Black Women and the Criminal Justice System

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The objective of this dissertation is to demonstrate that victimisation is not punishment. Although this thesis statement sounds simplistic enough, there is a need to demonstrate its validity because the theory and practice of punishment focus exclusively on 'the punishment of offenders' as if anyone who is 'punished' is necessarily an offender. A review of the philosophy and theory of punishment reveals that the punishment of the innocent is conceptualised as a logical impossibility or contradiction because punishment is conventionally construed to presuppose an offence. The present dissertation argues that the punishment of the innocent is not always a mistake or a miscarriage of justice but also an inherent feature of the adversarial nature of criminal justice which assumes formal equality between parties who are substantively unequal in class, race and gender relations. This dissertation is guided by the assumption that the more central punishment is to any theory or practice of criminal justice the greater the tendency for that theory or practice to conceal or truncate relatively autonomous issues that are routinely packaged with, and thereby colonised by, the conceptual empire of punishment. The historical materialist theory of the articulation of race, class and gender relations is applied here to show how poor black women in particular, poor black people and poor women in general, are uniquely vulnerable to victimization-as-punishment and victimization-in-punishment and how they struggle against these. The former refers to the 'punishment' of innocent people sometimes because they are close to targeted individuals and sometimes because they are framed and made to appear guilty. The latter refers to punishment which is unusual or out of proportion in relation to the nature of the offence. The concept of colonialism is employed in this thesis to underscore the close links between the law-and-order politics of today and the imperial traditions of the past and to emphasise the colonisation of relatively autonomous institutions and processes by the criminal justice system. Towards the decolonisation of victimisation, or the understanding of the nature of victimisation-as-punishment and victimisation-in-punishment as part of the processes of imperial domination which survive in the internal colonies and neocolonies of today, the history of the victimisation of black women in the guise of punishment is sketched from the days of enslavement, through conquest and colonialism, to neo-colonialism as a useful background to understanding the victimisation of black women and other marginalised categories specifically in the internal colonies of England, with analogous evidence from other locations brought in to throw more light on the situation in England. Informed by feminist research and by critical criminology, the present dissertation adopts the method of data reception that differs from data collection in the sense that the former respects the autonomy of sources of data which the latter tends to take for granted. Empirical data were received from individuals and groups who were aware of the problems that faced black women in the criminal justice system in England. Such information was complemented by the personal observations of the present researcher and by what is already known from previous research and publications. This dissertation concludes by explaining the theoretical, methodological and practical implications of the present research especially for people who are active in the struggles against the problems that face black women and people like them in the criminal justice system in particular and society in general. The major implication of the present research is that since the problems that face black women in the criminal justice system can be seen to result from the articulation of unequal and oppressive class, race and gender relations; research, theory and struggles must be aware of all three rather than prioritising, distancing or isolating one or two of these social relations.

Declaration

I, Onwubiko Agozino, hereby declare that this thesis was composed by myself and that it has not been previously submitted anywhere else for a similar degree. An essay of fifteen thousands words with the same title was submitted to the University of Cambridge in partial fulfillment of the requirements for a successful M.Phil in 1990. The present thesis is approximately one hundred thousand words long. Thanks to my supervisors for their patience, to my colleagues for their support and constructive criticism, to my family for their sacrifice and encouragement, to the University of Edinburgh for the Postgraduate Research Studentship, to the Committee of Vice Chancellors and Principals for the Overseas Research Students Award which helped to finance the present study and to the groups and individuals who provided information. I am fully responsible for any errors that might be found in this thesis.

BLACK WOMEN AND THE CRIMINAL JUSTICE SYSTEM

BLACK WOMEN AND THE CRIMINAL JUSTICE SYSTEM

Introduction

> 'Brothers and sisters, Hail! Hail! ... As the brothers in the street would say, I man Ire, I man dread, which simply means that whatever pressures may be coming down we are determined to resist. Our will to struggle has not in any way been lessened; on the contrary, today we feel stronger than ever, we feel more confident than ever, not simply in our own ability and capacity, because that would be incorrect. We feel more confident because of the demonstrated ability and capacity of the people as a whole' (Rodney, 1981: 5)[1]

The choice to focus this research primarily on black women is based on the belief that they are marginalised in both society and in criminological research. In education, employment, the professions, commerce, industry, and politics, black women are poorly represented. But in the prisons, their presence is highly disproportionate to their numbers in the wider society.

It was reported by the Home Office[2] that in June 1988,

> 'About 9.5 per cent of the male prison population and 19 per cent of the females were known to be of West Indian or African origin, compared to 9 per cent and 17.5 per cent

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[1] His last public address exactly one week before he was assassinated on 13 June 1980.

[2] Home Office Statistical Bulletin, hereafter referred to as H.O.S.B, 12/89, 'The prison population in 1988', p. 10.

> respectively in mid 1987 and thus continuing the increases from 8 per cent and 12 per cent respectively, in mid-1985.'

This is out of line with their proportional distribution of less than three per cent in the total population. It is also out of tune with the relative lack of criminological interest in Black women (Rice, 1990). Yet some criminologists and administrators interpret these statistics to mean that black people are disproportionately involved in criminality.[3] It will be argued in the present research that this pattern of relative presence (in prisons) and relative absence (in research) is symptomatic of marginalization which needs to be properly understood in order to be overcome.

Marginalised groups such as the poor, it has been argued, are traditionally the focus of criminological research because of their relative powerlessness and also due to their over-representation in control institutions (Box, 1983). The criminological interest in the poor is justifiable because the majority of those arrested and those held in custody are poor. What is difficult to justify is the assumption of some criminologists that the marginalised poor only constitute problems that could be solved through the discovery of more effective control mechanisms (Wilson and Herrnstein, 1985, for

[3] See Fitzgerald, 1993, a Home Office review of the literature on this for The Royal Commission on Criminal Justice. She concluded that it is not possible to tell the level of involvement in criminality by whole groups and categories. She also conceded that it is possible that some of the over-representation of black people in the criminal justice system is as a result of discriminatory treatment at different stages of the criminal justice process. Hudson, 1987, is surprised to find similar scepticism among criminal justice officials while it is becoming fashionable for many left-wing and right-wing criminologists to argue that black people must be more involved in (street) crime simply because black people are relatively poor.

example). The present research focuses on the problems that the theory and practice of criminal justice pose for the marginalised.

Another research tendency that has been widely criticised is that of drawing generalisations for all poor people from studies that focus on a specific category of poor men. Women as a category of marginalised people tend to be denied the traditional focus of conventional criminology, perhaps, because most of the researchers are men or because women have not tended to end up in prison as frequently as men. Feminist scholars have convincingly argued that better criminological knowledge could be gained by studying women with equal emphasis and by limiting conclusions to those studied (Smart, 1990). Black women have similarly criticised research in criminology for focusing almost exclusively on white women or on black men while claiming to be writing generally on gender or race relations (Rice, 1990).

By generalising for black women from studies that do not focus on black women, researchers who exclude black women from their studies give the impression that the problems facing black women are not significantly different from the problems facing those studied. Examples of such studies will soon be discussed under the guiding assumptions of the present research. Whether researchers assume that the problems facing black women are unique or that they are common, there is a need to study such problems compared to the problems of similar categories of people in order to understand them and help to overcome them.

The present research assumes that the race and class relations of black women are shared (to a large extent) by black men and that their gender and class relations are shared, to some extent, by white women. This means that race relations reflect and are reflected by class and gender relations and these relations should be analysed together in order to understand fully the problems that face black women (see Daly, 1993; Hall, 1988; hooks, 1984). The nature of the outcome of all three relations for black women can be best understood in this dissertation along with outcomes for categories of people who share these relations to some extent.

The objective of the present research, then, is to examine whether the problems that face black women in the criminal justice system are significantly different from those that confront black men, on the one hand, and white women, on the other hand. If so, this dissertation aims at demonstrating how such problems are constituted by the articulation of race, gender and class relations and how these social relations are articulated in the struggles against such problems. There will be no attempt here to hierarchicize these social relations for the purpose of determining respective ranks of significance in specific instances. The focus of the present research is on the nature of the problems that confront black women in the criminal justice system rather than on the extent of such problems. However, the nature of the problems that face black women may suggest the seriousness of such problems.

Similarly, attitudes of black women could reflect, to some extent, the problems that black women face and so such attitudes deserve to be

studied in their own right. However, the present research is more interested in social structural problems and in problems constituted by institutional practices that may or may not be reflected by the attitudes of individuals. It will be argued here that the problems that face black women can be understood in terms of the structural positions of black women in society, their social relations and the nature of the institutional practices of the criminal justice system. The attitudes of black women will be reflected by the opinions of individuals and groups who provide research information but the researcher will always try to focus attention on the problems that the women face and not on their attitudes to social institutions.

However, the perception of such problems by groups and individuals is likely to carry the marks of certain attitudes. Nevertheless, it is possible to focus either on the problems perceived or on the attitudes implicit in the perception or on both. The present research is analytically focused on the problems and not on the attitudes articulated in their perception although the latter cannot be completely excluded from consideration.

The major significance of this research is that the identification of the problems that black women face could enable activists, scholars, and legal practitioners to be better able to work with black women to overcome such problems and boost the confidence of black women in their power and rights within the criminal justice system in particular and society in general. The extent to which such problems can be shown to be shared by black men and by white women would be the extent to which the implications of the findings could be

applied for the purpose of overcoming the problems that face these other categories of people in the criminal justice system and in society.

This dissertation is structured into three sections with a total of seven chapters. Section one consists of the methodological, theoretical and the historical chapters. The methodological chapter focuses on the statement of the research objective and the indication of the significance of the research. This chapter also discusses technical and methodological problems that are anticipated in the research and suggests how such problems would be overcome.

Chapter two contains the review of existing literature to see what leads they can offer towards the formulation of questions on race, gender, and class relations in the criminal justice system. Moreover, this chapter considers the alternative frameworks for the research. The major theories of social control would be reviewed to see to what extent they are applicable to problems of race, class, and gender relations in the criminal justice system. The last section of this chapter justifies the choice of the theoretical perspective of articulation, which derives from historical materialism, for this research.

Chapter three is historical in the sense that it attempts to show what links there are between the problems that face black women in London and the slavery, colonial and neocolonial techniques of control that created problems for black women in Africa and

America. This chapter also considers the historical experiences of black women in British society.

Section two consists of the three empirical chapters focusing on the police, the courts, and the prisons, respectively, to show how they affect black women compared to black men and white women. Chapters four to six therefore compare figures of black women with those of white women and black men in criminal justice statistics. Observations from court visits and information from discussions with relevant organisations and interested individuals form a part of the comparisons where appropriate. Independent publications and reports are also cited where necessary or mentioned in footnotes.

Section three contains the last chapter dedicated to discussions of issues raised in the previous two sections. Chapter seven focuses mainly on the theoretical and practical implications of the methodology and the framework for the research in view of the findings. This involves a general discussion of issues raised and the conclusions they point to. This includes a review of the theoretical assumptions that guided the research and a re-assessment of the methodological approach. This is followed by a general bibliography that contains all works cited except those from newspapers or bulletins for which references were given in the body of the text.

To end this general introduction, there is a need to clarify further, the key concepts introduced in the abstract of this thesis. Victimisation-as-mere-punishment (VAMP) is used here to refer to

what is sometimes referred to in jurisprudence as the punishment of the innocent (POTI). VAMP differs from POTI in three important ways.

Firstly, they differ in terms of theory because punishment is rightly conceptualised but not always practised as the punishment of offenders (POO). This suggests that to term what is done to the innocent as a form of punishment would be a misconception. Secondly, from a conceptual point of view, punishment is the operative word in POTI whereas victimisation is the operative word in VAMP. This suggests that POTI still colonises victivisation within the empire of punishment. Thirdly, from a practical perspective, POTI would be willing to forgive what is done to the innocent as an error whereas VAMP would like to see the offenders punished in the interest of those who were victimised.

VAMP recognises that some people who are 'punished' are not offenders and so such people can be said to have been victimised. The central point of VAMP is not the simple one that the criminal justice system makes mistakes but the critical one that the system also institutionally violates the rights of some people because of the ways that power relations are structured within the system (see McConville, Sanders and Leng, 1993).

VAMP is, therefore, not an invention of the present thesis. It is adopted from popular consciousness of the reality of victimisation whereas the philosophical concept of POTI still talks about victimisation as if it is a form of punishment. Moreover, victimology

does not include VAMP in its discourse while the philosophy, theory and practice of POO simply colonise it and present it as part of their territory by denying its autonomous existence. Notable exceptions are sections 2.8 and 2.9 of the Race Relations Act 1976 that recognise the existence of victimisation but define it restrictively in civil rather than criminal terms as the subsequent unfavourable treatment of a person as a result of proceedings brought, evidence given, or allegations made by such a person under the Act.

Examples of VAMP in this thesis include the imprisonment without trial of wives of army officers whose husbands were suspected of planning or attempting a coup, mothers or sisters of suspected robbers or terrorists or supporters of suspects and convicts who are themselves imprisoned, harassed, killed, maimed, put under surveillance or have their freedom of movement restricted sometimes because they are mistakenly regarded as conspirators or accomplices and sometimes because their victimisation is calculated to affect the elusive or unapologetic suspects who are socially proximate to the victimised. In England and Wales, an extreme case of VAMP resulting in the conviction of a whole family is that of the Maguire Six who were subsequently cleared of the terrorism charges (see Hillyard, 1993, for a detailed analysis of this and similar Irish cases of what he called a 'suspect community'). This thesis will show that such assumptions of guilt by association affect black families also not only in terms of harassment and brutality by the police but also in the form of false accusations and malicious prosecutions of black people who happen to be close to suspected black communities.

When the innocence of the victimised is not in doubt, such as in the case of the married sisters whose millionaire brother is suspected of funding a coup, VAMP can be said to be direct or deliberate. In the former case, when the significant others are also (rightly or wrongly) suspected, arrested or convicted and later found to have been wrongly so-treated, as in most cases of the miscarriage of justice, VAMP can be said to be institutional rather than direct or deliberate.

The politics of crowd control at football matches could provide actual illustrations of VAMP especially when there is violence and the police arrest hundreds of alleged football 'hooligans'. No one will be ready to believe that all those arrested or convicted of hooliganism were actually involved in acts of violence. As one of the six Manchester United supporters jailed in Turkey in November 1993 and later released with no explanation put it, the officers merely hand-picked people for arrest without regard to their individual conduct.

An analogy (though a bit far-fetched) that could illustrate VAMP is the football penalty. 'THE PENALTY THAT WAS ... THE PENALTY THAT WASN'T' was the verdict of the Sunday Times of London (15 May 1994) on the two penalties that disorganised or demoralised Chelsea F.C. in their first ever F.A. Cup Final. They lost the game 4-0 to Manchester United after dominating a goal-less first half. The Sunday Times, graphically reconstructed the two penalties to emphasise that the first foul was committed inside the eighteen yard box and so deserved a penalty kick whereas the second (more of a

clash than a foul) occurred outside the box and should never have been a penalty even if booked.

'The Penalty that wasn't' raises the obvious question: what is a penalty that wasn't? Some would answer that it is a case of the miscarriage of justice as in the criminal courts but sports analysts are likely to see it as a case of erroneous decision. Whatever, the answer given, it is obvious that if it wasn't a penalty, then it was something else. The argument in this thesis is that that something else is victimisation.

If we review 'The Penalty that was...The Penalty that wasn't', it becomes obvious that Kharine, the Chelsea goal-keeper against whom the resulting penalties were directed was not the actual player who committed the fouls. The first one resulted from Newton's rough tackle on Irwin - a defender of Manchester United - and the second arose when Sinclair bumped into Kanchelski who then ran falteringly into the penalty area before falling down.

Why was the goal-keeper the one given the penalty and not the offending players? Why should a whole club be penalised for the conduct of an individual player? The answer is short and simple, they are one team, they share their losses and victories, they are accomplices in offence just as they are partners in reward. That is the logic behind collective responsibility in sports jurisprudence. Yet sometimes, penalty kicks are awarded in soccer without any fouls being committed. That is one of the ways of settling a stalemate but

it goes to show that committing an offence is not necessary before the machinery of penalty is set in motion.

The present writer believes that collective responsibility, wherever it operates, is never applied equally to all persons but is often applied oppressively against people who are marginalised on the bases of race-class-gender. Another look at 'The Punishment that was/wasn't' will show clearly that the two Chelsea players who were booked were black players. If referees are never partial and discriminatory, then they would be an incredible exception in a society that is characterised by racism, sexism and class exploitation. The colour and race blindness of referees are further in doubt given that sports activities are often characterised by racist-sexist and class-specific taunts and incidents.

The suggestion being made here is that black players might be more readily booked and given more severe sanctions than white players because of the image of black players as stampeding giants and because of the widespread view in society that black people are crime-prone. Newton of Chelsea is 22 years old, five feet 11 inches tall and weighs 11.2 stones. This would make him look ordinarily aggressive against Irwin of Manchester who is 28 years old, 5'8" tall and weighs 11 stones (telephone information from Chelsea F.C).

Sinclair is two inches shorter and weighs less than Kanchelskis but because he is also three years younger and black, it is possible that he too was seen as being more aggressive (even though sports actually reward aggressive behaviour so long as it does not pale into

dangerous play) than he really was. The macho perception of black players (male and sometimes female ones too)[4] is racialised and gendered and might lead to victimisation in the field of sports. This suggestion is strengthened by the pervasiveness of the racialisation of the crime problem especially when law-abiding black people are seen as the exceptions even though the majority of black people are overwhelmingly law-abiding.

A similar suggestion would be that richer clubs and more wealthy players would get off lightly in circumstances where poorer ones might not. Manchester United is one of the richest clubs in the world and against Chelsea, they were the overdogs. They deserved their emphatic victory but the point being made here is that success in sports might relatively protect certain parties from victimisation that could affect less successful ones adversely. Moreover, even when rich players and rich clubs are fined what must be considered 'peanuts' compared to their incomes, they fare better compared to poorer ones who might receive less fines that are disproportionate with their incomes.

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[4] For example, The Daily Telegraph, 25 June 1994, identified the Nigerian World Cup star, Rashidi Yekini, as an 'incredible 'Hulk'', insisting that it is his team-mates who nicknamed him the Hulk for his 'bulldozing style.' This probably had little to do with the fact that Nigeria was later penalised 27 times in 45 minutes in their game against Argentina who were booked only twice in that half. The case of Dianne Modahl, the black woman whose urine sample was said to show a testosterone level that is 42 times higher than that of most men is equally interesting. The British Athletics Federation decided not to withdraw its all-black female relay team from the world cup even though the suspended athlete was in the qualifying team. The BAF explained that the presence of testosterone is a naturally occurring hormone in men and women. Roy Collins, the chief sports writer for Today, 2 September 1994 - echoing the debates around the planned abolition of the right to silence in Britain - asked, 'since when did innocence have to hold its tongue?' What he implied is that because Dianne Modahl was making no comments to the press, she was probably guilty. The statement of the BAF in the same newspaper differs by maintaining that, 'To assume guilt prior to a properly constituted hearing would be the violation of a fundamental human right and contrary to natural justice.'

Victimisation in sport and in criminal justice would require further research before they are established as facts. What the present analogy has done is to point out that gains made in the struggles for civil liberties could be drawn on to further social justice in sports. The lesson to be learnt from this analogy is that since sports have borrowed the ethic of collective responsibility from the wider society and from the criminal justice system, we must not ignore the possibility of victimisation in sports with the complacent saying, 'it is all in the game.' This is because such instances of victimisation in sport would most likely reinforce the victimisation that operates in the wider society and in the criminal justice system. The significance of this analogy is that of contributing to the highly emotive, highly theoretical and highly practical debates around the nature of criminal justice and social justice. An increasing sensitivity to social justice in the field of sport penalty might have a beneficial impact on similar concerns in the criminal justice system and vice versa.

Sports are not the only areas of life where team ethics are operative. Families, groups, nations, etc. can be and have been seen as sharing a common goal and deserving shared sanctions. In England and Wales, for example, the 1991 Criminal Justice Act gave magistrates and judges the power to directly fine the parents of juveniles between the ages of 16 and 18 for offences that such young people committed. The same act also empowered the courts to bind parents over to make sure that their children do not re-offend. The significance of these provisions for black women is that many of

them are single parents on low incomes and that young black people are even more over-represented in the criminal justice system than adult blacks. This suggests that poor black women face serious risks under the clause of parental responsibility for the alleged conduct of children.

The London-based Institute of Race Relations has documented cases of Policing Against Black People (published in 1987). The most striking fact in the document is that the black women who were affected by repressive policing were mostly affected, not because they were suspects themselves, but because they were mothers, sisters or wives of suspected black men. One of the women was shot and paralysed when the police came looking for a son who no longer lived with her, at her house in London. Another one collapsed and died of heart attack during a police raid that was connected with her son.

There is no need to overstretch the analogies in order to illustrate the point that the knowledge of guilt is not necessary for the unleashing of the control mechanisms that are often popularised as 'the punishment of offenders' (POO). Some people who are 'punished' are known to be innocent and some people who are known to be guilty are not punished at all. Many officials of the criminal justice system would accept the second part of the preceding sentence and apply it exclusively to those poor defendants and suspects who manage to win their acquittal or secure their escape even while the officials believe that they are guilty without satisfactory evidence to prove it.

However, such people are not always assumed to be guilty until proved innocent, they could also be given VAMP through repressive actions that are taken, supposedly or initially only against suspected individuals who are close to them even, when they themselves are known to be innocent. This is the ancient plough of the criminal justice process: collective responsibility and guilt by association that the football analogy tried to illustrate.

The POO discourse is relatively silent on VAMP and even on POTI also because it is supposed to be a barbaric practice that is no longer present in the industrial societies of today (see Cohen, 1993 for a powerful explanation of this 'culture of denial'). However, even when the pre-industrial past is the subject-matter of theorising and research, the subject remains offenders (see Durkheim, 1973; Garland, 1990). When the existence of guilt by association is acknowledged, it is applied restrictively to the past as if it is completely absent in modern society (Kennedy, 1976) contrary to the incontrovertible documentation by the Institute of Race Relation in Britain (IRR, 1987).

