 1978). Following the Westminster statutes ravishment was a capital felony defined as the abduction of a woman without her consent or, if she was under 14, irrespective of consent. Even if a woman subsequently consented, the crime was still to be tried and she was to be barred from any inheritance, thus dealing with situations where an abduction was the cover for (voluntary) elopement (Jones 2006: 77). Furthermore, the King was given the right to prosecute the crime if a woman had not lodged the case within 40 days. A statute of 1382 extended the right to prosecute to a woman's male kin or guardians (Saunders 2001: 37; Baines 1998: 70).

The growth of the law and legal process in the medieval period was a consequence of monarchs' attempts to establish a countrywide system of justice which would ensure the 'king's peace' over and above the authority of local, manorial courts (Harding 1973). Punishment for all kinds of offences was generally more severe for those of lower social status (Hanawalt 1975). The law aimed to maintain social inequalities, including but by no means exclusively those of gender. The rape of virgin heiresses or nuns attracted higher penalties than that of poorer, lower-status women. An Act of 1487 specifically excluded bond women (servants) from the protection of the law on rape (Hawkes 2007: 127).

Following the Norman Conquest, primogeniture, the inheritance of property by the eldest legitimate (male) heir, became more common. Questions of family, legitimacy, the regulation of reproduction (and hence the control of women's sexuality) were important to property transfer. There was therefore an overlap in the law's intention to punish both sexual violence and the encroachment on the rights of fathers, husbands or other male kin to control a woman's sexuality and reproductive capacity (Saunders 2001: 48). The laws on ravishment served the interests of the wealthy, and some cases amounted to dynastic power struggles fought out over the bodies of elite women. However, many cases were originated by women of more moderate social status.

In Emma Hawkes's study of 132 later fourteenth-century indictments, around two thirds of cases involved married women and where the violence was against single women, the loss of virginity was not emphasised. However, indictments for the *raptus* or ravishment of wives also often mentioned the theft of their husbands' property. On marriage women's material possessions became legally owned by their husbands; the abduction of a wife meant the theft of the husband's property in her clothing and personal items. Although medieval women were not chattels, women, reputation and family or household property were closely associated. Hawkes finds that indictments were careful to use different words to distinguish property theft from sexual violence. The prosecutions focused on personal injury, but in the legal instrument which defined the crime, elements of property, theft and the wrongs to male kin remained closely associated (Hawkes 2007).

Prosecuting a case was arduous for the woman or girl involved. It required prompt and rational action following the attack, the humiliating display of her violated body to male authority figures, repeated visits to court and having to remember and repeat her charge word for word (Saunders 2001: 63; Hanawalt 1978: 34, 61). The legal formulae required were precise; any error or deviation could lose the case. Declaring rape in public jeopardised sexual chastity and the possibility of future marriage. There was a requirement to show resistance, but this in itself could indicate a lack of feminine respectability. The problems of proof were exacerbated since pregnancy was widely taken as evidence of sexual consent, the theory being that conception required the sexual pleasure of women as well as men. Many cases were settled out of court or abandoned, sometimes with a cash settlement and sometimes by marriage. Where the woman or girl who brought the original complaint used the older legal process of appeal she was subject to imprisonment if the case was abandoned. Women bringing unsuccessful charges of rape might also face charges of defamation or fornication (Jones 2006: 78). Even if a verdict was obtained punishment was often light (Kittel 1982; Orr 1994; Walker 1987). However, Barbara Hanawalt has suggested that even when a rape prosecution resulted in acquittal, the opportunity to relate the events and name the accused might have proved sufficiently satisfying to 'outweigh the danger to women's own reputation' (Hanawalt 1998: 133; Klerman 2002: 312).

The medieval laws established the legislative framework for the criminal prosecution of sexual violence against women and girls until the nineteenth century. Statutes of 1555 and 1597 indirectly established abduction and rape as separate offences. In 1576 rape became a capital felony. However, there is no sign that greater clarity in the law led either to larger numbers of charges or to a higher conviction rate (Baines 1998: 72).

Interpreting Early Modern cases

The greater production and survival of court records for the Early Modern period (the fifteenth to eighteenth centuries) has meant that by examining cases of fornication, adultery, defamation, sodomy and assault as well as those for rape and attempted rape, historians have been able to ask more detailed

questions about narrative construction and cultural meanings of sexual violence than has generally been possible for the medieval period. Both rape and sodomy were widely written about as heinous offences which destabilised social order. However, as specific criminal offences they were extremely difficult for the law to 'see' (Herrup 1999: 27, 29). Cases often pitted younger or lower-status complainants against adult men in a society where credibility depended on social status and where unequal social status frequently legitimated the use of force (Walker 1998: 29; Gowing 2003: 90).

As an offence, sodomy was differently positioned than rape since the 'property' element did not apply. Sodomy first became a secular offence in the 1530s as part of the legislative programme which accompanied Henry VIII's break with the legal authority of the Catholic Church in England. It was defined as penetrative sex between male partners, between human and animal, or anal sex between men and women, and was an offence for both parties irrespective of consent, unless one of them was either a boy below the age of criminal responsibility (14) or a girl below the age of sexual consent (effectively 10). Male homosociality, clientage and patronage underpinned much of Early Modern public life. The idea that homosexual practice defined a distinct sexual identity emerged (arguably) only much later in the Early Modern period. Sodomy was seen as unfettered desire, and this disturbed social rather than sexual order. Sodomy was dangerous not primarily because it involved unauthorised sexual choices, nor because it might involve coercion, rather because it manifested a lack of the self-control that was becoming increasingly necessary to ideals of manhood. Because of this, 'sodomy "existed" only when someone chose to see it' (Herrup 1999: 35); that is, where a man's conduct disturbed the prevailing social order, usually on a local or sometimes on a wider scale. King James I and Francis Bacon, Earl of Verulam were two of several examples of high-status men accused of sodomy together with other allegations of misconduct in public life (Herrup 1996, 1999: 33–4; Shepard 2003; Breitenberg 1996: 59–61).

Probably the most widely publicised case of rape and sodomy was that of the Earl of Castlehaven (1631). Castlehaven was a rare example of a high-status man found guilty and executed for sexual offences, which included abetting the rape of both his wife and daughter-in-law and sodomy with his servants. Although analyses of the case since the eighteenth century emphasise the Earl's sexual transgression, at the time the case seemed most disturbing because of his failure to maintain proper decorum in his own household. The (orderly) Early Modern household was the microcosm of hierarchical society and the kingdom itself. During the 1630s, as King Charles I's relations with his parliaments worsened, such disruption within an elite household had particular political resonance and mirrored what seemed rotten in the Stuart state (Herrup 1996, 1999).

Sexual violence in warfare has been a recurrent event across centuries of history and can be located at the most extreme reaches of a continuum of violence since it is about inflicting pain and humiliation on communities and nations over and above that which it causes to specific individuals. I shall take up these issues in more detail when reviewing the modern period. However, the historical nuances were equally complex at earlier periods and, as Herzog