Coming from an African culture where the concept of human beings as victims is non-existent, the present writer wishes to emphasise that VAMP does not suggest that the victimised are victims. Rather, the victimised are seen in this paper as survivors who fight militantly against victimisation

VIP or Victimisation-In-Punishment is what is usually called 'over-criminalisation' or excessive punishment relative to the nature of the offence. Instances of VIP would be the imprisonment of some convicts for offences that other defendants with similar or even worse previous records could get non-custodial sentences or shorter prison terms, the disproportionate provision of services and discrimination within the prison, and the militarised policing of certain categories of suspects when other categories engaged in similar activities could be more civilly policed.

This thesis recognises that VAMP is more likely to occur at the level of policing and the investigation of allegations (because of high degrees of discretion given to rank and file officers by the Police and Criminal Evidence Act) but such occurrences could be reinforced institutionally, rather than deliberately if such VAMP is not recognised for what it is at subsequent stages of the criminal justice process. Consequently, VIP is more likely to be the form that victimisation would take in the courts and prisons even though VAMP cannot be said to be absent in these institutions as well.

Central to this thesis is the theory of articulation that will be discussed in some detail towards the end of section 2.4 of this thesis. This theory was introduced to the present writer by Stuart Hall in London during the fieldwork. Although the present writer was familiar with the theory of the articulation of modes of production before this meeting, credit goes to Hall for pointing out its potentials for the analysis of social relations. The present writer met him along a busy London road and was pleased to get an appointment to visit

his house and talk about the present research. After a brief summary of the research, Professor Hall immediately identified articulation as the key theoretical concept. He lent his copy of Hall (1980a) and the present writer went away with a feeling of 'eureka!'

It is sufficient to say here that the present writer uses articulation to indicate that race-class-gender relations are joined together and that they give expression to one another in the experiences of real people and so their analyses should be concurrent and made to reflect their interconnectedness. This approach differs from unifocal perspectives that single out race, class or gender and analyse it by denying or belittling the importance of other relations. The present thesis extends this perspective to social policy impacts by looking for ways that penal policies articulate with victimisation and with welfare to give rise to VAMP, VIP and even VAW - Victimisation As Welfare.

The present thesis suggests that VAMP can be explained by the articulation of unequal race, class and gender relations because the people who are relatively marginalised on the bases of these social relations appear to be the ones most vulnerable to VAMP. This explanation is persuasive because the power and material resources available through these social relations could make certain individuals relatively immune to VAMP because they could more successfully defend themselves against VAMP or even participate in its perpetration through the manipulation of available resources. Articulation is important here because none of these social relations could be isolated to offer a satisfactory explanation for VAMP.

For example, a poor black woman would be more vulnerable to VAMP because subordinate race relations make her more suspect than a poor white woman, subordinate gender relations make her to be more readily seen to be dependent and therefore more likely to be targeted as an accomplice (of suspected black men) than a poor black man (when a black woman is a suspect), and subordinate class relations locate her more closely in the internal colonies that are more militarily policed while also denying her the necessary resources for more effective legal defence than a rich black woman.

It follows that the class of a rich black woman would relatively disarticulate her subordinate gender and race relations and thereby give her a degree of protection, the gender of poor black men could disarticulate their race and class and even make some collaborators in victimisation, while the race of a poor white woman could relatively disarticulate her gender and class by offering her relative protection. However, the class of the rich black women who become targets when their husbands, brothers or fathers become suspects of subversive activities could be said to be disarticulated by their gender just as the race of the white women who are victimised due to their proximity to poor black men could be said to have been disarticulated by their gender relations.

This is not a privileging of class over race and gender relations. It is a recognition of the specificity of the criminal justice system as a terrain where most defendants are poor irrespective of race and gender differences. However, the anti-hierarchicization perspective

of articulation demands that the importance of class relations in the criminal justice system cannot be understood unless they are viewed as class-race-gender relations.

The concept of articulation is being used in this thesis in the sense that Stuart Hall employed it as a way of avoiding the usual critique that historical materialist analyses tend to be economically deterministic. The concept of articulation allows us to take other forms of social relations seriously without abandoning class relations as many of the critics of historical materialism tend to do. According to Hall (1980a: 325) articulation results in 'a structure in which things are related, as much as through their differences as through their similarities'.

This suggests that the present thesis will be interested in differences as well as similarities between black women, black men and white women in the criminal justice system. This is important because the complexity of articulated structures means that such structures do not correspond to any one component but reflect and are reflected by the articulated relations. Hall (1980a) has shown how widely the concept of articulation has been used with reference to relations between different modes of production. The present thesis follows Hall by abstracting this theory from mode of production analysis and applying it to social relations and social policies.

Chapter One
Objective and Methodology

Introduction

A good way of conducting this research could be by focusing on one agency, one country or one region over a short span of time. Such an approach has been modified here in the sense that the impacts of the different agencies of the criminal justice system on black women in London are considered. Moreover, analogous experiences of black women in other places are brought in for the purpose of a broad historical background within which to understand their experiences in London.

By focusing narrowly or exclusively on one institution or locality, illustrative evidence from other institutions or localities could be said to be superfluous if not irrelevant. But by looking beyond a particular institution or locality, it could also be possible to show what is unique and what is common about particular trends and tendencies in a specific place and time.

The historical and spatial focus of the present research is on the contemporary conditions of black women in certain parts of London. However, the historical scope is extended to cover the slavery, colonial, and neocolonial periods in America and Africa and past and contemporary conditions of black women in Britain and America. This scope may appear too extensive for a research of this nature but it will serve as a source of analogies that could facilitate an

understanding of the problems encountered in the limited locality of London. Viewed against the backdrop of the relative lack of interest, in criminological research, concerning black women, the broader the scope of the present attempt, no matter how narrow the focus, the better the chances of making a comprehensive analysis. Besides, Scraton (1990), Hall (1980a), Sivanandan (1974), Sumner (1981), Said (1993) and Gilroy (1987a), among others, have emphasised the central importance of such a broad historical background for understanding contemporary social relations in places like Britain.

1.1 Statement of Objectives and Significance

There is now a growing literature in criminological research on gender, race, and class but their analyses rarely tend to be brought together and are often treated separately. For example, Hall, et al (1978) Policing The Crisis, focused on race and class but made only passing remarks on black women probably because the reaction to the crime of mugging, with which they were concerned, affected black men almost exclusively. Even so, one would like to know how much the policing of mugging affected the women in the lives of the suspects because, as we shall see, there is evidence that the policing of men affect the women in their family or in their lives. Similarly, Naffine (1990) analysed the impacts of gender and class relations on the treatment of people by the criminal justice system but she was silent on race relations even though she writes from a highly racialised society, Australia. Another example is that of the black feminist activist, Ware (1970) who looked at race and gender relations but narrowed it down to quarrels between black men and

black women without mentioning the impacts of class relations in this context.

Likewise, although there is a growing literature on black women, most of it relates to their family life or employment opportunities (Gregory, 1987; Crenshaw, 1991; James and Busia, eds, 1993). Those that have direct relevance to criminology tend to be positivistic in the sense of trying to identify what makes black women commit crimes. For example, Carlen (1992), in a review of her earlier work Women, Crime and Poverty (1988), indicated that black women were included in her sample but what she wanted to find out from the women was why they broke the law or why they failed to conform to societal norms.

Carlen's approach is inadequate for at least three reasons. Firstly, her questions presupposed that the women had what she called 'criminal careers' or that they were exposed to overcriminalization or excessive punishment relative to the seriousness of their deviance. The criminal career approach ignored the fact that some of the women were first time offenders who might have normal rather than criminal careers. However, Carlen used the term 'criminal careers' differently compared to longitudinal studies that follow a given age cohort. She seems to have used the term to refer to the occurrence of criminality in the life histories of the women.

Secondly, it is possible that some of the poor and marginalised women that Carlen studied may have been processed through the criminal justice system, not always because their marginalization

forced them into a criminal career as left realists would predict (see Young and Matthews, 1992), but, perhaps, because their marginalization exposed them to severe surveillance and, possibly, to VAMP. If Carlen did not find any such women, it may be because she started with a leading question that is ideologically loaded. Instead of asking them why they broke the law or why they found it difficult to conform, she should have started with an inquiry into the possibility of their innocence. To assume their guilt from court verdicts is to ignore the fact that many convicts go down still protesting their innocence.

Thirdly, Carlen failed to analyse the impact of race relations on the women she studied. She merely stated in passing that race was an additional factor for the marginalization of some of the women and presumably, an additional variable for the causation of the criminality of those (black) women. This qualification is inadequate for the first two reasons stated above and also because when Carlen summarised her findings, there was no mention of race at all, implying that the politics of race was irrelevant to how white women were treated in the criminal justice system.

According to Lardner (1987), most criminological writings on black people maintain a 'deviant perspective' because black people lack adequate power to resist the stereotypes and labels applied to them. She argues that future research should abandon the search for 'problems' of (i.e. caused by) the black community' and focus on 'the nature of oppression and the mechanism by which institutionalised

forms of subjugation are initiated and act to maintain the system intact.' This is the approach that is adopted in this thesis.

The small amount of literature that exists on the ways black women are treated in the criminal justice system tends to focus on one institution such as the police or the prison (Chigwada, 1991; French, 1981). Some, like Rice (1990), only complain about the relative absence of black women in criminological literature and call for the criminality of black women to be studied alongside the criminality of white women. As we have seen with reference to Carlen (and with reference to the theory and philosophy of the Punishment Of Offenders, POO, as we shall soon see), the prioritization of the criminality of black women or that of any group of people in the conceptual focus of any research could lead to the concealment or distortion of some of the problems that the criminal justice system poses for some of the people who might be innocent. The contention in the present research is that it is necessary to go beyond these approaches by examining the criminal justice system as a whole with a view to understanding the problems different institutions cumulatively pose for black women.

Further, this dissertation contends that it is equally necessary to see the social relations of black women concurrently, as Dill (1987) implies, instead of looking at their race, class, gender, or culture separately as if these do not operate in articulation. In this connection, Dill (1987) and Gilroy (1990) warn that black culture should not be equated with working class culture since black people have variable class relations.

The fact that most earlier studies of race and gender in criminology focus exclusively on black men or on white women implies that the racial experiences of black women could be represented by those of black men and that the gender experiences of black women could be inferred from those of white women (Rice, 1990; Harding, 1987). Some writers have noticed this and called for the study of black women in class relations (Morris, 1987; 1988) but this call tends to be answered in exclusive dualities of race and gender or race and class, rather than in the broad comparative way that has been suggested here.

Following Cain's warning against the use of men as false standards in comparing men with women (Cain, 1990), there are no assumptions in this research that black men and white women are standard bearers of social justice against whom black women are to be measured. However, the solution to false standards does not lie in different standards as Cain seems to suggest by calling for women to be compared with other women while opposing comparisons of men with women. This dissertation does not see what makes the comparison of black women with black men unacceptable if it is permissible to compare poor women with rich women and black women with white women.

Nevertheless, the warning against false standards - such as regarding female prisons to be holiday camps because they appear to be less over-crowded and better-kept than male ones in what Carlen (1983) called 'female imprisonment (as) female imprisonment

denied' - is taken seriously here. There is no assumption that if black women are treated in exactly the same way as black men and as white women, they would have no problem at all or vice versa.

Moreover, differences between black men and black women or between the latter and white women may not be related to gender or racial differences as such. A poor black man may face problems that a rich black woman may escape and a poor black woman may share the problems of a poor white woman. Therefore, there is an attempt here to see what ways class relations articulate with race and gender relations for people with similar and variable class, race or gender relations in the criminal justice system. This means that neither class, nor race, nor gender would be analysed exclusively without indicating how far they are articulated.

Given similar circumstances before the law, the present research hopes to demonstrate how the problems faced by black women vary according to their gender, race, class, and the historical point in time when they are confronted by the criminal justice system. The relations of race, class, and gender, are analysed in historically specific contexts to make sense of the problems that black women face in the criminal justice system.

This does not mean that these social relations are separate and independent of one another. Rather, the claim in this research is that race, gender and class relations are socially articulated with one another. In other words, the meanings of femininity (for example) vary with race, class, time, and place. Black women are

different from white women in many ways but they are similar enough to be classified together as women. A rich black woman may not face significant problems that a poor black woman may share with poor black men and poor white women. This seems to be what Hall (1988) referred to when he said that race, class and gender are socially articulated, disarticulated and rearticulated dialectically. Naffine (1990) has also argued that gender and class, and by extension, race, should be analysed together because their meanings and impacts are compounded. However, this does not mean that they are all identical social relations, it only suggests that although they are different issues, they do not operate separately and so should be analysed jointly.

This dissertation will look at similarities in the class-race-gender (as Daly, 1993, put it) relations of black women, black men and white women in society to see whether or not these can explain similarities and differences in the problems that they faced in the criminal justice system. Of course, differences and similarities in problems could be due to factors other than race, gender, or class. They could be due to circumstances surrounding the cases but if different cases tend to raise similar problems or if similar cases raise different problems, they may also have to do with the social relations of the people involved.

Another objective of this dissertation is to examine whether existing theories in criminology adequately account for any evidence of differences in the problems faced, and modes of struggle for survival, by women of different races and classes and those of men and

women of one race and class in the criminal justice system. The emphasis is on the tendency to victimise innocent people and in what ways such victimisation follows gender, racial, class, or historical patterns. However, the relative victimisation of offenders through disproportionate criminalization is also considered.

In line with this objective, three related guiding assumptions that are implicit in existing criminological theories and methods will be examined and debated. These are:

1. Black women do not face unique problems in the criminal justice system compared to white women,

2. Black women do not face different problems in the criminal justice system compared to black men and,

3. Poor black women do not face peculiar problems in the criminal justice system compared to rich black women.

Although very few researchers make explicit claims that all black women or all black people or all women face the same problems irrespective of variable race, gender, and class relations, those who do not theorise these internal differences leave the assumption of sameness intact, albeit implicitly, in their generalised conclusions. For example, O'Dyer, Wilson and Carlen (1987: 178) explicitly claimed that 'women in prison suffer all the same deprivation, indignities and degradations as male prisoners. Additionally they suffer other problems that are specific to them as imprisoned women.' The authors could have qualified their claim by adding that black women also suffer additional problems based on race relations.

They did not see the need for such a qualification probably because they were not studying black women as well, otherwise, they would have seen the danger of generalising for all women from the experiences of some. Besides, even if they gave such a qualification, it would prove inadequate for two reasons. First, it still implies that all men face the same problems in prison in spite of different race and class relations. Secondly, such a ritualistic qualification would still beg the question of what the nature of the specific problems facing black women are, demanding that they be directly studied.

Similarly, Hall, et al, (1978) and Gilroy (1987a) have made significant contributions towards the understanding of the politics of race in society and in the criminal justice system. However, they based their conclusions almost exclusively on encounters between young black men and the police without showing the unique predicament of black women. The present research is directly aimed at understanding the problems that poor black women share or do not share with poor black men and poor white women in the criminal justice system. The emphasis on poor black women, black men and white women is noteworthy here because a majority of those processed through the criminal justice system are poor. Unless otherwise indicated, wherever these categories of people are mentioned in this dissertation, the reference is to the poor.

This is different from those approaches that represent black women as if they all face the same problems in spite of different class relations. For example, Hall (1985) talked about 'racist-sexist violence' in the same manner that French (1981) identified a 'double

jeopardy' of race and gender as the major problem facing black women. The theme of double jeopardy is reflected in many studies of black women even when a sloganeering call for race, class and gender to be analysed together is made (see Chigwada, 1991). The guiding assumptions of the present research, stated above, make differences within categories of people problematic without denying that some problems are shared between and within categories.

The above assumptions are closely related because they capture the three major ways in which the relations of race, gender, and class are articulated in the problems facing black women in the criminal justice system. This indicates that an attempt will be made during the present research to understand differences in the problems faced by black men and black women with reference mainly to their gender differences. Differences between the problems facing black women and white women will be partially linked to their racial differences. And the present research will try to see whether similarities in the problems facing black women, white women and black men in the criminal justice system when offence characteristics and circumstances differ, has any connection with their similar class-race-gender relations.

If the three assumptions enumerated above are upheld by the evidence, then the relative neglect of black women in research could be excused since their experiences could be reduced to those (racial) of black men and to those (gendered) of white women or generalised for all black women irrespective of class relations. Otherwise, ways of reconstructing the relevant theories to avoid this apparent neglect

and ways of overcoming the marginalization of black women in the entire society would be suggested. This is the immediate significance of the present research.

The wider significance of this research is as a modest theoretical contribution to the debate over the nature of procedural and substantive equality in the criminal justice system. This significance of the research is related to the research objectives of explaining how race, class, and gender relations are articulated in the problems that face black women in the criminal justice system. The significance is that such an explanation will contribute to the solution of the problems facing black women in the theory and practice of criminal justice.

By focusing on marginalised black women without loosing sight of other marginalised categories of people, there is a good chance of understanding the major issues relevant to the problems faced by marginalised black women, black men and white women in the criminal justice system. Irrespective of their differences, it is necessary to understand whether these marginalised categories of people relate to the criminal justice system in similar, though not identical, ways.

Poor white men and poor Asians are excluded from this research for the purpose of narrowing the focus. Moreover, Gilroy (1987a: 39) has argued that racial meanings and identities are not given and constant but are contested, articulated and rearticulated in such a way that 'definitions of black based on the possibility of Afro-Asian

unity (has shifted) ... towards more restricted alternative formulations which have confined the concept of blackness to people of African descent.' This view has been supported by Parekh (1987: xii) according to whom, 'The term black is rejected by the bulk of the Asians ...' The extent to which the present research has implications beyond the categories of people focused on can only be determined by future research.

1.2 Towards a Committed Objectivity

The present section argues that objectivity and commitment are different but that they are articulated rather than being separate issues in social research. This section challenges those who believe that objectivity is impossible or undesirable as well as those who believe that commitment is undesirable in social science. As a man doing research on 'Black Women and the Criminal Justice System', these issues assumed major epistemological importance and were compounded by the gender identity of the present researcher. This section concludes that both objectivity and commitment are necessary elements of good research by all researchers irrespective of (or even because of) race-class-gender differences. This is contrary to the 'purist' definition of the role of research by Hammersley (1993: 429) as the search for 'truth claims, not their practical implications or practical consequences.'

Many feminists (Harding, 1987; Gelsthorpe, 1986; Cain, 1990b) agree that men can study and understand the problems facing women, contrary to the separatist epistemology of people like

Hartsock, 1987; Mackinnon, 1987; Stanley and Wise, 1983. The objection of the separatist feminists derives from the saying that 'who feels it knows it' and since men do not experience certain things that women experience, they cannot understand them.

Some feminists do concede that men can understand the problems facing women but many still argue that men should not join the struggles against such problems because all men appear to be part of the problems. This is evident in the fact that feminist journals such as the Feminist Review still refuses contributions from men, study groups on feminism refuse to allow men to participate in their discussions and urge them to start study groups on masculinism, and women who protest against nuclear power also protest against men joining the protest.

The present research is neither feminist nor anti feminist. Particular attention is paid here to feminist literature for what could be learnt from it but this is not a feminist research (in the sense of identity) even though the research could be said to advocate feminism, among other issues as hooks[5] (1984) advised. This is not a research on or for women alone but a research on and for under-privileged women and men. The focus on black women is necessary

[5]This is the way that Gloria Watkins (see hooks, 1993b) spells the pen-name that she adopted from the real name of her grand mother. The present writer used to change the spelling to conform to formal practices (Hooks) until the name was mis-spelled as 'Hookes' in a television discussion in which bell hooks participated. Since then, the present writer decided to follow writers like Paul Gilroy and respect the way that the cited author spells her own name. This will present a slight formal difficulty in the bibliography where all authors have been listed in capital letters. This problem was resolved by starting with a small 'h' and then completing in capitals. This is a deliberate move and not an error as the computer spell check thinks.

because they had been relatively ignored in the past but this focus is also strategic in the sense that the comparative approach adopted will show how much of the problems of black women are shared by black men and by white women.

It is suggested in the present research that the subjugation of black women, for example, can be best understood within the context of domination in general (including class, gender or racial, etc. domination). One does not have to be a black woman to understand that black women are subjugated on the basis of their race, class and gender. Being a black woman does not guarantee any researcher a perfect understanding of the problems facing black women. Neither does black femininity command unflinching commitment by all black female researchers to black feminists nor does support for black women amount to black feminism as the title of James and Busia (1993) seems to suggest.

Being a black man, the present researcher was often asked why he was interested in the problems facing black women instead of those facing black men or instead of corruption in Nigeria. It appears that the present researcher was suspected of attempting to exploit the situation of black women just to get a degree. There is no denying the charge of trying to improve personal knowledge and academic standing by successfully completing this research. However, the choice of the research topic reveals the researcher's value position but it is up to the public to see whether the actual conduct of the research displays career opportunism or whether it is informed by the need to gain knowledge as a value in itself and also to contribute

to the empowerment of the marginalised toward the overcoming of oppression in society.

Two problems that confronted the present researcher are that he is a man and he is black. Feminists like Stanley and Wise (1983) and Hartsock (1987) do not agree that a man can understand the problems of women because they do not believe that the masculine world-view can allow a man to sympathise with women. The problems of racial and gender identity of the researcher are tackled in this research with a commitment to be as objective as possible even though objectivity is unpopular with many researchers who look into similar problems.

The problem of whether social science can be objective is not the same thing as what Mackinnon (1987) calls 'point-of-viewlessness' or 'aperspectivity'. Objectivity is not positionlessness but the procedure of taking a position without concealing or distorting oppositions to the position taken. Mackinnon (1989: xii-iii) seems to recognise this when she stated; 'I do not defend "subjectivity" over "objectivity" or elevate "differences" over "sameness" but criticise the method that produces these symbiotic antinomies.' Mackinnon's paradoxes seem to have been derived from Nietzsche who concluded by affirming the complex articulation of subjectivity with objectivity (Nietzsche, 1969: 119).

This reference is one of the instances when the thoughts of Nietzsche came close to those of Marx. The noteworthy difference, however, between Marx and Nietzsche is that while Marx adopted

the perspective of the oppressed while remaining objective, Nietzsche was 'a belligerent opponent of almost every enlightened liberal or democratic value .... a precursor of the Third Reich ...' (Eagleton, 1990: 244). This demonstrates that the epistemological assumption of the present writer that subjectivity and objectivity are articulated rather than separate can be employed for either oppressive or emancipatory purposes. To say that objectivity and subjectivity are articulated is to say that although they are different, they are not separate. To be objective presupposes having a view or taking a position - an objective view or position - which could be for or against the oppressed. It follows from this that objectivity does not preclude but, in fact, rests on perspectivity.

Subjectivity, in this thesis, refers to political or ideological commitments that any writer holds. In this sense, the subjectivity of a writer refers also to the commitments explicit or implicit in the text. This is the sense in which subjectivity becomes controversial in social research. Those who oppose subjectivity in social research do not mean by this, the ability of writers to think introspectively. What they oppose is the need to make political and ideological commitments explicit in social research. For this reason, the present writer will focus on politicality when talking about subjectivity.

What appears to be a false contradiction between objectivity and politicality in scholarship arose from the long-standing view of the nature of science that is reflected in the 1918 lecture of Weber (1989) on 'Science as a Vocation.' According to him, social research cannot help being 'value-relevant' in the sense that the choice of

research topics is always value-laden, but sociology should be 'value-free' so that even political opponents can use its methods to compete fairly for academic status without undue appeal to political sentiment by rival scholars. In Weber's own words, 'it is one thing to state facts, to determine material or logical relations or the internal structure of cultural values, while it is another thing to answer questions of the value of culture and its individual contents' (Weber, 1989).

It is important to note that Weber was speaking with specific reference to the situation in the German lecture-rooms of his time. Lecturers were paid according to the number of students who subscribed to their lectures. Weber was saying that prophets and demagogues belonged to the streets and the public arena 'where criticism is possible.' Politics did not belong to the lecture room, according to him, because

> 'In the lecture-room, where one sits opposite one's audience, the audience must be silent and the teacher must speak. I consider it irresponsible for the lecturer to exploit the fact that students must attend a teacher's course for the sake of their careers and that nobody present can criticise him, in order to stamp them with his personal political opinions' (Weber, 1989: 20-21).

It is interesting to note that Weber never used the phrase 'value-free' to describe social science as a vocation. The closest he came to this was when he talked about a 'science free of preconceptions in the sense of religious lies' about miracles and revelations. However,

he also emphasised that although personal sympathies could distort analyses, 'To let the facts speak for themselves is the most unfair method of all' (Weber, 1989:20-21). This is a recognition on his part that facts do not have their own mouths and so, invariably, it is people that speak and they do not speak just to lend their voices disinterestedly to facts. That is, they do not speak for facts but with facts in the instrumental sense rather than in the sense of camaraderie. Weber regretted that it might be impossible to completely exclude personal sympathies from scientific analyses but advised that each researcher should be left at the mercy of the sharpest critic of them all - personal conscience.

Weber did not use the 'value-freedom' concept at all but he gave enough indication that it is a desirable aspiration for vocational social scientists. Consequently, the disciples of Weber use the concept very freely to describe the level of purity they want their analysis to attain (see Lassman, et al, eds, 1989, for example). This indicates that some social scientists are still striving for what Weber called 'pure science' in which truth and commitment would be kept in separate compartments.

This fact/value separation is supported by many social scientists. Becker (1967: 244), for example, argued that 'our problem is to make sure that, whatever point of view we take, our research meets the standard of good scientific work, that our unavoidable sympathies do not render our results invalid.' However, Becker was defending the choice by some sociologists to study social problems from the perspective of subordinates as distinct from an explicit choice by the

researcher to oppose such subordination. A similar view was taken by Bankowski et al, (1991) who argue that two permissible commitments in scholarship should be first and foremost, to 'truth and objectivity' and secondly, a necessary commitment to 'rationality' in theory and practice and to ways that 'norms and values can inform material content of practical justifications.'

Similarly, Hammersley (1993) argued that Peter Foster (1990) has been unfairly criticised for concluding from a study of one school that teachers are not racist even though anti-racist education presumes that they are. According to Hammersley, the truth of Foster's finding cannot be debunked with reference to the political possibility that it could be used to undermine the anti-racist struggle. However, Hammersley presents an apolitical conception of truth which is questionable given that truth in the social science is a matter of interpretation. For instance, the finding that teachers in one school are not racist could mean that anti-racist education has succeeded in eliminating racism among teachers in that particular school.

Furthermore, if teachers are not racist at one school, they could be at another and even if all teachers are anti-racist, there might still be some racist students to justify an anti-racist education programme. Moreover, even if all teachers and all students are known to have become anti-racist (whether as a result of the success of anti-racist education and struggles or not) there is still racism in the wider community that demands an anti-racist education. All

these are political considerations without which no meaningful interpretation of Hammersley's pure 'truth' would be possible.

The sharp separation of commitments from theoretical facts is rejected by most radical scholars and by almost all feminist writers as a myth. Back and Solomon (1993) argue 'that it is impossible to see research in this field as simply an information-gathering process'. However, they are critical of Ben-Tovim et al (1986) for carrying commitment too far in the sense of claiming to be the advocates for the oppressed. The present writer does not see any problem with any attempt by researchers to advocate the interests of the oppressed. What is more problematic is the claim by Ben-Tovim et al (1986: 5) that, 'Widespread condemnation of racism amongst academics sits uncomfortably alongside a commitment to objectivity in the production and use of research findings.' The present thesis argues that objectivity and commitment could be and are often comfortable neighbours. They are different principles but they are rarely separate in any good research.

Gouldner (1961: 204) for instance, argued that 'the value-free doctrine' failed because it emphasised 'the separation and not the mutual connectedness of facts and values.' According to him, the doctrine was often adopted as an excuse for political passivity whereas Weber deemed the cautious expression of value judgement to be both permissible and compulsory in certain situations, so long as such a value judgement is cautiously separated from factual statements. As he put it, 'If Weber insisted on the need to maintain scientific objectivity, he also warned that this was altogether

different from moral indifference' (Gouldner, 1961: 200). The point here is that the recognition that facts and values coexist is contradicted by efforts to separate them. Facts are different from values but they are articulated rather than being separate.

However, when Gouldner (1970: 112) wrote that he found himself 'in the uncomfortable position of drawing back' from some people, Becker in particular, who found his above position persuasive, he could be said to have recanted. But Gouldner was not drawing back from his position, he was drawing back from a particular (mis)interpretation of that position. Gouldner did not change his mind about the inseparability of facts and values. He was rather afraid 'that the myth of a value-free social science is about to be supplanted by still another myth .... the myth of the sentiment-free social scientist' (Gouldner, 1970: 112 and 118). We will return to the dialogue between Becker and Gouldner shortly.

The position of the present researcher is that it is both undesirable and impossible to separate social science from social action if for nothing else, because the conduct of social research itself involves social action. The major question behind all social science research (implicitly or explicitly) is the problematic, 'What is to be done?' There is no social science research that has no direct or remote practical implication. Those who pretend to be describing social facts like discrimination from value-free positions cannot deny that such descriptions could be used to support the continuation of discrimination. While Weber saw the political lecturer in an uncritical lecture-room to be irresponsible, it is similarly

irresponsible for the apolitical social scientist to try to understand the world of oppression without a commitment to changing it. Whereas Weber saw what is now known as value-freedom as a formula for making social science relevant, it is actually seen by radicals as a prescription for what Soyinka (1973: 2) termed the 'erudite irrelevances' with which sociologists are armed.

According to Rubin and Babbie (1989: 63), 'Nowhere have social research and politics been more controversially intertwined than in the area of race relations.' Social scientists may pretend that they are studying race relations (and by implication, gender and class relations) with point-of-viewlessness but their findings eventually inform political practices of different tendencies. For example, the U.S. Supreme Court established the apartheid principle of 'separate but equal' in 1896 in order to deny black people who were victimised by segregation the benefits of the Fourteenth Amendment's legislation of racial equality. The judges pretended that they were not influenced by social science research but their judgement has been linked to the work of William Graham Sumner (1906) who maintained that 'stateways do not make folkways'.

W. G. Sumner may have presented the statement that 'stateways do not make folkways' as a democratic critique of authoritarianism but the converse implication that it is 'folkways that make stateways' could result in oppressive rule especially in societies structured along race-class-gender dominance. The Supreme Court must have been influenced by Sumner to reject the belief that 'social prejudices may be overcome by legislation.' The court opposed 'laws which

conflict with the general sentiment of the community' (Blaunstein and Zangrando, 1971: 308). This reasoning appears to be also an application of Durkheim's theory of collective conscience which critics have shown to be a mythical representation of hegemonic ideas (see Garland, 1990).

The link between social research and practical politics became clearer in 1954 when the same Supreme Court in Brown v. Board of Education of Topeka cited the findings of Myrdal (1944) regarding the adverse impacts of segregation on black children as part of the reasons for overturning the doctrine of 'separate but equal.' However, when the United States Commissioner of Education, as required by the 1964 Civil Rights Act, appointed James Coleman to direct a research into inequalities in education, Coleman, et al, (1966) reported that black children in segregated schools did not perform better or worse than those in integrated ones. Coleman and his colleagues concluded that segregation had neutral impact at a time that many social scientists were actively campaigning for black civil rights.

Although the conclusion of Coleman and others that good school facilities and effective teaching methods have less impact on performance than family and neighbourhood backgrounds could be interpreted to mean that de-segregation was not enough, it more readily supported the widely criticised theory of Jensen (1967) who held that genetic inferiority accounted for lower IQ scores by black students. The present researcher chose not to plunge into the

dangerous water of the debate about the genetics of intelligence or the intelligence of genes.

Michael Rutter (in Giddens, 1989: 424) has since shown that while Coleman was right about the influence of pre-school experiences and conditions outside schools on examination results, Coleman failed to consider the influence of teacher-pupil interaction. Rutter found, in a study of London schools, that a co-operative and caring atmosphere between teachers and students and well-organised course preparation influence students' motivation and that these principles were practised by better teachers who tended to be attracted to better schools. The un-stated implication here is that even in good schools, some good teachers could interact with students from different backgrounds differently. Thus Bourdieu (1986) has argued that schools are not just institutions working for social equality but also institutions that reproduce and amplify the existing culture with the existing inequality.

This can be illustrated with the case of the Institute of Race Relations that pretended to be detached and to be surveying race relations in Britain with scientific objectivity and value-freedom. The Institute was challenged by one of its own staff, Robin Jenkins (1971) who forcefully demonstrated that the research of the institute was value-laden and ideologically loaded against the black people who were surveyed by the institute. Jenkins's paper was initially delivered to the British Sociological Association and it focused on the gigantic survey by the IRR on Colour and Citizenship. Jenkins charged that the perspective of the survey was not scientific,

contrary to the claims of the researchers and their supporters, but ideologically exploitative of the black communities studied. According to Jenkins, the knowledge produced by the institute tended to empower the 'power elite' at the expense of black communities. However, Jenkins was a strong believer in objective social research. He did not recommend that researchers who share the standpoints of the oppressed should show that commitment in their objectivity. He only called on black people to tell insensitive researchers to get lost. The controversy raised by Jenkins resulted in self-criticism by the staff of the institute who gradually transformed it (in practice rather than in name) beyond mere objectivity and moved it towards committed objectivity or 'from an institute of race relations to an institute against racism', according to Sim et al, (1987:30).

Other IRR researchers, notably Mullard (1985) and Sivanandan (1974) pointed out that the controversy over objectivity and commitment had gone beyond the initial critique by Jenkins to embrace the fundamental roots of racism and the strategies for fighting racism. The views of Jenkins were obviously shared by many researchers at the IRR and his bold intervention encouraged many other researchers at the institute to make their researches even more critical of the state and its agencies. The now defunct journal of the institute, Race Today, became more accessible to black perspectives for the articulation of black realities. Notably, collections of the works of radical black poets like Linton Kwesi Johnson were published by Race Today even though they were openly critical of the state. For example, Johnson's poem 'Sunny's

Lettah', in the form of a dramatic narrative from an imprisoned son to a disturbed mother, exposes the injustice of the use of the 1981 Criminal Justice Act by the police against black youth whom they suspected of being involved in crime or of planning to engage in one:[6]

SUNNY'S LETTAH[7]

It woz di miggle a di rush howah
wen everybody jus' a husle an' a bus'le
fi goh home fi dem evenin' showah;
mi an' Jim stan-up
waitin' pan a bus,
nat causin' no fus',
wen all an a sudden
a police van pull-up

Out jump t'ree policeman,
di 'hole a dem carryin' batan,
Dem waak straight up to mi an' Jim
One a dem hol' an to Jim
Seh him tekin him in;
Jim tell him fi let goh a him
far him noh dhu not'n',
an him naw t'ief,
nat even a but'n.
Jim start to wriggle
Di police start to giggle

Mama,
mek Ah tell y'u whey dem d'hu to Jim;
mama
mek Ah tell y'u whey dem dhu to him,

dem t'ump him in him belly
an' it turn to jelly

---

[6] Hall, 1979:13, pointed out that 'the pervasive application of "arrest on suspicion" which is popularly known as 'sus' operated 'under the ancient statutes of the Vagrancy Act of 1824'.

[7] Also published, with the subtitle, 'anti-sus poem', by Island Records as a track in Johnson's 1979 classic album, 'Forces of Victory' and in the 1985 selection of his best for Island's 'Reggae Greats' series

dem lik him pan him back
an' him rib get pap
dem lick him pan him he'd
but it tuff like le'd
dem kick him in him seed
an' it started to bleed

Mama,
Ah just couldn't stan-up deh
an' noh dhu not'n:

So mi jook one in him eye
an' him started to cry;
mi t'ump one in him mout'
an' him started to shout
mi kick one pan him shin
an' him started to spin
mi t'ump him pan him chin
an' him drap pan a bin
an' crash
an' de'd

Mama,
more policeman come dung
an' beat mi fo di grung;
dem charge Jim fi Sus;
dem charge mi fi murdah.

Mama,
doan fret,
doan get depres'
an' doun-hearted
Be af good courage
till I hear from you
(Johnson, 1981: 11-13).

'Sunny's Lettah' is quoted almost fully here because it illustrates a number of points that are relevant to the present dissertation. The fact that the letter was addressed to a mother to cheer her up illustrates that even when black men are the focus of repressive policing, the women close to them are also affected. However, since the poem is concerned with a single incident, can it be taken to be

representative of more widespread encounters or should it be treated as an isolated event?

It is significant to note that the IRR published such a poem even though the life practically lost was that of a policeman. It could be said that the poem is not a documentary but a one-sided fictitious account of an imaginary encounter which has little or nothing to do with real events. However, the poem very closely predicted the cases of the 'Tottenham Three' who were jailed for the killing of a policeman following protests that greeted the death of a black woman during police raid in her flat. Just as the Tottenham three have had their convictions quashed because the police fabricated evidence to convict them, Sunny could be said to have been innocent of the murder with which he was charged because it appears that he acted in self-defence and with no intention to kill.

The poem must not be trivialised as fiction because it seems to illustrate what is probable if not predictable in situations of oppressive policing. Johnson may have used irony to exaggerate to capture attention and to emphasise that black youths are not underdogs on their backs but militant underdogs fighting back, as Gouldner (1970) would say. That the policeman died from Sunny's kick just as a policeman died during the Broadwater Farms Estate protests should not conceal the fact that most of the kicks and the killings that occur in such encounters are directed against poor people by the police and yet hardly any police officer has been convicted as a consequence (Scraton and Chadwick, 1987). The present dissertation will make use of similar literary allusions to

provide illustrations when appropriate. It will be seen that such literary texts, like 'Sunny's Lettah', will tend to focus on single events and so care will be taken not to present them as generalisations but as specific illustrations or analogies to clarify certain lines of argument.

Theories of inequality have forced many radical scholars to conclude that objectivity is either undesirable or impossible or both. For example, Hall (1987) was unnecessarily apologetic about his commitments in the analysis of race relations. He pleaded that he found 'it impossible to muster the scholarly detachment and academic calm which is often felt to be appropriate in discussions of this kind, and if I transgress in any way this frontier I hope that you will forgive me.' Maximum respect is due to Hall for confessing his commitments. He should go in peace for, as Bob Marley sings, 'truth is an offence but not a sin'. Marx was aware that he was developing an objective method for studying and (with commitment) for changing the world. So the belief that it is possible to be objective and still be politically committed is not a new invention, that is what most radicals have been doing (see Hall, et al, 1978, for example). However, it is not only radicals that do this; non-radicals claim that they are not committed and that they are simply objective (Tappan, 1977, for example). Radicals have easily shown how much the so-called objective methods are also committed. They in turn deny being objective and clearly demand the explicit statement of their commitment (Becker, 1967, for instance).

Those who doubt that objectivity is possible in the social sciences do so because they define objectivity in the natural science terms of complete detachment. In the present research, objectivity is operationalised not to mean pretentious value-neutrality in social research, but as the ability to take a position and argue it logically without concealing or distorting opposing positions. Thus operationalised, objectivity does not guarantee truth. The finding could be objectively shown to be false or true, politically viable or inefficacious, etc. There are different possible truths relating to the logical adequacy, empirical tenability, and policy efficacy of the claims and interpretations of individual analysts. Since the empirical terrain of social science is political and dynamic, there is no guarantee that objectivity could deliver an absolute truth but there is no doubt that as operationalised here, objectivity which presupposes rather than denies commitments, could increase our understanding of social phenomena. However, some studies could be more objective than ideological and vice versa.

It should be clear from the beginning that the present researcher identifies with oppressed black women as he identifies with all oppressed people everywhere. This research was partially stimulated by a desire to contribute to the amelioration of the sufferings of black women. The present researcher believes that a contribution could be made towards the solution if the problems that black women face are better understood. However, it is known that black women are not the only people who suffer discrimination and so their problems can be best understood only in solidarity with the problems of other powerless people in society. This approach, which

values the freedom of all human beings, irrespective of race and sex, will help the researcher to remain objective and honest while showing commitment to the overcoming of the problems facing those more marginalised than others. In this connection, it should be pointed out that black women or any marginalised category of people are not seen here as passive victims. In the words of Cornel West (1993: 201), 'We're not talking about human beings as victims here, we're talking about victimisation being in place and about responses to that victimisation'.

Finally, the present thesis does not make statistical claims of generalisability. However, the thesis uses the words 'significant' and 'insignificant' mainly in a qualitative sense although some of the usage refer directly to quantitative figures that are not statistically significant in the usual sense. To avoid any confusion, it should be emphasised here that even those quantitative differences have been given qualitative interpretations when figures that are not statistically significant have been referred to as being significant. The qualitative interpretation of significance is important here because the present research is dealing with justice and injustice that are not always quantifiable. In other words, even if it is only one person who is known to be oppressed on the bases of race-class-gender, it would be qualitatively false to say that that is not significant. This interpretation of significance is consistent with the epistemology of committed objectivity.

1.3 Methods of Data Reception

There is no need to rehash the debate of whether objectivity is separate from subjectivity or whether they are articulated even though they are different. However, the relationships between the goal of objectivity and the techniques of proof are worthy of some comments here because they are central to any theory of the data process. The problem of objectivity also touches on what Bertaux (1981: 40) calls the 'confirmation of hypotheses - the moment of proof' by which attempts are made to explain social relations through quantitative tests. Bertaux argued that this burden of proof should be dropped and replaced with an attempt to understand the historical movement of social relations by describing it in depth with the aid of necessary theoretical concepts. This is in line with the aim of the present research to reach a better understanding of the problems that face black women as distinct from the search for truths. In the process of the present research, relative truths might be constructed, supported, or questioned as means to the end of better understanding rather than as absolute or universal truths.

The techniques outlined by Bertaux (1981) as the contributions of the life-history approach to the transformation of sociological practice will be applied here because, as he implied, such contributions are not exclusive to the life-history method. This was why the guiding assumptions of this research were not rigidly formulated as hypotheses but loosely stated as hypothetical assumptions that would inform the discussions throughout the present research. These assumptions will not be quantified and

statistically tested at any pre-given point but will be discussed as the research progresses. Bertaux recommended that such assumptions about the nature of social relations should be stated at the end of the research but there seems to be no danger in stating them earlier as we have seen above since they would be reflected in the discussions that follow.

Secondly, in line with the data theory of Bertaux, the empirical focus is not exclusively on black women but also on the people significantly affected by gender, race, and class relations which black women share. Given that many black women who were ex-prisoners had resolved to have a clean break with their prison records rather than remain objects of research for students, according to Black Female Prisoners' Scheme, the present research avoided basing research information mainly or exclusively on the opinions of the affected black women to understand the problems that face them in the criminal justice system. Rather, contact was made with black women, black men and white women who had passed (or who were passing) through the criminal justice system and with organisations and individuals working with these categories of people in voluntary and supportive capacities. The main sources of primary evidence were the personal observations of the present researcher in London courts and discussions with people and organisations that had been dealing, on voluntary and on professional bases, with the problems that faced black women, black men and white women in the criminal justice system.

To say that the present researcher's personal observations and information from groups and individuals in London constitute primary data is not to say that only black women were observed nor that only black women provided research information. These sources are primary simply because they do not derive from previous analyses. The focus on the problems that face black women in the criminal justice system made it possible for this researcher to use information from barristers and probation officers who dealt with related problems on professional and on voluntary bases. Coupled with information from organisations that had been dealing with similar problems voluntarily and the personal observations of the researcher, it is hoped that the problems that faced black women in the criminal justice system would be clearer.

The voices of black women were represented in this research by affected black women who discussed with the researcher and by black women who talked as voluntary or professional workers. The point being made is that efforts were made to discuss with black women in this research that concerns them but there was no insistence on such a talk irrespective of the consequences for the women involved. The methodological justifications for giving more weight than usual to the information from voluntary groups and professionals are both practical and ethical.

Practically, such information appears valid because many of these organisations and professionals had been dealing with the problems that face black women for more than ten years and cannot be said to be ignorant of what the problems were. Similarly, they may not be

said to be concealing the problems because they dealt with them voluntarily and provided research information voluntarily. The only risk was that they could exaggerate the nature of the problem since they were interest groups. This risk was checked by comparing the information they provided with information from other sources and by the fact that they were asked what problems they had been dealing with rather than what their attitudes to the problems and institutions were.

If the present research was concerned with the attitudes of black women to the criminal justice system or with what motivates their behaviour, then their opinions would almost exclusively form the basis of the evidence. However, since the research is particularly interested in the problems that face black women, the methodological assumption is that such problems may or may not be adequately known to the individuals who were affected in different degrees. This assumption appears valid because some individuals may experience problems that other individuals escaped while the groups that care for all the individuals can be expected to deal with the different problems that are known to them. Such problems were not known only to those who were affected by them but also to those who had been dealing with them voluntarily and professionally for decades.

In a sense, Becker's idea of the 'hierarchy of credibility' can be applied here. According to Becker (1967), 'In any system of ranked groups, participants take it as given that members of the highest group have the right to define the way things really are.' Becker was

of the view that researchers should not be apologetic for taking the definitions of reality offered by subordinates seriously. This is because, according to him, the relative powerlessness of subordinate groups makes their leaders more credible than the 'responsible officials' of superordinate groups precisely because, 'The political fortunes of the superordinate group ... do not depend as much on credibility, for the group has other kinds of power available as well' (Becker, 1967: 244). This does not suggest that responsible officials lack credibility or that subordinates completely lack power. By conceiving credibility as one source of power that is relatively accessible to the underdogs, Becker made the point that sociologists who take the side of the underdogs stand a good chance of rescuing, and highlighting the authenticity of subordinate accounts of reality which could be easily ignored.

The leaders of subordinate groups, by contrast, may not be held responsible for the conduct of their members but they speak 'on their behalf and are held responsible for the truth of those assertions.' According to Becker, credibility is not the only influence on the opinions of the leaders of subordinate groups. Such opinions reflect also the amount of information available to them as well as their goal of transforming existing hierarchical relations. However, as a result of their goal of achieving change from positions of marginalization, the group can hardly afford the discrediting of the definitions of reality offered by their leaders because such lack of credibility would lead to further loss of political power (Becker, 1967: 243-44).

The hierarchy of credibility and the privileging of the standpoint of the underdogs have been severely criticised by Gouldner (1970). According to him, Becker divided the world neatly between subordinates who suffer and superordinates who enjoy power and indirectly implied that sociologists should always take the side of the subordinates even when studying superordinates. Gouldner shared Becker's sympathy for the underdog but he also pointed out that Becker did not make his own sympathies explicit enough, probably because his research was also motivated by self-interest and not by sympathies alone. Moreover, Becker's call for partisanship, according to Gouldner, is not 'passionate or erect' with the result that he appeared to be supplanting the value-free myth with the myth of 'the sentiment-free social scientist' (Gouldner, 1970: 115-118).

Gouldner's main critique of Becker is that suffering is not exclusively experienced by subordinates and so if sociologists are not sensitive to the sufferings of superordinates, then sociology will be lacking some humanism. Gouldner questioned the hierarchy of credibility on the ground that there is 'no special virtue in those who are lacking in power or authority' and the same goes for those who are in power. Gouldner argues that,

> 'The underdog's standpoint therefore deserves to be heard in sociology not because he has any special virtue and not because he alone lives in the world of suffering. A sociology of the underdogs is justified because, and to the extent, that his suffering is less likely to be known and because - by the very reason of his being underdog - the extent and character of his

> suffering are likely to contain much that is avoidable' (Gouldner, 1970:119-121).

If we ignore the androcentric identification of the underdogs by Gouldner and Becker, it can be easily seen that the former's justification for studying the underdogs is applicable to the present research. The standpoint of the responsible officials of the criminal justice system is largely ignored in the present research not because such officials might contaminate the research information with lies but because a lot more is known about the official standpoint whereas very little is known about the problems that face black women.

It is worth pointing out that research into the problems that face people in the criminal justice system have not usually proceeded by asking individuals what problems they face and why. This is especially true of studies of discrimination that usually rely on statistics or on the observation of procedure, or on interviews with criminal justice personnel, or on a combination of these (Hood, 1992; Gordon and Shallice, 1990; and Gelsthorpe, 1986, for example). Rare exceptions like that of Baldwin and McConville (1977) or that of Cohen and Taylor (1977) have been known to have faced doubts about whether their accounts were respectable as research and whether they were too impressionistic to be taken seriously (see Jupp, 1989). Exceptions can be found in victimisation surveys and prison biographies but they differ from the present research because it is not focusing on the expectation and the experience of crime or in

every detail of prison life but in practical problems that may or may not result from direct discrimination.

It could be suggested that the practical reasons why studies of discrimination and related issues do not start and end with opinions of those who suffer them are as follows. First, individual opinions might be better indicators of attitudes than of actual problems that may or may not be experienced by all. What this suggests is that unlike social surveys that ask people what their attitudes to specific groups, individuals and policies are, the present researcher asked individuals and groups to describe the sorts of problems that face specific individuals and groups. It is recognised here that descriptions or perceptions of actual problems would be partial as well as reflective of the ideological orientation of the sources (Ahmad, 1992: 99) but the focus of the present research is on the perceived impacts of institutionalised practices and not on individual attitudes.

The differences between perceived impacts of institutional practice and individual attitudes are that [a] individuals may have positive attitudes to practices that are perceived by other similar individuals and even by themselves to affect them adversely (alcoholism, for instance); [b] perceived impacts are relatively descriptive and whereas such descriptions may be relatively accurate or otherwise, they differ from attitudes which are relatively judgmental; [c] it is possible for a researcher to focus on either attitudes or on perceived problems or on both without reducing one to the other.

For example, Jefferson and Walker (1992) studied the problems of discrimination in the criminal justice system in 'a provincial city'. They supplemented their court observations with a survey of the attitudes of individuals to the police in Leeds without confusing one with the other. The differences between perceived or observable problems and judgmental attitudes do not presuppose a complete separation of judgements from descriptions of problems but only indicate that one cannot be reduced to the other. The connections between descriptions and attitudes are recognised in this thesis and that was why a whole subsection of chapter four addresses the question of attitudes even though the thesis is analytically focused on perceived problems rather than on attitudes to institutions. The reason for this analytical focus is that the attitude of people to the police in London is relatively well-known unlike the nature of the problems that the criminal justice system poses for people like black women in London and similar places.

Secondly, it is more difficult to track individuals down for detailed interviews about emotive issues that affect them. Moreover, the most important methodological reason, perhaps, is ethical. Such individuals may be unwilling to talk about the problems for various reasons ranging from fear of repression and of publicity to personal convenience. This ethical problem is highlighted by the policy statement published by the Black Female Prisoners Scheme ruling out the introduction of researchers to ex-prisoners because the affected women say that they want to sort out their lives in peace and that they want to have a clean break with the label of the ex-convict. This does not mean that it is impossible to get the women to

talk. One of the members of the Black Female Prisoners' Scheme stated that some of the women might want to sell their stories to people who were ready to pay for the time but even then, there was no guarantee that many of the women would talk just for the sake of money.

It is risky for researchers to buy research information in that way because the money may massage the message and manipulate the author. Stories could be cooked up for sale like any other commodity. Journalists may have no scruple about investing in such scoops because they have a profit motive. During the fieldwork for the present research a leader of Akina Mama Wa Africa stated that they were 'waging a war' against one such journalist who gained entrance into the prison and came out with the full names and offences of some Nigerian women even when such information exposed them to double jeopardy under decree 33 of 1990 which stated that Nigerians who were convicted of drugs offences abroad would be tried again and given fresh sentences when deported to Nigeria at the end of their foreign prison terms (Green, 1991:41-42).

A similar ethical problem was mentioned by a prison governor, Mr Peter Quinn (1990) who told a conference on black women in prisons that prison officials try to 'protect' women from hordes of researchers and journalists who were eager to use the inmates as 'zoo specimens.' This assertion was applauded by the conference but it is unfair to say that researchers and journalists who are interested in prison life are like fun-seeking zoo visitors. Mr Quinn's assertion raises the question whether it is visitors that make a zoo what it is

or whether zoos will structurally remain zoos even without visitors? Angela Davis seems to answer this question affirmatively when she wrote that 'Jails and prisons are designed to break human beings, to convert the population into specimens in a zoo - obedient to our keepers, but dangerous to each other' (Davis, 1974:52).

However, Governor Quinn also told the conference that only researchers and journalists with worthwhile aims would be allowed into the prisons. He cited the example of two ongoing projects to demonstrate that research was not ruled out. However, because those two projects had to do with control and authority relations in the prison, it is likely that independent research projects which are not under the control of the Home Office and which are interested in discrimination and related matters would not be considered worthwhile or would be referred to Home Office-sponsored research into such matters. This has been cogently pointed out by Cohen and Taylor (1977: 77) who identified five key forces of official control over the research process: Centralisation of power, Legalisation of secrecy, Standardisation of research, Mystifying the decision structure and Appealing to the public interest. Concerning 'Standardisation', they argue that;

> 'The Home Office, and particularly the Prison Department, has used its obvious and legitimate identification with correctional aims to develop a highly circumscribed system for deciding what constitutes proper research. Either by carrying out its own research - through such bodies as the Home Office Research Unit - or simply by using its definitions of proper research to exclude outsiders, it has created a virtual monopoly of

> research on its own workings. This monopolistic power consists in being able to say when talk is not research.'

What Cohen and Taylor failed to point out is that Home Office research is not always supportive of government policies and that in such cases, findings could be suppressed through the refusal of Her Majesty's Statistical Office to publish (See The Guardian, 4 July 1994). A similar point was made by bell hooks (1993a) who regrets that oppositional and innovative works by black intellectuals are consistently censored by publishers under the guise that they would not be marketable.

Since there are ways of understanding the problems that face black women in the criminal justice system without invading their personal space as ex-prisoners (which was almost impossible in cases of foreign prisoners who were deported on completion of their sentences) or without allowing prison authorities to control the scope of the research, it was decided that more weight than usual would be given to the knowledge of volunteers and professionals who had been sympathetically dealing with such problems.

Researchers are sometimes called upon to give voices to those that they study rather than silence them. However, if voice is a gift, the concept of data reception would demand that researchers should recognise that it is the research subjects who give us the gift of their voice although the reverse is also true in a different sense. When we understand that data is a gift we will agree with Marcel Mauss (1990) that the power and glory of salaried researchers would pale

into insignificance or appear 'mean' when compared to the power and the glory of 'the joy of giving in public, the delight in generous artistic expenditure, the pleasure of hospitality in the public or private feast.' Although Mauss was comparing the luxuries of managers and the wages of workers in this passage, he made the general point that it is more glorious to give than to receive gifts.

This is the point made by the native American, Chief Dan George, quoted in 1975 as saying that, 'Everyone likes to give as well as to receive. No one wishes only to receive all the time.' This should be an injunction to researchers to always try and give something in return especially when it comes to recommendations arising from the research. There should always be a conscious effort to make recommendations that could be acted upon by the research subjects rather than make all the recommendations to some external authority. This presupposes a commitment on the part of the researcher to share (as portions of this thesis have been shared with black women and their organisations) the results with the subjects for, as Bertaux (1981) argues, reading is the final stage of the research process and not mere publication. If research subjects feel being used or fail to notice that they are gift bearers or gift givers, it may have to do with the practical implications of the ideology of data collection.

Bhavani (1990) has suggested that 'silences, as well as 'giving voice' can be empowering' in the sense that summaries of interviews or structured questionnaires may conceal as much as they reveal in reporting the voices of subjects. An example of such would be Player

(1989) who summarised the views of black women, white women and the police and concluded that, 'Clearly, there is a close interrelation between the views held by the women and those held by the police.' The impression is that both the police and black women agree that the latter belong to a criminal subculture which mainly explains why black women are arrested proportionately more often than white women.

It is important to point out here that talking to black women who have been through the criminal justice system does not necessarily make any research about them more valid than another, though the opinions of individual black women make good contributions to the present research. In line with Bhavani's paradox, the present researcher has tried to state the reasons for silences and voices in this research.

Discussions were held (by the present researcher) with individual black women in courts and with relevant charitable organisations such as the 'Africa Prisoner's Scheme', 'Black Female Prisoners Scheme', NACRO's 'Women Prisoners Resource Centre', 'Women In Prison', 'Akina Mama wa Africa', 'Society of Black Lawyers', 'Society of Black Probation Officers', and 'Hackney Community Defence Association' to understand the problems that face black women, white women, and black men in the criminal justice system.

From the records of such voluntary agencies and relevant literature, it appears that the main problem that needs to be understood is the nature and extent of discrimination in punishment, care, and

victimisation of black women by the criminal justice system. By including the problems of black men and white women, it was possible to understand to what extent such problems were related to direct discrimination and to what extent they were part of the legal and social systems that might have different outcomes for people with unequal resources with or without direct discrimination.

This means that the present thesis goes beyond the issue of direct bias and discrimination to see to what extent VIP (or disproportionate criminalization) and VAMP (or the victimisation of innocent people) result from the inherent inequalities in the criminal justice system and in society. The information received through discussions was supplemented with personal observations in London courts, and with historical materials in the form of criminal justice statistics, reports, and independent publications relevant to the understanding of the problems that confronted black women in the criminal justice system. At every stage, the problems that faced black women were compared with those that faced white women and those faced by black men because this seems to be an effective way of understanding and attempting to overcome such problems.

The fieldwork was considered to be complete with the attainment of what Bertaux (1981: 37) called the point of the 'saturation of knowledge' beyond which additional information appeared superfluous or repetitive. Bertaux wanted to understand the social structure of bakeries and there were hundreds of potential informants for him to hold discussions with. However, by the time

he had discussed with only thirty-six of them, he was receiving no new information, his knowledge of social relations in bakeries became saturated in the sense that new informants repeated what earlier ones had already told him. At that point, it was not necessary for him to seek additional information from the other potential informers.

However, the present research does not seek to replicate the work of Bertaux who used life-histories to analyse the social relations in bakeries. This research was focused on the social relations of black women with the hope that such a focus would enable us to understand the nature of the problems black women face compared to those faced by black men and white women in the criminal justice system. Unlike Bertaux, the present writer does not prioritise class alone as the most important social relation but attempts to understand the articulation of race-class-gender relations (see Hall, 1980a, 1988). What is more, unlike Bertaux, it was not assumed here that the fieldwork was designed for 'data collection' but for 'data reception' from autonomous subjects.

The present researcher was not under the illusion that he was out to 'collect' data the way etymologists collect butterflies but to receive information from willing subjects. Data collection suggests a hierarchy of the worst form in which the researcher exercises control over the objects from which information is gathered whereas data reception more appropriately captures the nature of research practice in which informants are autonomous subjects. The varieties of sources of information make the information received fairly valid

in the sense of furthering the 'understanding' of the nature of the problems facing black women and people like them. This is the aim of Bertaux's 'point of the saturation of knowledge' - to understand the social relations of interest by consulting different sources that may add to, or correct, information already received (though, even Bertaux talks of data collection). The point of saturation refers to validity in the sense that the information received is relevant to the problem of interest and no new information is coming up in the form of controversies or things hitherto unknown to the researcher from the field.

Some scholars may concede that data reception is acceptable only within the context of interviews or group discussions. They may however object that unobtrusive observations and documentary sources of data which do not require the voluntary provision of information by subjects are only appropriate to the method of data collection. However, this is an epistemological issue relevant to the assumptions with which the researcher approaches the subjects and sources of data. Some might say that information from books is always collected because it is not received interactively. The fact remains, however, that every reader must interact with the text, every reader must engage in some decoding or interpretation of the message of the author. If that is not interactive, that still does not prove that the only thing that could be done is an act of collection rather than that of reception even from books.

The methodological assumption here is that the fieldworker is a recipient of information from individuals, groups and even from

records and books. This is nothing new. This is what researchers do even when they pretend that they are 'bailiffs' or 'tax-collectors' as the term 'data collection' seems to suggest. However, by theorising the data process from a non-hierarchical perspective, the present researcher found the process more interesting and more honest. When books are published, journalists and critics want to know how the public received[8] the publication and not how the latter was collected. However, the possibility that some people may engage in the collection of books, observations, and opinions as hobbies similar to stamp collection and train spotting, is not ruled out.

The present researcher chose to 'receive' data through discussions rather than to collect data through measurement scales because he did not pretend to have the power of a bailiff. Only a bailiff can assume the role of a collector without regard to the disposition of the sources. Consequently, the researcher did not arrive at data analysis at a pre-determined stage in the research process. Rather, he made the examination of relevant information part of the discussions throughout the research.

Everything in this section of the thesis will be familiar to those who are conversant with the demands for grounded theory (see Glaser and Strauss, 1967, and Strauss, 1987) which has been popularised as a qualitative research method especially suitable for research reports. The popularity of grounded theory is evident in the genealogical claims to it by certain computer programs for

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[8] Young, 1992: 426, for instance, writes that '...only particular sorts of knowledge claims are ... received' as criminological knowledge.

qualitative analysis (see Bryman and Burgess, 1994). The difference between grounded theory which takes the concept of data collection for granted and what has been argued here should be made clear lest some confusion arises. Grounded theory is not a theory but a call on researchers to consciously attempt to theorise their data. Grounded theory reminds us that it is desirable to build theory from data rather than from speculation and that descriptions are good but theorised ones are better than atheoretical ones. The present paper agrees with all that but goes beyond grounded theory and moves towards the theorised ground or field of work. It is not enough to offer a theoretical account of the data without a theoretical account of the fieldwork.

In all, unstructured interviews or discussions were held by the present researcher with seven voluntary organisations. These were 'Women In Prison' who dealt with foreign offenders, 'Black Female Prisoners Scheme' for African and Caribbean women, 'Akina Mama wa Africa' (African Women United) who ran a project for African women in prison, NACRO's 'Women Prisoners Resource Centre' which dealt mainly with white British women, 'African Prisoners Scheme' who attempted to provide support for African men and women who were in prison but were forced by limited resources to restrict their efforts to African women, the 'Society of Black Lawyers', the 'Association of Black Probation Officers', and the 'Hackney Community Defence Association' who campaigned against police harassment and brutality. Similar discussions were held with twenty barristers and ten probation officers and 130 appearances of defendants were observed at the magistrates' courts. Twenty-four of

those appearances were by black women, 24 by white women, and 82 by black men. Discussions were also held with many of the defendants and some of those with previous prison experiences spoke about them.

Some of the potential informants shook their fists in the face of the researcher and told him to 'get lost'. Some of the men thought that the researcher wanted to 'chat up' their women and when the purpose of the research was explained, some of the respondents wanted to see the student's identity card while others referred him to their barristers. Due to the unstructured nature of the interviews or discussions, the information that the respondents gave on the problems that they or others faced was repetitive and so, in line with the 'point of saturation' of information (Bertaux, 1981), only the essential points were written down, usually after the discussions, with emphasis on what came as new information. In the reports (chapters 4-6), isolated information or observation would be distinguished from shared ones. The decision to present evidence from both the field observations and informants' accounts along with documentary materials was based on the need to see to what extent one source could complement or contradict another.

If evidence from different sources was separated, the mutual illumination of evidence might not be clearly visible. Tentative explanations of the problems that faced black women in the criminal justice system surfaced in this presentation of evidence but a fuller analysis of their theoretical and practical implications will be presented in section III.

The fieldwork took a total of three months to complete. During the fieldwork, three magistrates' courts were selected from the telephone directory for initial visits. They were selected because they were in the Inner London Area where most black people lived and also because they appeared to be large and multi-departmental. When the list was shown to some barristers, they said that they would have recommended the same courts because many black people appear there. The observation commenced with Clerkenwell Magistrates Court in the West Central area. But very few black women were appearing there. The second week of observation was spent at the South Western Magistrates Court. It was bigger than the West Central one but still there were few appearances by black women. In the third week, observation started at the Camberwell Green Magistrates Court in the South East. The researcher soon noticed that a significant proportion of the defendants at Camberwell Green were black women. Apart from a few visits to Inner London Crown Court[9] and to the Clerkenwell Magistrates Court, the observation of court proceedings concentrated on Camberwell Green which was visited every working day during the next seven weeks and during a four-week follow-up observation.

The observation usually covered the morning sessions when most of the criminal cases were heard. During the afternoons, appointments for discussions with individuals and groups (which were usually set for 2.00 p.m.) were kept. The researcher also participated in some of

9 To participate in and observe the support provided by Hackney Community Defence Association for some defendants

the meetings of the Hackney Community Defence Association and that of the Policing and Sentencing committee of the Society of Black Lawyers of which he was a student member.

1.4 Methodological Issues in Feminist Research

It is not very useful to attempt a methodological categorisation of varieties of feminist research because they have more in common than arbitrary compartments imply. Stanley and Wise (1983: 24-38) made this point in reaction to the dichotomization of research into good and bad ones by Carol Ehrlich (1976) who held up her own type of research as the good type. According to her, 'good' or 'feminist research' seeks ways of radically improving the conditions of women. According to Ehrlich, 'research on women' is engaged in by careerists merely for professional advancement. She further divided (good) feminist research into;

1. 'Muckraking' research which is only concerned with exposing and denouncing institutional sexism and therefore, does not go far enough,

2. 'Corrective' research which is descriptive and is only interested in filling theoretical gaps in our knowledge about women and,

3. 'Best' or 'movement-oriented' research which is designed within, and conducted in the service of, the Women Liberation Movement.

The present research can be said to be muckraking in the sense that it seeks to expose institutionalised discrimination based on race, class, and gender relations. It could also be said to be corrective in the theoretical sense of being interested in filling gaps in knowledge.

Furthermore, it could also be said to be movement-oriented (even though it is not being designed within or conducted in the service of relevant movements) in the limited sense that we take the information from such organisations seriously and our findings have implications for their politics. This shows that one particular research could fall into different arbitrary categories and render categorisation less persuasive.

The controversy over the scope and nature of feminist research can be traced to the review done by Daniels (1975) of feminist research by American sociologists which showed that most of them were conducted exclusively on women and by women. Stanley and Wise saw this as implying sexist bias in previous research and justified it as a 'corrective' effort to fill existing gaps in knowledge. Although they object to research on women alone, they 'see an emphasis on research by women as absolutely fundamental to feminist research' (1983: 17-20).

The dictum that feminism requires research on, by, and for women presupposes that there is a common set of methodological yardsticks with which to measure feminist research. Gelsthorpe and Morris (1988: 233) followed Clegg (1975) and Kelly (1978) to argue that such a coherent set of methodological rules is a nonentity. They accept, however, that there are some 'methodological preferences within feminism.' Gelsthorpe (1992), in response to Hammerseley (1992), argued that no single methodological preference, not even the privileging of gender relations in analysis, is uniformly shared by all feminists all the time.

The broad principles of feminist research have been identified by Acker, et al (1983: 423) as follows;

1. Contribution to female liberation by making recommendations for women to act upon,

2. Preference for non-hierarchical research techniques and,

3. Development of a self-reflecting perspective that is critical of the conventional approaches.

Although Acker, et al, identified these as principles, only number two approximates a principle, while the other two are merely objectives or goals that may or may not always be attained. This supports the view that there is no parameter for measuring feminist research. In other words, some research that is identified as being feminist or non-feminist may or may not be by, on, or exclusively for women.

It is the purposive corner (for women) of these triangular preferences (which Acker, et al, call 'broad principles' above) that raises the most serious problem. Certainly, a research that is against women cannot be said to be feminist even if it is conducted by women and on women. On the other hand, a research in the interest of women can be said to be feminist even if it is by and or on men (see Scraton, 1990; Sumner, 1990 and Sachs, 1978, for example).

The problem here is that research findings can have unintended consequences, depending on those implementing them under variable conditions. Even when the findings have implications for action by women specifically, it is hardly conceivable that such actions would benefit women exclusively. Hence, the argument in the present research is that all researchers should aim to serve the non-exploitative interests of the whole society (including blacks and whites, women and men, rich and poor) no matter how difficult this is in practice.

However, let us briefly consider the methodological advantages that being a woman is supposed to confer on female researchers. The most popular requirement is that of personal and political sympathies for the research subjects. There is no essentialist biological or psychological trait that makes it absolutely impossible for men with differential or comparable experiences to sympathise with oppressed women. Neither is there any innate quality that commands automatic solidarity from all women for all women irrespective of variable ideologies, social situations, and levels of consciousness.

Roberts (1981: 16) insists that genuine sympathy is possible only when a feminist '... takes her own experiences seriously and incorporates them into her work ...' It is true that this approach is no more biased than those of most men that are informed by their male-centred world views. However, the emphasis placed by Roberts on personal experience is questionable since a woman does not need

to experience a rape, battering, or mugging to be able to sympathise with the victimised while studying the problem.

Besides, it is not all women that share a feminist world view and it is not all those who sympathise with oppressed women that qualify to be feminists. The present researcher received information from individuals and groups some of who did not personally experience the problems that faced black women but were aware of such problems because of their work or close association with the affected women.

Indeed, sympathy for oppressed women is less important than commitment to ending sexism, racism, and class exploitation. Commitment may be difficult without sympathy but sympathy is definitely inadequate. As Samora Machel put it in his opening speech to the founding conference of the Organisation of Mozambican Women in 1973 (quoted in Urdang, 1983),

> 'The emancipation of women is not an act of charity, the result of a humanitarian or compassionate attitude. The liberation of women is a fundamental necessity for the revolution, the guarantee of its continuity and the precondition of its victory. The main objective of the revolution is to destroy the system of exploitation and build a new society which releases the potential of human beings, reconciling them with labour and with nature. This is the context within which the question of women's emancipation arises.'

The revolutionary situation might vary from place to place and from time to time but what Machel indicated is that most problems of oppression are articulated in a way that calls for solidarity rather than sympathy.

Cain (1990b) took the standpoint epistemologies of feminist criminology to task by identifying their unrealistic demands. Feminist standpoint epistemology (very much like Becker's preference for the standpoint of the underdog) claims that the control over the body of women by men and the subordination of women by men essentially make women better knowers of reality than men.

Cain contrasted the standpoint epistemology of Hartsock (1987) with the realist philosophy of Harding (1986) and pointed out that the former constructed an essentialist 'straw man' which stood for all men and which personified all that was objectionable in social research. Hartsock, according to Cain, assumed that the invasion of the female body and the monotony of domestic chores gave women a superior point of view on the reality of social relations, and that women could not think hierarchically because their success as mothers or wives depended on how well they allowed their children and husbands to be independent of them.

Cain agreed with Harding that there is something essentialist in the belief that women's bodies make them better knowers of social relations. She also questioned the implication of the point that the oppressed have a better view of reality which seems to suggest that

oppression should be maintained lest the oppressed lose their clear vision from below when liberated. She cautioned against an exclusive focus on women's experiences because such would encourage men to keep thinking that women are all the same just as such a focus assumes that men are all the same.

Yet, Cain (1990a: 127) mistakenly asserted that 'African men, Harding argues, have many similarities in their thinking to European women.' Although she included this assertion as one of the issues exposed, but not resolved, by standpoint epistemologies, according to Harding, Cain presented it as if that was what Harding argued rather than what she argued against.

What Harding (1986:165-166) argued is that such 'contrast schemas' are necessarily problematic because the concept "African" is a Western creation just as "woman" and "femininity" originated in and remain central to masculinist thought. Moreover, she argued, these concepts gloss over vast historical differences and varying patterns of contemporary struggles among different African peoples and various categories of women from different cultures. Furthermore, she concluded, such contrasts suggest that the fact that these categories were created by dominant groups to marginalise those they chose to subjugate has had no impact on the standpoints of Africans and women over the centuries. This critique of feminist and Africanist standpoint epistemologies reflect the critique of Becker's underdog standpoint by Gouldner. To reiterate, the present research is focused on the standpoint of the subjugated not because it is likely

to be more truthful than dominant standpoints but because it is less likely to be well-known.

The view that African men think as European women was probably borrowed from de Beauvoir (1953) who contended that the 'alterity' of subjugated people induces inferiority complexes as in black men in America and in women in general. What is usually forgotten is that she extended this generalisation to French men under German occupation and that she was almost silent on black women. What she emphasised was the difference that 'Negroes submit with a feeling of revolt, no privileges compensating for their hard lot, whereas woman is offered inducements to complicity' (1953: 300).

This hypothesis of black revolutionary tendencies was soon dropped when de Beauvoir asserted that 'the passivity to which he is condemned' can be explained by the probability that it was impossible for a black man to use violence against white people in the American South (1953:329-30). From the South, this passivity complex was generalised for all 'Negroes', presumably including those Africans who fought bravely and died defending France against Germany in both imperialist world wars especially as troops of the Tirailleurs Senegalais (Echenberg, 1991). Her conclusion was that black men's 'difficulties - with themselves as well as around them - (are) similar to those confronting women.'

It is interesting that black women were completely ignored in this equation of race with gender. They were only mentioned in the context of being the sexual properties of white men in contrast to

white women who, de Beauvoir claimed, were lynched for sleeping with black men (1953:369). Suffice it to say that such intercourse between black men and white women were usually interpreted as rapes and that the black men were the ones who stood the risk of being lynched even when the allegation was false. Indeed, Davis (1981) argued that the myth of the black rapist was invented specifically as a cover for the terrorist policies designed to block the march of black people from enslavement to genuine freedom. The point de Beauvoir was trying to make is that oppressed people everywhere face similar problems. However, this has been over-generalised to all black men irrespective of class and denied to black women irrespective of race relations.

Cain (1990b) argued that even if women's experiences were uniform, no one should decree that they should be the only valid foundation of knowledge. Cain concluded by emphasising that the only requirement of the 'relational' feminist standpoint is that the men and the women who consciously choose it should be intellectuals of the oppressed (women) in the Leninist sense by being organically linked to the feminist movement in the Gramscian sense. By this she meant that intellectuals who belong to the petit bourgeois class could and do support the struggles of the oppressed with the knowledge and skills that they acquired as Lenin taught and practised. Gramsci (1971) clarified this principle by emphasising that being an intellectual of the oppressed goes beyond doing research on or for the oppressed and revolves around active participation in the practical struggles of the oppressed.

Cain failed to point out that the dialectic of organic linkage has less to do with the will of the researcher than with the readiness of feminist groups to organically accept (or admit) allies irrespective of sex. This does not mean that it is impossible for men to be organically linked to the struggles of women or for white people to be intellectuals of black people. For example, Women In Nigeria (WIN) is an organisation to which both women and men (including the present researcher) belonged and white activists are members of the African National Congress.

However, membership of any organisation or group[10] does not mean commitment to the goals of such groups or organisations since there are such things as nominal and opportunistic membership. The converse is also true because non-membership of organisations cannot be interpreted as opposition to, or lack of support for, their goals. When feminist activists consciously exclude men from their clubs and the Feminist Review still asks potential contributors whether they are women or not, because they publish only articles by women, it is difficult for any man to be devoted to the 'male feminism' of Stephen Heath (1987) who wishes to be accepted as a feminist scholar.

It appears that Cain is aware of this dilemma because, in her address to the American Criminological Association on being the

[10] Although membership is suggestive of acceptance or admission into an exclusive group, it could also suggest a trap in the sense of fake membership being offered to someone in order to compromise the person in one way or another.

first woman to be given the Sellin Glueck Award in 1988, Cain (1990a: 9) had this to say;

> Just as a name can only be found in 'women only' settings, so in research the male voices may need to be silenced in order for a quite different female discourse, which is not the flip side of the male one, to emerge and/or to be heard.

If men must be silenced to hear the voice of women, does it follow that white women need to be silenced to listen to black women? The point Cain (1990a) and Smart (1990), among others, are making is a valid one in the sense that men should not be seen as the standard against which women are to be measured for equal justice.

However, the call for women to be compared with other women instead does not solve this problem of false standards. Rich women and white women could easily become the criteria for female liberation against which all other women might be measured. This means that comparisons should not be abandoned and that in all comparisons, whether of women to women, men to men, or women to men, one should be careful not to set up false yardsticks.

Perhaps, the only indisputable advantage for women studying women is that access to information is facilitated by their shared identity with the subjects. According to Finch (1984: 74), an interview at home by another woman is like a conversation; women are more used to intrusive questions about the 'private parts of their lives' and; the subordination of women in the domestic sphere makes

it more likely for them to talk to a 'sympathetic listener'. However, this advantage is also ethically risky in the sense that the unsuspecting subject may be exploited and mis-represented by an uncommitted, even if sympathetic, female researcher.

This is undoubtedly a serious problem for any man contemplating research on women and vice versa. Nevertheless, it only makes the present research more difficult and not impossible. The present male researcher was able to gain the co-operation of some individual women and the organisations that support women in prison. Moreover, since the present research is not closely related to the 'private parts' of the lives of women, the researcher got as much useful responses as a woman could, probably because he was seen to be a committed and 'sympathetic listener'. What is private is often political but what is political is not always private. By addressing the problems that the criminal justice system poses for black women, this research focuses on the parts of their life that are more public than private.

Feminist research has never been and should never be specifically or exclusively on, by, and for women. This position is clear if we follow Gelsthorpe and Morris (1988: 227) in defining the feminist perspective with its anti-positivism, its opposition to stereotyping, and emphasis on the subordination of women. The present research is therefore not a feminist research simply because it does not emphasise the subordination of women more than it emphasises the subordination of poor men or the superordination of wealthy women. As an alternative to gender-specificity, the argument here is for

gender-class-race-sensitivity in all theories, methods, and actions, whether or not they are sworn to feminism.

This position should not be misconstrued as support for the usual rejection of feminism as being 'irrelevant, transient or trivial, (and) ... an invalid enterprise' (Gelsthorpe and Morris, 1988: 226). On the contrary, most feminist research principles were borrowed from aspects of conventional research[11] and so, to reject them would be tantamount to a rejection of some of the best traditions of social science. The contention here is that the useful techniques (such as open commitment and unhierarchical research relations) which are advocated by feminists should be available to all social scientists for the study of the whole society and for the benefit of both men and women, blacks and whites, the rich and the poor.

The earliest problem raised by feminists against conventional research methods is that of selective 'amnesia' or the concealment of the problems of women, and by extension, of black women. However, Gelsthorpe and Morris (1988: 228) have shown that this neglect is not a systematic or peculiar one since women get mentioned even in the classical writings and crimes of the powerful have equally been ignored.

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11 For example, taking the experience of subjects seriously and adopting non-hierarchical approaches are phenomenological principles just as taking sides and taking the standpoint of the marginalised were advocated by Becker. Feminists have brought a unique emphasis on the importance of gender awareness to these principles but as Gelsthorpe, 1992, argued, gender awareness is not emphasised to the same degree by all feminists.

The incorporation of gender perspectives into conventional methods is important, but this alone would be inadequate to correct all the biases of the latter, and men (who do not share the hegemonic construct of masculinity) also suffer some aspects of sexist biases in criminology. These observations support the conviction that the problems of black women can be best solved in solidarity with the problems facing other people who are victimised under domination.

The exclusive focus on women by some feminists is seen by them as a legitimate protest against, and an overcoming of, the biased generalisation for the whole of humanity based on studies of only men. Roberts (1981: 15) also sees it as a deliberate bias that is calculated to fill the gaps created by masculinist research and thereby create the 'conditions in which a non-sexist methodology might be approached'. Her argument is that if there is nothing wrong with an all-male sample, then there is nothing wrong with an all-female sample. One response could be that all sexist samples are faulty as a rule in the study of gender relations that impinge on both sexes. Instead of multiplying the error, it is more desirable to identify the sources of these errors and try to avoid them as many feminists have done.

Another issue raised by some feminists is the fetish which conventional methods make of statistical analysis. Roberts (1981: 23) suggests that few women engage in quantitative research because certain statistical procedures are inadequate for the understanding of sex differences. She refers specifically to the official and bureaucratic measurement of social status based on the

occupation of fathers and husbands. This is an important point but it should not be taken to mean that statistical analysis is masculinist or completely undesirable. The criticism of official statistics is a shared concern throughout the social sciences. This is a challenge to improve the system of statistical data reception and simplify its analytical methods. For this purpose, the present research does not reject evidence from official statistics out of hand but uses descriptive statistical measures and tables to summarise them where appropriate. The present research also goes beyond official records to include independent publications, direct observations, reports of surveys of individuals and group discussions.

What could be considered the most crucial critique of conventional research by a feminist was raised by Oakley (1981). According to her, the 'hygienic' methods of data collection and analysis merely mystify the research process and result in false or inadequate explanations. She rejected the traditional guidelines which specify that the interviewer should ask all the questions, that the interviewee should be seen merely as a source of data, and that the interviewer should not be emotionally involved.

Again, this is not a new critique but a re-echoing of the points earlier made by phenomenologists, new sociologists and new criminologists.[12] The common oversight is that all the critics of the conventional approach, including feminists, still talk of 'data

[12] See Gouldner (1970), Mills (1959), Schutz (1970) and Taylor, et al (1973), for example

collection' as if the supposedly empowered subjects are as indifferent as apple trees which researchers can climb at will to pluck juicy data when the logic of 'empowerment' should force everyone to talk more about 'data reception' from conscious subjects.

Data reception is not defined by 'who' but by what most researchers actually do in the field. They rarely collect data but often receive them from sources and subjects that willingly provide information. The non-hierarchical aspect of data reception is its most important feature compared to the ideological loading of data collection. This suggests that as a black man investigating black women, the present researcher did not automatically assume that he could collect data from black women, whether or not they like it, as the hierarchical concept of collection in a patriarchal society would imply. Rather, the present researcher recognised the autonomy of the subjects and approached them with a full awareness that they could refuse to participate in this research.

This approach highlights a second difference between data collection that is not an ethical one of hierarchy but a practical one of feasibility. The present thesis is based on the assumption that data reception is more feasible than data collection and that the former is what most researchers practise even while mis-identifying that practice as a process of collection. Data reception, apart from being more ethical, resolves this tension between the theory and the practice of the data process. The point here is also ethical in that there appears to be a tension between the logic of empowerment and the concept of data collection and this apparent tension is resolved

in the present research by conceptualising the latter as a process of 'data reception' as was argued above.

Another advantage often claimed by feminists is their ability to reject the myth of objectivity and opt for intersubjectivity between the researcher and the subjects. As we have seen above, there is nothing feminist about this principle that was borrowed from symbolic interactionists and phenomenologists (see Gelsthorpe, 1989: 33-37). Unless we confine the meaning of conventional criminology to only positivistic research, we can no longer say that the open commitment of the feminist criminologist is unconventional since this is a widely accepted research practices today.

What is actually unconventional in this connection is the belief in the present research that no researcher should reject objectivity as an excuse for politicality or vice versa. Objectivity and partisanship are different but the present researcher believes that they are not separate. This is nothing new under the sun. Those feminists like Gelsthorpe (1986) and Brown (1990) who go out armed with sufficient ammunition of commitment to hunt for sexism in 'real police work' and in classical criminology, respectively, and conclude that people and institutions that are usually shot down with the sexist stereotype are not always so, still retain their commitment without rejecting the objectivity of their observations. What feminists have contributed here is the requirement that awareness or lack of awareness of gender relations affect the outcomes of social research. The same goes for the awareness of racial and class relations.

The acceptance of the view of the research subjects as being equal, rather than inferior, to the views of the researcher (Stanley and Wise, 1983: 6) is a good research principle that should be adopted by all social scientists. However, this should not be taken to the absurd extent of assuming that the views of the subjects are superior to the analysis of the researcher. In this regard, Klein (1983: 94) warns that what is demanded is 'conscious subjectivity' that should not be confused with an uncritical acceptance of the commonsense of the research subjects.

Cain (1986: 262-63) argued that a research subject has the power to participate in the formulation of the problem, in the choice of techniques, and in the construction of explanations. However, she maintained that the researcher should be allowed to choose whom to treat as a subject and whom to treat as an object. This value-laden flexibility is consistent with the ideology of the feminist perspective. The problem it raises is whether female researchers must always treat men as objects and whether male researchers are incapable of treating women as subjects?

Cain solved this problem by pointing out that entitlement to being a subject should not be universally claimed by any group or automatically denied to any group. It follows that men can empower the women they study just as women can empower their male subjects, depending on their objectives. The distinction being made here is not between those who should be treated as objects and those who should be treated as subjects but who deserves to be included as

subjects even though no one deserves to be treated as an object of any research.

What we have shown so far is that there is nothing inherent in any research method that makes it unsuitable for the study of any group of people, by any group of people, or for the benefit of any group of people. It depends on the consciousness of the researcher and his/her commitments. Having said this, can we still say that there is anything like a feminist method or should we simply accept the argument of Harding (1987 :1) 'against the idea of a distinctive feminist method of research'?

Gelsthorpe and Morris (1988: 227) answered that there is nothing like 'feminist criminology', in the sense of a sub-discipline, since such a narrow definition would limit the expansion of its scope. However, they accept that what we have is a feminist perspective which should be applied to all branches of criminology. It seems that it is this perspective that makes it possible for us to talk about feminist criminology or methodology, not in the sense of a sub-discipline but, in the same way as we talk about positivistic criminology, new criminology, Marxist criminology, phenomenological criminology, etc.

Conclusion

Any perspective can be shared by any willing researcher who is capable of applying it. Gelsthorpe and Morris (1988: 235) agree with this but distinguish between feminism (which denotes political and

emotional commitment) and a feminist theoretical perspective. According to them, men can share the latter but not the former. We have argued above that there is nothing that makes it absolutely impossible for both to be shared by men. However, sharing both does not automatically make anyone a feminist. It depends on the relations of dominance among the conjunction of commitments that the researcher may have besides commitment to oppressed women. It is accepted here that gender awareness is vital but it is also assumed that class and race consciousness are equally, if not more, crucial to the present research.

The claim being made for the methodology of the present research is neither that of sophistication nor that of reliability (in the sense that any other researcher could arrive at exactly the same results with the same methods). The claim being made here is that of validity in the sense that the methods of data reception, committed objectivity and the insights from feminist research are seen to be capable of exploring the nature of the problems confronted by black women and people like them in the criminal justice system.

The next chapter will start where the present one stopped by looking at feminist theories of criminal justice to see what they could contribute to the present research. That would be followed by similar reviews of the literature on race and class and then by the specification of the theoretical perspective within which the relevant issues will be posed and pondered.

Chapter Two

Literature Review and Theoretical Perspective

Introduction

The literature on race, gender, and class relations in the criminal justice system shares the concern over inequality and discrimination with varying emphases on ethnic minorities, women and the poor. Some researchers (see Farrington and Morris, 1983, and Gelsthorpe, 1986, on gender; Wilson and Herrnstein, 1985, on class; McConville and Baldwin, 1982, on race) hold that there is no significant difference in outcomes or discrimination based on race, gender, or class relations in the criminal justice system.

On the other hand, many researchers have found that there are disparities in the criminal justice system which would be difficult to explain if the belief that everybody is equal before the law is maintained (see Hood, et al, 1992, on race - although their conclusion is contentious because it favours the 'chivalry thesis' according to which women are supposedly favoured by criminal justice officials irrespective of race and class; - Eaton, 1987, on gender and Gilroy, 1987a, or Walker, 1988, on class).

The focus of research is moving away from the search for evidence of discrimination to explanations for the nature and extent of the existing disparities (Cook and Hudson, 1993). Some explanations

pinpoint either race, class, or gender relations or a combination of any two of them but very few attempt to consider the influence of all three relations on the outcomes for different categories of people in the criminal justice system. The aim of the present research is to attempt such a comprehensive analysis by looking at black women compared to black men and white women. The major problems that this dissertation is trying to explain are those of disparities in outcomes for people in similar and unsimilar circumstances, that is, the problems of discrimination and victimisation.

However, it is also apparent that structural inequalities based on gender, race, and class relations would produce different outcomes for different people without any direct discrimination or victimisation. The distinction being made here is between institutionalised discrimination that affect the poor, the relatively powerless and the marginalised because they lack the resources with which to meet the standards that are based on the circumstances of the rich and the powerful on the one hand, and wilful or direct discrimination that is based on the deliberate action or omission of a given individual. So the present researcher hopes to go beyond the attempt to understand the nature of discrimination and try to see how the social structure in general, and the criminal justice system in particular, directly or indirectly pose problems for black women.

2.1 Gender Relations and Criminal Justice

Women had been ignored in much of conventional criminological theorising until the 1970s when feminist issues started being forced into the centre-stage of criminological debate. The sexist explanations of positivistic theorists, that women commit less crime because of inherent biological differences (Lombroso and Ferrero, 1895) and the paternalistic theory that women appear to engage less in crime simply because the chivalrous criminal justice personnel tend to conceal or treat their crimes leniently (Pollak, 1950) were no longer satisfactory.

Evidence from official statistics shows that men are much more likely to be given custodial sentences than women. This has been interpreted, following empirical studies of one magistrates' court in Cambridge, as resulting from the relatively low gravity of the offences of women and their relative lack of previous criminal records (Farrington and Morris, 1983). This interpretation suggests that when the gravity of offence and previous criminal records are similar for men and women they tend to be treated in similar ways by the criminal justice system.

This interpretation has been re-examined by a number of researchers who do not focus on official statistics and sentencing alone but go beyond them to look at the assumptions and methods that underlie policing and the generation of such statistics. Gelsthorpe (1986) seems to support Farrington and Morris when she points out that the reaction of the police is influenced more by the

nature of the alleged offence and by the attitude of juveniles to the police than by gender. She suggests that girls may appear to be treated more leniently than boys because they are more likely to be apologetic than boys. However, she does not say whether the methods by which girls are persuaded to apologise are similar to the language with which boys are interrogated or whether apology is simply a function of the nature of the offence. However, she links the different attitudes of boys and girls to officials with their different socialisation processes. Nevertheless, socialisation is supposed to be a lifelong process and the officials may be acting also as agents of socialisation by reinforcing conventional stereotypes of how boys and girls are supposed to behave.

Worrall (1986: 90) observes that female crimes are seen by courts as abnormal consequences of natural and emotional forces for which the defendant was not to blame. This appears to be a follow-up to Pearson (1976: 265), on magistrate courts in Cardiff, who reported that female offenders were treated like children as if they did not know what they were doing when committing offences. Their poverty was accepted as a punishment-mitigating social cause of their offences more readily than that of men in similar circumstances.

Similarly, Allen (1987: 82) observes that when the seriousness of offence is controlled for in comparing men and women, it appears that violent crimes by females are portrayed by psychiatric and probation reports in peculiar sexual patterns that tend to mitigate sentence or exonerate them through 'manoeuvres that are either

absent or untypical in cases involving males.' She is of the view that such a report 'neutralises ... guilt, responsibility and dangerousness, and thus undercuts any demand for positive actions.'

These findings seem to point to the pervasiveness of what could be called paternalism in the criminal justice system in the sense that women appear to be treated more leniently or to be subjected to more subtle forms of social control. Radical feminists see the findings as evidence of discriminatory stereotyping of the female personality by the predominantly male criminal justice personnel. Their concern is that such biases reinforce other inequalities that have adverse effects on women in the wider society (Edwards, 1989).

Moreover, even in the criminal justice system itself, the portrayal of violent women as harmless and helpless could result in the perception of relatively harmless women as violent. This could be illustrated with the case of custody for mental illness. Allen (1987b) compared a random sample of 200 individual criminal cases and found that psychopathic evidence was sought by courts before approving the hospitalisation of women who truanted from school, were involved persistently in petty delinquency, were sexually promiscuous or lesbian, were lacking long-term relationships, or were bad mothers. This sharply contrasted with the cases of men who were more persistently violent offenders and therefore deserved the court order of psychiatric examination more than the women. This suggests that what could be called a paternalistic practice of presenting relatively violent women to be more harmless than they

are could result in the oppressive presentation of relatively harmless women as being more violent than they really are.

In this connection, Eaton (1987: 95) argues that sexism is not manifested overtly in courts 'but through subtle reinforcement of gender roles in the discourse and practice of courtroom practitioners.' This seems to refer to hierarchical gender roles in the family, the values of which influence court practices, reproducing the inequality at home in court. This suggests that since the gender inequality at home is oppressive, its reproduction in courts would be equally oppressive even while appearing to be paternalistic.

Eaton (1987:106; 1986) argues that it is not true that all women are treated differently from men or similarly to each other by the courts. The most important things, according to her, are the gravity of the offence, previous convictions, and whether the woman plays her expected role in the family well. The importance of family background, she argues, is also considered in cases involving men whose punishment may be mitigated by the fact of being responsible fathers and bread-winning husbands. This appears to be saying that the law treats both men and women similarly and yet she appears to have attempted to show evidence of 'subtle' anti-female sexist social control practices.

Arguments like these imply that discrimination in the criminal justice system is not suffered by women alone. However, some (but not all) researchers do not seem to be concerned about oppressive discrimination suffered by men and they appear quite happy with

favourable discrimination that benefit women. Sumner (1990) addressed this point by arguing that, although the ideology of law has the masculine gender of repression, this masculine gender is also exercised against men who have alternative masculinity different from hegemonic masculinity. However, Sumner failed to note that the ideology of law also has a 'feminine' gender of care and failed to say exactly what, if anything, makes repression necessarily masculinist or what makes care essentially feminine.

Harris (1987) must have realised the weakness of arguing for equality from an essentialist position and therefore demanded a 'massive infusion' of the 'care/response' orientation into the existing system without abandoning its traditional focus on justice and rights. The approach of Harris (and to some extent, that of Sumner) is very close to that of Heidensohn (1986:291-93) who dichotomised justice into two mutually exclusive models of 'Portia or Persophone'.

The Portia, named after the pound-of-flesh character in The Merchant of Venice (Shakespeare, 1987), is supposed to value masculinity, rationality, and individualism; to operate through a system of civic rights and the rule of law; to conceptualise justice as meaning procedural legal equality; and is characterised by the male norm.

On the other hand, the Persophone model, named after the blindfolded, scale-weighing and machete-wielding Greek goddess that is crested on many justice symbols, is said to value femininity and personal care; to work through informal networks; to

conceptualise justice as responsibility and co-operation; and is characterised by the female norm. Heidensohn argues that although the present system, which is modelled exclusively on the Portia, is important for measuring justice for women who still suffer injustice within the model, procedural justice has to be additionally seen in relation to social disadvantages that make women 'unequal to men even before they encounter the law'. This suggests that the gender inequality between men and women in patriarchal societies is reinforced and deepened by the legal institution.

The irony here is that Heidensohn chose a Greek goddess, which is favoured by the present 'Portia' model, to represent the female norm of justice whereas women, along with slaves, were not even citizens in Greek city states and those goddesses were characterised by their inferiority to the gods, hence the blindfold that suggests irrationality even while being used to represent impartiality. However, it is not all goddesses (read women) that were seen to be unequal to all gods (men) in Greek society because the constructed social positions of some goddesses (women) made them superior to most man-made gods. This point was made in a different context by Sachs and Wilson (1978) who pointed out that discrimination against women, sometimes supported by law, is usually grounded on the chivalrous assumptions that women need to be protected and respected as virtuous beings, an assumption that has also been applied to enslaved black people in America.

They argue that the legal question of whether women were persons is similar to the issue of whether black people in America were

persons or property. In both cases, the law eventually answered affirmatively that they were persons but qualified this by saying that they were special sorts of people who needed to be given special protection. Sachs and Wilson concluded that the alleged protection was a mere smoke screen designed to conceal discrimination because it tended to exclude certain categories of people from the lucrative professions and thereby limited their opportunities to the hazardous ones from which they should be protected if they needed protection at all.

Naffine (1990) is critical of this approach because it seems to say that women should be treated as men without realising that this could result in greater disadvantage or repression for women when treated in the same way as poor men. She contends that the problems facing poor men should be addressed along with the problems confronting women because both categories of people lack the image of the reasonable man that is dominant in legal discourse. Such a broad concern can be extended by differentiating poor women from rich women and ethnic minority men and women from the dominant groups as the present research is attempting.

The more serious problem with the dichotomy approach was raised by Nagel (1981: 105) who pointed out that although the 'intent' of criminal justice officials is assumed to diverge into 'punitive' or 'protective', it nevertheless produces similar 'outcomes' for both men and women in similar circumstances. Such outcomes, according to Edwards (1989), may be favourable or unfavourable in the short run. However, what is favourable in the short term might produce

more unfavourable outcomes in the long run. She states that researchers should concern themselves with the construction of better theories of sex and gender instead of the search for better data in their attempts to understand the disparities in criminal justice outcomes for different people. The search for better data and the building of better theories are not mutually exclusive and the present research would try to contribute to both concerns and support the struggles for social justice.

Daly (1987) shifted the argument from gender-specific typologies when she observed that feminist explanations of sentencing had not adequately accounted for the 'reasoning process' guiding the treatment of both men and women. From interviews with thirty-five court officials, she abstracted that the operative principle is that of 'familial paternalism' which differs from 'female paternalism' in the sense that it is directed towards the protection of family life as a whole, including the safeguarding of the labour of men and women who have dependants.

The implication here is that the assumption of systematic sexist bias in criminal justice administration is still problematic. Feminist criminology has contributed to theory the notion that whatever leniency that is shown to women in courts is also extended to men in similar familial circumstances: certain men and women are sometimes treated leniently to limit the socially dysfunctional potential consequences of more severe punishment on the innocent dependent members of their families. However, according to Eaton (1986), what may appear simply as a lenient treatment may be a

compromise by which more intrusive informal social control replaces severe formal ones. Accordingly, the present research is not looking for who is treated more severely than another but for the ways that the problems that arise differ and how such disparities can be understood based on the articulation of race, gender and class relations in the criminal justice system.

The questions that arise are whether cases of 'familial paternalism' are simply gender-specific as Eaton (1987) implies or whether they are both gender- and class-specific as Naffine (1990) demonstrates or whether relations of race, gender, and class are simultaneously operative to produce variable and similar impacts on people variably and similarly located in the social structure as Dill (1987) argues? This question will be addressed in this dissertation by considering race, class, and gender as different but articulated relations that influence the problems confronting black women in the criminal justice system.

Elaborating on her earlier point, Daly (1989: 11) argues that the 'logic of punishment' and the 'ethic of care' typology of state response to crime that was popularised by the call of Gilligan (1982) for the incorporation of the female voice, wrongly assumes that the voice of law is exclusively male. On the contrary, she suggests 'that crime is defined using the female voice because it is contingent on the relations between the victimised and offenders and the different degrees of harm and culpability that are associated with these relations'. What this clarification shows is that the voice of care is already in the law and so, the addition of any new voice (especially

one that is not so new by reason of prior presence) to the law would not necessarily make it more just. Rather, efforts should be directed towards empowering the poor and minority men and women who are 'disproportionately accused and punished.'

Daly (1989: 2) objected to the two-voice typology not only because of its misleading assumption that there is no 'female' voice of care in the existing apparently masculine law, but more importantly because of its excessive emphasis on female "victims" as opposed to female defendants. She warns that the quest for justice for "victims" without equal concern for female and male defendants could result in a 'repressive agenda' which could be suffered also by women and not only by men.

What is more, the limitation of the critique of sexism and paternalism relates to an emotional defence of female offenders. As Allen [1987: 93] puts this, '... feminist discussions share with the court reports the underlying predisposition to view criminal women as more "victims" than aggressors, more sinned against than sinning, more to be pitied than blamed'. Such an approach does not recognise that some "victims" of female offenders are women and so even from the separatist interest of protecting only women, it is not satisfactory to stand rigidly on the platform of sex.

The problem here is that this dissertation is also concerned with the victimisation of black women by the criminal justice system. However, this is a victimisation different from the alleged pitying of the 'offender'. Though this dissertation is interested in cases of

disproportionate or improper punishment or what is usually referred to as 'over-criminalization' (see Carlen, 1985; Chadwick and Little, 1987), but which should be more appropriately called Victimisation-In-Punishment (VIP), it is also concerned with innocent people who were victimised by the long arms of the law through the process of Victimisation-As-Mere-Punishment (VAMP). To understand when black women are victimised as women, it is necessary to study the problems they face in circumstances where black men would be less likely to be victimised in the criminal justice system. That is, as wives, sisters, friends, lovers, or mothers of suspected men who may be harassed in ways that husbands and fathers of suspected women may not. However, even in such situations, it would still be necessary to know if rich black women and white women would be similarly vulnerable to such victimisation.

Moreover, those who suffer VAMP are not seen as passive "victims" in the present research. Rather, the researcher tried to see how the victimised contest such victimisation in practical struggles. Again, there is no intention of focusing exclusively on black women but to compare them with black men and with white women to see how much of their victimisation is unique to them and how much is shared by people with similar resources. This approach is clearly in line with the view of Daly (1989: 15) who calls for a jurisprudence that maintains emphasis on problems facing women but goes beyond these to consider 'men who have been crippled by patriarchal, class, and race relations.'

The need to go beyond the gender approach is captured by the fact that male and female offenders are said to be significantly similar in socio-economic status (Elliott, 1988: 114). Official statistics tell us more about the actual operations of the criminal justice system than the traits of offenders. However, the statistical evidence of similarities between men and women facing problems in the criminal justice system supports the attempt to study black women in comparison with black men and with white women.

Feminist criminology is limited by the fact that it 'tends to go much along the same road as masculinist criminology: it focuses on one sex' (Swaaningen, 1989: 289). In recognition of this limitation, Gelsthorpe (1986) proposes that we need to transcend both paternalism and sexism as explanations in the debate and consider the influence of race and class relations in criminal justice administration. She also demands that sexism should be reinterpreted within the context of societal expectations of 'real police work.' She made these calls to correct the false impression that men are not victimised through sexism even though macho images of the 'breadwinner' and 'typical' men are operative. By this, she means that sexist effects are not always produced by attitudes of biased officials but also by organisational and institutionalised gender inequalities.

The majority of feminists see any bias as undesirable but some are in support of 'positive' discrimination that favours women. Scales (1986: 1375-76) critically observes that some feminists have put forward a shoplist of 'special rights' which would produce equality

by incorporating the 'non-stereotypical 'real' differences between the sexes' into the law. The three major programmes frequently put forward for the improvement of the legal chances of women are

(1) The proscription of existing discrimination against women;

(2) The prescription of preferential treatment for women until socio-economic inequality is abolished and;

(3) The introduction of permanent structural special rights for women.

The critique of incorporationism, according to Scales, is that it assumes that male domination is a question of a number of 'legal mistakes' and oversights which can be corrected by simply plugging the holes of 'irrationality'. However, according to her, 'sexism is not irrational; it is domination.' The point here is that the incorporation of special rights in the law would not guarantee equality for women if the society remains structurally unequal. In such a society, it will be difficult to say whether incorporationists are demanding equality with poor men or with wealthy men. If the latter is the case, how would the problems facing poor men be addressed? The incorporation of more women into criminal justice administration is important but it is inadequate for the transformation of the basis for inequality in society.

Similarly, Holtmaat (1989: 492) rejects calls for 'legal equality' and 'Special Rights' for women and advocates the development of an 'other law'. While her 'other law' would incorporate the above three 'ways' which 'leave existing law intact' it will transcend them by

eliminating 'existing law, adapting its substance to the needs of women and changing procedures at the same time.' There is no concrete suggestion of how Holtmaat hopes to accomplish her political manifesto of doing away with the existing law. The slightest suggestion comes from Olsen (1984) who made what she rightly called the 'startling proposal' that would shift the existing power structure to 'increase the power of women in their sexual relations with men' by taking the words of women as sufficient proof that an intercourse is voluntary or a rape.

Brown (1990) has pointed out that the critique of biologism and patriarchy is inadequate, even when extended to race and class biases, because it falsely assumes, as Kingdom (1981: 100) pointed out, that if such 'contamination' of an otherwise perfect law is distilled out, the supposedly just (but currently biased) legal system would automatically operate without discrimination. It is part of the purpose of the present dissertation to see to what extent the victimisation of innocent people (that is, the infliction of penal sanctions on people who are innocent but were 'found' guilty, prosecuted maliciously, arrested brutally or suspected falsely) is an inherent logic of criminal justice practice and whether this uncontaminated aspect of law variably affects people whose race, gender, and class relations vary. This means that the ideology of law which reflects other non-legal hegemonic ideologies, and the institutional framework of the law should be treated as part of the criminal justice system and not merely as the external side of law. Law is not simply what is in the statute books and ideological critiques are not external but internal to law, contrary to Brown

(1990). David Nelken (1987: 151) supported the above point when he stated that

> 'The view that 'rhetoric' lies outside the law rests on an unexamined positivist separation between the rules of law and the broader principles which animate it and ignores the argument ... that 'rhetoric' serves as the source of principles which can generate or limit legal rule-making even though it does not and cannot function in the same way as rules.'

To more fully understand the kinds and degrees of the problems that face black women in the criminal justice system in London, it is necessary to examine the historical, social structural, political and economic conditions that affect the treatment of black women in the criminal justice system. For this purpose, what follows is a search for leads in the criminological literature on race that deals mainly with black men just as we have searched through the literature on feminist jurisprudence that focuses mainly on white women and the criminal justice system.

2.2 Race relations and criminal justice

The literature on race relations and the criminal justice system is even more voluminous and more contentious than that on gender relations. Concerning racial bias, Howard (1975) found that black people who raped white women in America received severer punishment than white men who raped black women. This appears to replicate Bullock (1961) who found that black men who burgled the homes of white people received longer sentences than black men

who raped black women or murdered other black people. Attempts to control for race, age and class, but not for sex, led to similar findings as Thornberry (1973) found that black juvenile males (in particular) and poor juvenile males (in general) received severer treatment than white boys (in general) and middle class boys (in particular) for similar offences.

Concerning colour-blindness, and closely reflecting the findings of Farrington and Morris (1983) on gender relations, it has been argued by McConville and Baldwin (1982) that 'there appears to be no evidence of direct, systematic bias on racial lines in sentencing in the Crown Court.' They reached this conclusion from a comparative analysis of data collected in Birmingham between 1975 and 1976 and in London between 1978 and 1979, including about 1,400 contested cases of which 339 involved black defendants.

The defendants were matched according to age, sex, criminal record and previous sentence but in spite of this apparent methodological sophistication, Gordon (1990) points out that the methodology of McConville and Baldwin is flawed on a number of grounds. First, the researchers matched the type of offence without matching the seriousness of offence with the result that the theft of a sausage roll could be matched with the theft of a car both of which are against section one of the 1968 Theft Act. Again, Gordon points out that a similar act could be charged in different ways by the police who may be influenced by class, and gender relations besides race, but the researchers assumed that the way the cases were charged must have been how they occurred.

The most important criticism made by Gordon is that the researchers looked only at sentencing without consulting social enquiry reports that may have influenced sentencing and they matched defendants by seriousness of offence and previous records without saying that the later may be influenced by more frequent police harassment of black youth. This implies that because black youths are more frequently stopped, the chances of arresting them are higher and therefore, their chances of having previous records are greater and such records are eventually taken into account when they appear for subsequent trials.

This last point was made earlier by Landau and Nathan (1983) who found that black people had more previous records probably because they were more likely to be arrested and prosecuted. According to them, 'A white juvenile with previous convictions was over four times as likely to be cautioned ...' as his black counterpart. This appears to be a confirmation of the findings of Fludger (1981) who reported that black inmates of borstals had fewer convictions than their white counterparts. Considering the claims of Waddington (1984), it may be suggested that white defendants were more apologetic and repentant than black ones. Waddington argued that the differential arrest rates for blacks and whites can be accounted for by the disproportionate degree of disrespect shown to the police by black people and not by the sort of police prejudice found by Cain (1973), among others.

Norris, et al (1992) argue that the mythical black disrespectfulness is denied by the empirical evidence that blacks and whites are equally calm and civil to the police in arrest situation. Although Waddington's claim seems to be supported by the conclusions of Black and Reiss (1970) from an American study, critics have pointed out that even when black people are shown to be disrespectful, the claim does not explain whether such a disrespect occurred before the arrest or after the arrest and as a result of the conduct of the officers. The Policy Studies Institute (Smith and Gray, 1983) have shown that officers were more likely to interpret the behaviour of black people as being disrespectful and that black people were more hostile to the police than white people. However, it is doubtful if any such attitudinal difference between white people and black people could be attributed to differential socialisation.[13] Such differences, if they exist, could also be attributed to black consciousness of the real historical processes of repression and resistance through which black people have passed. An unapologetic defendant may be rightly so if he or she is facing unfounded suspicion or false accusation that could result easily from the special targeting of black communities by the police.

Gordon (1983) and Gilroy (1987a) have documented the pervasiveness of racism in the criminal justice system. They made the policing of immigration their starting points and demonstrated how the definition of black people as a 'problem' at this stage is carried through to the targeting of black communities for special

13 As Gelsthorpe, 1986, indirectly suggests with reference to the attitudes of white juvenile boys and girls

policing, how such practices are reinforced by both the racist attitudes of police officers and institutional racism. They found the same pervasiveness of racism in the ways the courts and the prisons work. In spite of such findings, and in spite of limited attempts to promote race monitoring in the criminal justice system, many researchers still come out to say that like cases are treated alike.

This was what Crow and Cove (1984) implied when they analysed 668 cases of which 124 defendants were 'non-whites'. Although they tried to improve on the McConville and Baldwin methodology by controlling for social status and looking at social enquiry reports and recommendations, they failed to indicate whether the defendants pleaded guilty or not guilty with the result that they treated contested and uncontested cases as if they were the same. Whereas, McConville and Baldwin were cautious about their conclusion Crow and Cove confidently concluded by urging ethnic minorities to develop more confidence in the criminal justice system because cases were handled in similar ways and sentences were similar when circumstances were similar.

This has been disputed by Mair (1986) who found that since black defendants were generally younger, it seems that the police might be apprehending and prosecuting black people more frequently and beginning at a much earlier stage in life than white people. He concluded that he does not share the optimism of Crow and Cove (1984). Moreover, Hudson (1989) argues that it is strange to find policy makers being ahead of some criminologists by identifying a problem which actual people are fighting against and searching for

solutions while some researchers say that the problem does not exist. She concluded that the disparity in the treatment of men of different races in the criminal justice system can only point to the existence of discrimination.

Smith (1994) reviewed what he called the 'unsatisfactory and incomplete' evidence for racial prejudice in criminal justice administration and came out with a number of thought-provoking statements. Contrary to the conclusion of Reiner (1992) that bias has been demonstrated at every stage of the criminal justice system, Smith substituted 'various stages' for 'every stage'. He suggests that bias remains in the system because of the exemption of certain criminal justice officials from the provisions of the 1976 Race Relations Act. Smith also stated that proven bias against black people at every stage is small in magnitude compared to the statistical evidence that black people are more highly involved in criminality compared to Asians and whites.

The present thesis differs from the summary of Smith in two important respects. First, this is not a research about bias as such but about problems that confront black women in the criminal justice system. Some of such problems would result from bias or prejudice but, as Jefferson (1991) suggests, a focus on bias would miss out the institutionalised political problems that do not depend on the attitudes of individual officials. Secondly, the present thesis is not concerned with the magnitude of bias because such measures do not tell us anything about the legally-imposed difficulty in proving allegations of racism or the ways that people who perceive

injustice deal with it. The present thesis is more interested in explaining the forms that the problems facing black women take in the criminal justice system and in society and how black women are coping with such problems.

What is immediately obvious in the above review of literature is that none of them focuses on black women. When an attempt was made in America to apply the theory of racial discrimination to gender discrimination in the criminal justice system, just as Sachs and Wilson (1978) did on equal professional opportunities for women in Britain and America, there was no mention of black women who suffer both forms of discrimination. Myrdal (1944: 1077) anticipated this problem when he wrote in his study of black men that, 'As in the case of the Negro problem, most men have accepted as self-evident, until recently, the doctrine that women had inferior endowments in most of those respects which carry prestige, power, and advantages in society ...'

This passage was cited by the appellants in Reed V. Reed to argue that sexual discrimination should be treated in the same way as racial discrimination (Scales, 1980). This seems to have been attempted in England and Wales, at least in theory and in a reverse order - by legislating against sex discrimination first and then following up a year later with a legislation against race discrimination - (Gregory, 1987). However, Freeman (1982) has warned that such legislation actually legitimises discrimination by refusing to admit that the problem should be seen from the point of view of the victim rather than from that of the offenders.

The argument of Freeman above seems similar to that of Mackinnon (1989) according to whom the concept of a reasonable woman should replace that of a reasonable man in rape cases such that rape would be defined from the perspective of the victim and not from a consideration of whether a reasonable man should have known that no meant no. The difference between Freeman and Mackinnon, however, is that the former is emphasising institutionalised discrimination for which no single individual may be held responsible and the need to radically transform the society to eliminate this, while the latter is talking about individual offenders and individual 'victims' and the need to change the rules of evidence to guarantee more convictions. Whereas the liberal argument of Mackinnon, that rape should be seen as what the victim says it is, could lead to a breach of due process in cases of false accusation, the argument of Freeman appears more persuasive because it does not require the conviction of any individual but the restructuration of social institutions that evidently disadvantage certain categories of people who struggle against such disadvantage.

People who sleep in cardboard houses could be said to be victimised by discriminatory housing policies even though no individual can be charged with discriminating against them. Such discrimination cannot be addressed completely in a law court because, as MacEwan (1991) argues, there is no law against discrimination on the basis of class even though class relations are articulated with the race and gender relations which anti-discrimination laws attempt to regulate. As MacEwan (1991: 6) put this,

> Following the Housing Act 1949, reference to 'working class' in legislation virtually disappeared but class or a perception of class remains an influential determinant of opportunity. To discriminate on the basis of class is not unlawful: so far as ethnic minority groups are located within broader social structures of British society, as opposed to a distinct housing class, racial disadvantage will result irrespective of racial discrimination.'

MacEwan went on to document the more critical housing needs of poor black women, suggesting that policies that try to isolate racial discrimination without addressing this in its articulation with class and gender tend to legitimise some forms of discrimination while attempting to legislate against others. The call for sexism to be treated like racism is the now familiar discourse that made hooks (1981) wonder, following Sojourner Truth,[14] whether she, too, is not a woman just because she is black. This discourse consciously or unconsciously places women (implying white women) against black people (implying black men) and the underdogs of the underdogs do not seem to deserve specific mention in spite of their multiple dilemma.

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[14] Sojourner Truth, who named herself so, was born Elizabeth and called Isabella by her mother, Mau-Mau Bett, and father whom the Dutch colonists of New Amsterdam in New York, called Baumfree. He was bought and shipped from the then Gold Coast, now Ghana, and he arrived New Amsterdam soon after a "mysterious fire" burnt a few houses in 1741 following which the Dutch settlers victimised the enslaved Africans, most of whom were innocent, by burning thirteen at the stake, hanging eighteen, and transferring seventy to other regions. Her mother, Mau-Mau Bett, was the third wife of Baumfree, the earlier two and their children having been sold away from him. Sojourner grew up with tearful stories of how the nine earlier children of her mother were torn from her parents and racketed away, a fate that awaited her and her own children. She made her famous speech, 'Ain't I a Woman', in support of an end to sexism at a public meeting where some white women tried to prevent her from speaking so that the women's movement would not be confused with black struggles. See Fauset, 1944.

The rare exception is Carlen (1988) who studied the relationships between gender, crime and poverty by looking at black women and white women. However, she did not directly analyse the impact of race relations or the problem of the victimisation of black women by the criminal justice system but seemed to imply that the women were simply pushed into criminality by poverty. Hence she did not even observe the criminal justice formality of asking people to say whether or not they were guilty of the alleged offences but suggestively asked them why they committed such offences.

This recalls the major significance of the present dissertation - by looking at black women in comparison with black men and with white women, it hopes to be able to understand the problems that confront black women as poor women and as poor black people in the criminal justice system. Davis (1981) did a similar analysis of the articulation of race, class, and gender relations in political struggles but without focusing on the criminal justice system specifically.

It can be seen from the foregoing that many of the debates in criminology are conducted as if all women share the same relationship to the criminal justice system irrespective of racial and class differences. As Collins (1991) Rice (1990), Dill (1987), Lardner (1987) and hooks (1981) have argued, this erroneous premise is reproduced by some scholars who write as if all black people face the same problems irrespective of class and gender. This has resulted in multiple neglect of black women in theory and it reflects the

multiple domination of black women in the articulated hierarchies of class, race and gender relations in society. This is what makes a study of the unique social situation of black women and their unique problems urgent and challenging.

There is a growing literature on black women but most of it relates to their family life or employment opportunities. The preoccupation with family life was pioneered by Frazier (1939) who traced what he saw as the black matriarch to the experiences of enslaved women who learnt to bring up their children in the absence of husbands. According to Platt (1987), Frazier was out to counter stereotypes of 'the lady of the races' by demonstrating how slavery destroyed black family culture in America. However, due to selective quotations from the book by Moynihan (1965), Frazier has come to be maligned for creating the myth of the black matriarch.

This myth has been debunked by many black women writers (like hooks, 1981; Davis, 1981; Collins, 1991; Lardner, 1987; and Dill 1987) who point out that the notion of black matriarchy conceals the gender oppression of black women in the family and society. Mama (1989b) has tried to document such oppressive violence against black women and to highlight the inadequacy of police and voluntary agency responses to this 'hidden struggle.' However she defined black women broadly to include Asian women whereas the present research adopted a narrow definition limited to women who share the African identity and culture. This is because the majority of Asians are opposed to being classified as black, showing that

racial categories are constructed from contested identities rather than being naturally given (Gilroy, 1987a).

Gregory (1987) and Crenshaw (1991) have analysed the impact of equal opportunity laws on class, race and gender relations but they did not extend their focus to the criminal law. The publications that have direct relevance to criminal justice tend to be critical of the relative exclusion of black women from the focus of criminological literature (Rice, 1990). Others tend to be positivistic in the sense of trying to find out what makes black women commit or not to commit crimes. For example, Harris (1977: 13) adopted a functionalist role theory approach to labelling (which focuses on how individuals internalise role expectations and rehearse them before fulfilling them) and came out with the finding that poor black men commit more crimes because their roles are dispensable to society, being mostly unemployed, and that whatever roles they vacated 'will presumably be filled easily by black women.' The works that focus on injustice done to black women and people like them (IRR, 1987; and Kennedy, 1992, for example) tend to be polemical and journalistic rather than academic.

The argument of Harris reflects elements of the myth of the black matriarch by implying that black women become breadwinners because black men are disposed of in prisons. Moreover, it abandons the little sympathy which symbolic interactionism traditionally reserved for the alleged offender. Whereas Mead and Becker made room for the innocent scapegoat who is labelled deviant, Harris assumes that it is not the actual application of the label that makes

people deviant. Rather, there are 'dominant typifications about what kinds of people 'do' criminal behaviour' (1977: 15). Therefore, poor black men and women rehearse their roles in the official drama long before they step on the stage to play out 'type-scripts' allocated to them by official playwrights and producers.

Harris presents a conformist view of black women and yet they make up a larger proportion of the female prison population than the proportion of black male prisoners to non-black male prisoners. Such a portrait does not fit the common image of the black woman as being immoral and violent which Davis, (1974, 1981), Rice (1990) and Chigwada (1991) identified as the major reason why the police target them more closely than other categories of women.

The negative stereotypes of the black woman may be shared to some extent by white women and by black men. For example, Davis (1981) states that 'the mythical rapist implies the mythical whore - and a race of rapists and whores deserves punishment (or victimisation) and nothing more'. It follows that labelling might be one of the important problems that the marginalised face in the criminal justice system but a focus on labels could lead to the assumption that those so-labelled are actually deviant or are likely to become deviant as a result of the label. It can be assumed that categories of negatively labelled people could become targets of special policing that could result in variable degrees of victimisation. However, a focus on labels is too limited for the purpose of understanding the different problems which similar people face or similar problems which different people face in the criminal justice

system because such problems may be influenced by the inherent structural inequalities in the system rather than by any attempt to label.

The literature on why black women commit or fail to commit crimes may appear irrelevant to the focus on the problems that face black women in the criminal justice system. However, such literature carries important assumptions about the way the criminal justice system operates; namely, that those who end up in the system are necessarily offenders.

Such an assumption has been challenged by Lardner (1987) who says that such a 'deviant perspective' is applied to black people because we lack adequate power to oppose the stereotyped labels that are pinned on us. She calls for future research to abandon the focus on the problems posed by the black community and emphasise 'the nature of oppression and the mechanisms by which institutionalised forms of subjugation are initiated and act to maintain the system intact.' The present research is partly a response to this call.

2.3 Class, Black Women and Criminal Justice

The above section on race relations in the criminal justice system suggests that there are very few publications on the treatment of black women in the criminal justice system. Moreover, most of what is available focus on one institution, especially the prison. French

(1981) reports that black female prisoners face the 'social double jeopardy' of race and gender in North Carolina where they made up more than fifty per cent of the female prison population. Since she also found that the black female prisoners were mostly poor and had lower education than their white counterparts, one would have expected her to talk about the triple jeopardy that includes class.

This focus on the prison and the theme of double jeopardy is found in other works that look at London (see Wilson, 1985; Chigwada, 1989). Chigwada (1991) has also looked at the policing of black women in London and rightly concluded that, 'It is difficult to separate the issues of race, gender and class when discussing the policing of black women.' However, by agreeing with Hall (1985) that the term 'Racist sexual violence' summarises these issues in the sense that it is not possible to separate sexism from racism when discussing the problems facing black women, she slips back into the double jeopardy position which neglects the crucial issue of class that she had earlier identified. In other words, what is seen by some as race-gender violence often involve a political economy of exploitation that is easily overlooked when the articulation of class is ignored. The class articulation with race was analysed in detail by Hall et al (1978) but gender was relatively absent from their analysis.

There is a need to see the problems facing black women in the criminal justice system comprehensively by focusing on the whole system and there is a need to see the social situation of black women comprehensively instead of looking at their race, class, gender, or

culture separately as if these do not operate in articulation. Although the primary focus here is on black women, particular attention is paid to their class relations as the widely neglected but one of the most important indicators of the problems which black women faced compared with white women and with black men. The present dissertation emphasises the importance of class relations because, in spite of the racial and gender differences among defendants in the criminal justice system, they tend to share similar class relations of poverty and marginalization (Walker, 1988). Such widespread similarities in the class relations of defendants are not presented in the present research as a priori explanation but as phenomena that demand adequate explanations.

There is no intention of `adding' the study of black women to studies of black men and white women in order to produce more balanced results. Neither is there any aim of incorporating class issues in the analysis of gender and race relations. According to Brittan and Maynard (1984: 69), such an 'arithmetic approach (of the addition or subtraction of factors) confounds the fact that it is not only a question of degree but also one of kind that is involved' in the oppression of black women relative to white women and of black workers relative to white workers.

This is a correct observation but it is not adequate for Brittan and Maynard to assert that (all) Marxist explanations of race and gender oppression are particularly inadequate for merely injecting race and gender into class analysis. While this is true of many applications of Marxism, it is not true of the theory of articulation (see Hall, 1980a).

They are of the view that all three dimensions must be given equal priority in the explanation of the problems of black women (Brittan and Maynard 1984: 20) but they made 'certain strategic choices' by emphasising race as being the critically relevant dimension to the understanding of the oppression of black women in South Africa. The Marxist emphasis on class could also be said to be strategic.

There is no doubt that race is crucial to the understanding of racism but as Hall et al (1978; 347) have argued, the importance of race consciousness does not diminish the significance of class relations in understanding racism. Race categories are also found in class categories and vice versa. The alliances and antagonisms forged between the fractions of one or more sexes, races, or classes are part of the reality of the society. Class is emphasised by those who prefer political-economic solutions to racism and sexism while those who emphasise racist and sexist ideologies believe that attitudinal changes are more crucial. One does not preclude the other since economic changes alone would not do but the choice of what dimension one emphasises is mainly strategic.

While calling for the end of anti-racism as a pastime activity for liberals and conservatives who are not in touch with the actual conditions of black people, Gilroy (1990) emphasised that class analysis is indispensable to the understanding of the problems facing black people under capitalism. However, he warned that such analysis should not lead to the sweeping statement that black people are working class when they are more likely to be

unemployed nor should it lead to 'a theological faith in the working class as either a revolutionary or an anti-racist agent.'

To summarise, a major strategic deficiency in criminology today (including feminist, conventional, and radical perspectives) is the relative lack of interest in the articulation of gender, race, and class relations in criminological discourse (Morris, 1987, 1988). It is usual for studies of race relations to focus on black men while those that look at gender relations study white women almost exclusively. By focusing on black women, the present research does not try to add them to the study of black men and white women. Rather the research tries to understand their unique and shared problems in terms of class, race, and gender relations. All three relations are present in any social situation of the black woman and they are probably shared in different ways by people who share the class, race, and gender relations of black women.

2.4 The Perspective of Race-Class-Gender Articulation

A popular approach to the study of the criminal justice system is to focus on punishment. This is variously constructed as response, treatment, penalty, control, discipline, censure, labelling, repression, correction, rehabilitation, and so on. Irrespective of the ideological, methodological, and theoretical implications which make this variety of vocabulary more competitive and conflictual than complementary, they are almost completely united in being

predicts[15] of the subject variously called the offender, criminal, deviant, or law-breaker.

A brief review of the philosophy of punishment (with due respect to critical legal philosophy) will show that the punishment of the innocent (POTI) is treated as a fantastic tale found only in fictitious stories and analogies. For example, a strong objection to the utilitarian philosophy of punishment by retributive philosophers is that utilitarians would permit and even encourage the punishment of the innocent if this could be seen to have the utility of promoting order. For example, if a white woman is raped by a black man, the hypothetical example goes, it would be utilitarian to punish any black man, even if the person is innocent, in order to satisfy the public urge for revenge and avert a race riot in which many more black people could be attacked and killed.

Rawls (1969) attempted to solve this hypothetical case by assuming that; (1) the punishment of the innocent in such a circumstance would not promote law and order and therefore would not be utilitarian especially if it is known that the person punished was innocent and so, (2) such a punishment can only work if it remains a secret and for it to remain a secret, there must be a special 'institution for telishment' whose job it would be to manipulate the public and control information about telished individuals and cases.

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15 Predict is a noun that is sometimes wrongly substituted with the transitive verb, predicate, as in to predicate, according to Chambers English Dictionary. Milovanovic, 1992: 96, for instance, used predicate correctly when he stated that: '... by posing the grammatical subject I and the predicate think we create the appearance of the centred subject'

In this sense, the punishment of the innocent would not be punishment but telishment and because the conditions for the establishment of institutions for telishment are impossible, telishment can only be hypothesised but never practised.

The assumptions of Rawls are flawed by the fact that knowledge of innocence is never universal and collective but often sectional and partisan such that people who are known by some people to be innocent could remain under punishment if the people who believe them to be innocent lack the power to effect or secure their acquittal whereas people who are known to be guilty by some people could escape punishment because the people who know of the guilt lack the will or the power to prove their guilt and effect or secure their punishment. In other words, the sophisticated attempt to define conditions for telishment is an unnecessary diversion from the fact that existing institutions do 'punish' the innocent and attempt to conceal their innocence or even with public knowledge of their innocence, without having to rely on a philosophical institution for telishment.

Anthony Quinton (1969) comes close to recognising that 'punishing the innocent' is not only a logical contradiction or hypothetical hair-splitting but also a historical problem that faces real people. Among moral philosophers, he is one of the few who agree that suffering can be inflicted on innocent people but he insists that this cannot be called punishment. According to him, such suffering should be properly described as 'judicial terrorism' or 'social surgery'. As he put it, 'If we inflict suffering on an innocent man and try to pass it

off as punishment, we are guilty of lying since we make a lying imputation that he is guilty and responsible for an offence'(Quinton, 1969: 58-59).

Quinton is right in observing that the punishment of the innocent is not punishment but judicial terrorism. However, by making judicial terrorism equivalent to social surgery, he seems willing to let the judicial terrorists off too lightly by suggesting that their actions are equivalent to surgical life-saving operations. By saying that those who inflict suffering on the innocent are guilty of simply lying or perjury, he trivialises the problem of POTI by suggesting that it is merely a logical problem of imputation. This is what differentiates VAMP from POTI, the former recognises that the system of justice can and does commit crimes against innocent people who might be victimised institutionally whereas the latter talks about such events as if they were mere bureaucratic errors that could be solved by transferring or retiring dishonest officials.

This sub-section will show that the preoccupation with the punishment of offenders is only partially valid when applied to class, race, and gender relations. It is not the case that punishment is proof of offence, nor that all offenders are punished. However, since punishment is usually conceptualised as a predict of the offender, it is necessary to develop a different vocabulary for the phenomenon of the 'punishment' of the innocent (POTI). It is necessary to go beyond descriptive vocabulary to show the nature which such victimisation assumes in its impact on people with variable power and material resources corresponding to class, race,

and gender divisions. It is not enough to explain this away as pitfalls along the penal paths of progress, nor as irrationalities within largely rational bureaucratic systems, nor as mistakes to be corrected with the payment of financial compensations, nor simply as repressive fetishes for domination and exploitation.

In this review of the major perspectives on the criminal justice system, we are looking for how each perspective can satisfactorily explain the problems facing black women without assuming that all such women are innocent or that they are all criminals, nor that all such problems are caused by punishment or victimisation alone. The aim of the application of the historical materialist theory of articulation here is to understand the problems facing people in class, gender, and race relations in the criminal justice system rather than to find the problems people pose for the system nor to find more effective ways of punishing them. The choice of the historical materialist theory of articulation is determined by the conceptual proximity of this framework to the belief of the present researcher that the criminal justice system does not only punish offenders and protect 'victims'. The system also criminally victimises some people. In other words, the perspective of articulation is useful for understanding how punishment, victimisation and welfare practices are relatively articulated, disarticulated and rearticulated like race-gender-class articulation.

If this belief is confirmed by this research, it will become clear that the difference between POO, POTI and VAMP is not mere rhetoric or simple hair-splitting. The practical implications of a theory that

avoids the one-sided conceptualisation of crime as an offence against the state, of punishment as a transaction between the state and the offender, and of victimisation only as something done to one person/s by another person/s, will be demonstrated. The practical implications of the concept of VAMP differ from those of the view of Kennedy (1976: 34-36) that because 'crime and punishment are injurious to life' they must be seen to have a sameness based on the belief that they 'both emerge and continue together as manifestations of singular institutional facts.'

Unlike Kennedy, the present researcher believes that crime and punishment are not always the same even though some penal systems like those of apartheid and Nazism can be shown to be crimes against humanity. Furthermore, whereas Kennedy was right in pointing out the importance of 'compurgation or oath-helping' as an expression of shared responsibility by blood groups for the offending conducts of individuals, he was mistaken in his assumption that such methods of dispute settlement were found only in pre-capitalist stateless societies in which, by his definition, 'crime does not exist.'

This assumption is mistaken in at least two ways. First, to define away the existence of crime is to go against the persuasive argument of Durkheim (1982) that there is no society without crime and social sanctions. Secondly and more importantly, by assuming that 'whenever we see any Western national State engaged in active warfare with any country governed by the ethic of shared responsibility, we see a State engaged in the savage business of

reducing this ethic to that of individual responsibility', Kennedy (1976) seems to argue against the huge historical evidence of the 'genocidal colonization' (Ahmad, 1992: 82) that led and accompanied the Western conquest of other cultures. In other words, Western States also practise the ethic of collective responsibility especially in their dealings with other cultures as in the Gulf war.

What is more, Kennedy's Eurocentric conceptualisation of crime and individualised penal sanctions prevented him from asking whether the ethic of collective responsibility has been completely eliminated from the Western criminal justice systems or whether it still operates in a subtle manner for the control of the internal colonies. The present researcher believes that the ethic of collective responsibility or guilt by association will help us to understand the phenomenon of VAMP in the West and in the Third World.

It will be noticed that the political implications of this theoretical belief will keep coming up in a way consistent with the methodological assumption that committed objectivity is a possibility if not an inevitability for this research. This review will also show why it is not possible to abandon theory completely or to apply all theories simultaneously. No matter what is synthesised from other frameworks, the foundational assumptions of the chosen one would remain the guides to method. Other perspectives were not chosen for this research because of a variety of reasons including the following.

The thrust of Durkheim's (1982, 1973) theory is how people react to deviance and not the nature of the deviation which is supposedly ascribed by social reaction rather than being definitive of the act. It follows from this that the internal structure of punishment is also insignificant relative to the values attached to them by conventional morality. Durkheim seems to say that law, crime, victimisation, and punishment are nothing but what the dominant conscience (the only meaningful way of reading his collective conscience, according to Garland, 1990) says they are.

Durkheim (1982) argues further that crime is necessary for social development provided its rate is not 'unusually high'. For the purpose of social progress, according to him, it is necessary that the collective conscience is not too strong in order to allow for 'the originality of the criminal who is below his time' as well as 'the originality of the idealist whose dreams transcend his century.' The collective conscience should not be too loose either because this would lead to a threatening of its 'moderate energy' by an unusually high crime rate (ibid).

Too much crime or punishment is as pathological as too little crime or punishment and by implication, an overdose of punishment will be as pathological as an inadequate dosage (Durkheim, 1982: 102). But since crime is not seen as sickness by him, punishment is also seen as a normal social fact. The major concern here is why and not how society punishes deviance? Durkheim's answers appear too simple and circular. Some people deviate because it is not possible for everybody to conform to the collective conscience all the time.

Society punishes deviance, not to stamp it out, but to protect the collective morality from being destroyed There is no attempt to differentiate defiance from deviance or victimization-as-mere-punishment from punishment and care.

Moreover, this simplistic account fails to explain what brings about changes in the criminal justice system, given that the moral conscience is more or less collective. Durkheim realised the inadequacy of these earlier formulations and attempted to fortify his argument in 1902 with his journal article, "Two Laws of Penal Evolution" (1973: 285-308). In this article, he applied the argument from his earlier work according to which societies gradually evolve from a simple form characterised by 'mechanical solidarity' to a complex ideal type characterised by 'organic solidarity'. Likewise, laws shift from the sacred to the profane and societal response to deviance evolve from reliance on severe penalties which are supported by religious authority to the use of less severe sanctions in societies made up of increasingly integrated individuals with increasingly differentiated functions and groups.

The laws of 'quantity and quality' are used in this article to demonstrate that although (or because) deviance is more frequent in organic solidarity with higher moral and social densities, due to increasing categories of prohibited behaviour, the dose of penalty prescribed for each individual offender is less in quantity and less severe in quality. The emphasis of the law is supposed to be on restitution through fines and services rather than retribution

through corporal punishment. Temporal deprivation of liberty has also come to replace total banishment or elimination of deviants.

The contributions of Durkheim (1982, 1973) to the sociology of punishment qualify his theory of social solidarity as a contending perspective for a research like this. Bottoms (1983) derived his theory of 'bifurcation' from the 'laws of quantity and quality' and the theory of Bottoms will presently be reviewed. Durkheim's emphasis on the close relationship between punishment and social structure and his idea that the legal system is widely supported in society are persuasive. This dissertation looks at both social structure and the law dialectically to show that the former includes the economic structure and that the latter does not correspond one to one with a mythical 'collective conscience' but refers to what Garland (1990) called 'dominant consciousness'. This made it possible to situate the criminal justice system in a historically specific material context and see how the former relates to the hegemonic morality in a partial, superficial, and ideologically selective way.

This review of Durkheim's (1982) approach has shown that he focused on the positive contributions which crime and punishment make towards the satisfaction of what Parsons later called the system needs for survival. Such a focus led him away from the equally problematic social fact that crime and punishment are often dysfunctional for society in the sense of inflicting injuries that could be contentious. His assumption that it is possible to understand the nature of a society by looking at its penal policies misled him into believing that whatever is administered as punishment must be

understood as a reaction to an offender in spite of the guilt or innocence of the target. This lead was adopted by his followers and consequently, they also failed to analyse penal policy and reveal what foreign bodies are lodged within its anatomy or what contradictory policies it has tried to colonise in its widening nets of care, victimisation and control.

It is often claimed that the strength of sociology is that it does not focus narrowly on the criminal justice system but studies this institution in its social context (Garland, 1990). It seems that the more central punishment is to a criminological theory, the greater the tendency to lump practices that are distinct from, though tied up with, punishment together with its concept. This was the case with Durkheim (1973) who tried to understand the structure of society by looking at its penal policies and thereby arrived at oversimplified, and to a great extent, unrealistic pictures of both social and penal changes. In a similar way, the symbolic interactionists tried to understand the whole society and the criminal justice system by reference to meanings attached to labels. Eventually, labelling theory became circular by asserting that people offend because they are labelled or that labelling is both punishment and the cause of deviance (see Harris, 1977).

Moreover, Gouldner (1971: 425-26) has brought Durkheim in particular, and functionalist theorists of crime in general, under severe criticism for carrying over Platonic assumptions which regard the deviant as 'falling away' from, or lacking, some kind of moral norms; that is, a 'poverty of morality', according to Durkheim. Just

as Plato defined 'injustice' as lack of restraint arising from the inability of people to perform their role expectations, Durkheim's anomie (or Parsons', 1951, 'system disequilibrium') arises when people fail to do only what their culture sanctions, and so violate other people's expectations. The point being made is that black women, for example, may be victimised for organising militant defiance against unjust power, not because they have fallen away from the expectations of their society but because they are conforming to certain expectations of the moral majority.

A related point was made by Hunt (1982: 34) who observed that,

> 'Durkheim posits a mirror image relationship between law and social solidarity. This rests upon the unsubstantiated assumption that law embodies the content of all normative systems and necessarily denies the possibility of conflict between legal norms and other normative systems; and such conflict could only be regarded as temporary and abnormal. It therefore follows that the use of law as an empirical index of social solidarity is a dubious undertaking.'

The implication of this critique is that students should go beyond the statute book when studying the categories of offence and punishment. Hunt went on to demonstrate the empirical untenability of Durkheim's scheme of legal evolution that makes his perspective inappropriate for this research. The major historical flaws in his theory and method have been summarised by Garland (1990:48). They include the characterisation of mechanical solidarity as being repressive whereas Malinowski (1926) and many others

showed that punishment in such societies was more restitutive than in many organic types of solidarity. Moreover, societies are not just either in mechanical or organic solidarity with no transitory ones.

Foucault appears to avoid Durkheim's reduction of the reality of criminal justice to mere penalty by focusing on power instead of on punishment. However, he fell into the same trap of reductionism because his study of the history of power relations zeroed in almost exclusively on what is done to the individual without mentioning inter-group power relations especially in the form of imperialism and anti-imperialist struggles, unlike Fanon's analysis of violence (Said, 1993: 335-36).

Foucault's theoretical sophistication made it possible for him to see that even this most penal of all criminal justice institutions - the prison - carries on activities, like surveillance and discipline, which are not exactly punishment. Although he studied power relations in different institutions, his basic assumption was that all the surveillance, discipline, and punishment that go on in the prison are working 'to adapt punishment to the individual offenders' (Foucault, 1977: 7-8).

The style of Foucault is misleading because he gives the false impression that he is abandoning a position when all he is doing is augmenting it. For example, when he says that

> 'a general process has led judges to judge something other than crimes; they have been led in their sentences to do something other

> than judge; and the power of judging has been transferred, in part, to other authorities than the judges of the offence' (Foucault, 1977: 22),

he means that this is not always the case or that this is not all there is to it. He could not mean to say that judges never judge crimes. What he is saying is that the existence of the 'non-juridical elements' which 'function within the penal operation' should be recognised but he seems to go about it as if he is saying that 'criminal justice functions and justifies itself only by this perpetual reference to something other than itself ...' (Foucault, 1977:22).

Foucault's approach to power is carried to an extreme by Cohen (1985: 10) who claimed that what 'orthodox Marxists' regard as 'Foucault's greatest weakness - his conception of power as a 'thing' not reducible to the workings of labour and capital' is what he sees as Foucault's greatest strength. He adopted this 'uncritically' even though he regarded himself as the type of humanist with belief in human agency whom Foucault allegedly attacked with his structuralism.

Foucault actually rejected structuralism and distanced himself from Cohen's conception of power as a 'thing'. In contradistinction to this, he proposed that;

1. Power is not something that one holds on to or allows to slip away;

2. Relations of power are not in a position of externality with respect to other types of relationships (economic processes, knowledge relationships, sexual relations), but are immanent in the latter;

3. Power comes from below ..., etc. (1978: 94).

What these propositions mean is that power cannot be understood as an abstract 'thing' that could be possessed or lacked or which can be divorced from its political, economic, knowledge, and ideological relational contexts. Power cannot be reduced to these contexts, Cohen was right, because they are constituted also by relationships other than power. However, as Foucault would insist, power is meaningless when it is removed from these varied contexts. Convinced that power is not reducible to the political economy, Cohen applied the concept of control to '... those organised responses to crime, delinquency and allied forms of deviant and/or socially problematic behaviour which are actually conceived as such ...' (1985: 3). Conceived by whom or applied by whom? As Cohen recognises, society does not operate as an individual and, in any case, it is not only people who are seen as exhibiting problematic behaviours that are targeted by control agencies.

There are people who are innocent 'victims' of social control who are dealt with, not as a result of mistaken conception of their behaviours, but for purposes of controlling '... whole groups and categories - through planned manipulation (with good intentions of establishing 'brakes on crime') of the everyday life conditions of these groups and categories' (Mathiesen, 1983: 139). This development of 'total control systems' of surveillance and special policing which Cohen and Mathiesen described is seen by Mathiesen as a departure from the tendency to individualise punishment in prisons, a tendency which Foucault identified. What is implicit in

the system of total control is that the assumption of guilt is not necessary to the operation of control. Members of targeted groups and categories are liable to special policing without actually exhibiting troublesome behaviour. All these are seen as future possible developments. There is evidence for them now, but Mathiesen and Cohen see these developments as things to come in the future. They did not argue that guilt by association has survived up to the present time. They only discovered that punishment is becoming more extensive contrary to Foucault's finding that punishment and discipline was becoming more individualised.

This dissertation tries to understand, with reference to black women, whether this discovery of 'the dispersal of discipline' by Mathiesen and Cohen is related in any way to the ancient plough of criminal justice administration - guilt by association. To what extent has the control of 'whole groups and categories' always been a basic approach of legal control rather than an emergent or even a futuristic project? It seems that guilt by association never disappeared from the tool box of the criminal justice system.

Cohen and Mathiesen did not say that those who are under the 'gaze' of discipline are necessarily guilty of any offence. They were mainly concerned with how discipline is extended and how it extends certain types of power mechanisms (like surveillance) into areas of the social fabric where they hitherto had less influence. The theory of Cohen and Mathiesen differ from VAMP because it does not emphasise the innocence of many of those who are affected or the possible criminal liability of those who exercise unfair discipline.

Cohen (1993) seems to have extended his theory of social control to the criminal state and crimes of the powerful in a way similar to the idea of VAMP. Contemporary practice does not seem to be a break with individualised treatment, it does not mark the emergence of the dispersal of punishment but suggests a continuation of what Kennedy (1976) called the ethic of collective responsibility which, he believed, has disappeared from modern criminal justice systems.

Furthermore what this preoccupation with control and punishment overlooks is that the criminal justice system does not merely control but also protects, it does not only punish but also cares. This is the point which Bottoms (1983) made with his theory of the 'bifurcation' of penal policy into a welfarist non-disciplinary penalty for less serious offences and disciplinary penalty for more serious ones. Bottoms correctly pointed out that, contrary to the Foucauldian idea of Cohen that modern society is turning into a 'carceral city' revolving around the prison, the most frequent sentence in England and Wales is the fine. One might even follow Bottoms and Cohen at once and call modern society the 'fine city' visited by the hypothetical 'Martian' of Young (1987) who found that the fine as a form of penalty is actually increasing while imprisonment is declining proportionately. The problem is that Bottoms talks of the bifurcation of penal policies whereas his analysis shows that all the policies are not penal in character.

Moreover, Young (1987) found that the fine is one of the few forms of penalty which can be borne by someone other than the offender. What he did not argue is that one does not need to offend in order to

attract punishment and that the imposition of punishment does not presuppose guilt. One objection to an argument like this is that the person who pays the fine is not the actual person being punished but the Criminal Justice Act (1991) provided that parents should be directly fined for the offences of minors, thus formalising an ancient tradition according to which parents paid the fines or fees imposed on children. Furthermore, the Home Secretary, Michael Howard, later proposed an amendment to the 1994 Criminal Justice and Public Order Bill that would make parents responsible for the court attendance of juveniles on bail. This means that the traditional focus on 'the punishment of offenders' (the first four words in the seminal work by Garland, 1990) is, to say the least, misplaced. Efforts should be made to interpret criminal justice practices as a whole to show the internal anatomy of foreign variables that are colonised by the imperialist concept of punishment.

It appears to be the case that what is bifurcating is not penal policy in particular but criminal justice policy in general. Indeed, the bifurcation thesis was used earlier to characterise the divergence of law into civil and criminal branches (Kennedy, 1976).[16] What is bifurcating into care and penalty (the 'penal-welfare strategy' described by Garland, 1985.) is criminal justice policy and not specifically the penal policy. What is more, and this is the point

[16] Theorists of quantum chaos, according to Milovanovic, 1992: 237, also use the concept of bifurcation to describe 'Far-from-equilibrium states' in which bifurcation is encountered at every level with each new focal point being the germinal bud for further bifurcation. What the 'chaologists' fail to explain is why there has to be only two points to every divergence. Even the word 'divergence' delimits the possible directions to two. Why must it always be a bifurcation rather than, say, a trifurcation or simply a multifurcation?

easily overlooked, what is going on is more than bifurcation; it is the 'trifurcation' of policy into welfare, punishment, and victimisation.

VAMP does not affect the issue of trifurcation because POTI is only an aspect or effect of this trifurcation. If we take the three-pointed fork held by Britannia on Rule Britannia's coat of arms or the three-pronged fork of the devil to represent a model of the trifurcation of criminal justice (very suitable models, given the good intentions, penalty and offensive excesses symbolised by the two objects), we will find different forms of victimisation, including VAMP, VIP and even VAW (victimisation-as-welfare), under the much neglected third point. Trifurcation reminds us that articulation goes beyond social relations to encompass social policies. This is probably why Ngugi wa Thiong'o and Micere Mugo, in their anti-colonial classic play, The Trial of Dedan Kimathi, defined criminal justice figuratively as a system that commits crimes under a law that is criminal. For an application of this definition to the criminal justice system of apartheid, see Agozino (1991) on the trial of Winnie Mandela.

What difference does this observation make? The difference is that punishment in general, and imprisonment in particular, loses the primacy which earlier theorists of POO and POTI accord them. Whereas Foucault assumed 'that it is the court that is external and subordinate to the prison' (1977: 308), a more comprehensive approach would avoid false hierarchies and situate the whole criminal justice system within the context of the state and society.

Another difference is that the penal system and the criminal justice system are not interchangeable in the way Foucault applies them. Garland and Young (1983: 13) have tried to solve this conceptual problem by adopting the elastic phrase, 'the penal realm' that covers 'criminal and quasi-criminal courts, Home Office departments, prisons, detention centres, psychiatric institutions, community homes, etc.' However, their solution actually extends the territory of the penal empire instead of decolonising welfare and victimisation from the conception of punishment. If anything, the penal realm shows that all penal practices are not aimed at offenders and all criminal justice practices are not within the penal realm. It appears more convenient to talk of the criminal justice system as a whole when it is the focus of attention.

A third difference is the practical political point that the intrusive traits found within the penal system will not be seen as non-penal aspects of penalty but as different issues to be contested in different ways. The point here is that when trying to understand the criminal justice system, it is important not to see everything going on as an aspect of punishment. However, this point should not be pushed too far to the extent that everything happening in the criminal justice system has nothing to do with punishment either.

This does not mean that punishment is not worthy of study as an independent subject. It only cautions the student against lumping everything into the penal basket. According to Poulantzas (1982: 185-87), the pluralist approach to power inevitably leads Foucault

> to underestimate at the very least the role of law in the exercise of power within modern societies; but he also underestimates the role of the state itself, and fails to understand the functions of the repressive apparatuses (army, police, judicial system, etc.) as means of exercising physical violence that are located at the heart of the modern state. They are treated instead as mere parts of the disciplinary machine which patterns the internalization of repression by means of normalisation.

This is a valid criticism in the sense that Foucault never raised any question about the social justice of the law and the legitimacy of the state in his analysis of discipline, punishment, surveillance, madness, sexuality, knowledge and power. Foucault should have distinguished between the exercise of power under a democratic setting and the exercise of power under an oppressive and authoritarian setting if only to emphasise his persuasive argument that power must be contextualised to make it meaningful. In this direction, Garland (1990: 162) observes that 'Foucault refuses to accept that there are elements of the penal system which either malfunction and so are not effective as forms of control or else are simply not designed to function as control measures in the first place.'

The problem with Poulantzas' approach is that he replaces the disciplinary machine with organised physical violence and thereby obscures the fact that it is not every aspect of the law and criminal justice practices that is physically violent. In other words, non-violent victimisation of innocent people is as possible as non-violent struggles against victimisation. Poulantzas could reply to this

comment by saying that all forms of victimisation are violent to some extent but still it does not follow that all aspects of criminal justice practices are violent since victimisation is not the only possible feature of such practices.

By way of emphasis, the present research maintains that it is not all policies which are designed specifically for penal purposes that inflict punishment in fact. People who are deliberately victimised for the purpose of maximising control are not being punished in any way. All forms of punishment have control implications but it is not all forms of control that have the character of punishment or care. This suggests that we should try to account for the ways victimisation is articulated with practices that are frequently constructed as nothing but punishment or welfare.

We have seen above that Foucault's emphasis on power relations is his major contribution to the historiography of criminal justice. However, by taking a pluralistic view of atomised power and de-emphasising the roles of the state, classes and the mode of production in the dynamics of penal regimes, he deliberately avoided the useful insights of historical materialism. By concerning himself with the apparently increasing individualised treatment of offenders, he missed the point that it is not only offenders, but mainly 'whole groups' that are targeted and processed through the criminal justice system, especially within power relations characteristic of imperialism about which Foucault was curiously silent while writing in an imperialist country.

The above summaries do not completely cover the issues raised by the relevant perspectives and it is not a comprehensive review of all relevant theories. Nevertheless, it is hoped that it is now clear why this research is not premised on their assumptions. Let us now see why the theoretical framework of articulation is adopted here. It seems paradoxical that the effectiveness of the Marxist theory and method of historical materialism for the purpose of this research is that they are not specific to punishment. This is suitable because this research is not focused specifically on punishment and also because penalty does not have the centrality which the above perspectives accord it in their attempts to understand the criminal justice system.

If we understand the contribution of Marxism to criminology as lying in the general methodology of historical materialism than in isolated remarks made by Marx and Engels about crime, then it becomes clear that the usual complaint that they wrote very little on crime and law would be beside the point. Marxism is significant to criminology not because of the peculiarity of the subject-matter discussed by Marx and Engels but because of the adequacy of the method they developed.

To say this is not to suggest that their specific comments on crime are useless to criminology but to emphasise that they did not intend those comments to be applied dogmatically to every situation; rather, they urged scholars to study every historically specific phenomenon afresh and arrive at concrete analysis of concrete situations. This position is widely accepted by most scholars

including many non-Marxists. There is no need to look briefly at what Marx and Engels said about crime and law for the purpose of revising their claims or interpreting their motives. The important thing is to show that they were consistent in the application of their methods. The significance of their method is that punishment, victimisation, law and crime cannot be understood in isolation but in close relationship with the state, the economy and ideological formations. Even when looking at the micro level of the family which theorists of social disorganisation often single out, historical materialism teaches that it has to be understood in its interconnectedness with the institutions of private property and the state.

A classic example is The Origin of the Family, Private Property and the State, in which Engels (1968: 501) argues that 'the inequality (between husband and wife) before the law, which is the legacy of previous social conditions, is not the cause but the effect of the economic oppression of women.' From this premise, Engels concluded that gender equality and an end to sexism will not be possible without first solving the material basis of gender inequality and sexism. Engels has been criticised for ignoring the mode and forces of reproduction while analysing the forces and mode of production and for assuming an original state of gender equality when such a prehistoric stage is contradicted by all known history (Mackinnon, 1987).

The search for the origins of social relations could only be speculative. The formulation by Engels embodies some of the strong

points of the Marxist perspective on gender relations in law as well as the points for which Marxism is most frequently attacked. Idealists would be quick to point out that economic factors are not the only determinants of gender relations. Engels did not say that they are the only ones, he said that they are the main ones. It follows that the removal of economic conditions of oppression alone would not automatically result in social justice but it also follows that if such conditions remain, changes will tend to be superficial, partial, and ideologically selective.

The above proposition is also applicable to race relations as Freeman (1982: 210-235) has shown. He argued that racial discrimination laws actually legitimise racism by focusing on the perpetrator rather than on the victimised or on the condition that made the victimisation possible. According to him,

> 'As surely as the law has outlawed racial discrimination, it has affirmed that Black Americans can be without jobs, have their children in all-black poorly funded schools, have no opportunities for decent housing, and have very little political power, without any violation of antidiscrimination law.'

The point is that attempts to solve racial discrimination in law should be tied to attempts to transform the entire society and empower the victimised. However, even within the law itself, racial discrimination by judges remains lawful because anti-discrimination law is interpreted restrictively to exempt judges from prosecution (Hood, 1992; Smith, 1994). These powerful insights of historical

materialism had been ignored by establishment criminology even though Marxists apply them with convincing results. The specific interpretations of the classical texts are contested and debated among Marxists and between them and non-Marxists but there appears to be a general agreement that the method of Marxism is effective for social research of the type being undertaken here.

A review of the various attempts to apply this method to the study of the criminal justice system will show that there is a general awareness that

> 'The bond, transparent or not, that is supposed to exist between crime and punishment prevents any insight into the history of penal systems. It must be broken. Punishment is neither a simple consequence of crime, nor the reverse side of crime, nor a means which is determined by the end to be achieved' (Rusche and Kirchheimer, 1968: 91).

The point being made in this passage is that it is not useful to talk about punishment in general without looking at specific practices that are conducted and their impacts in historically specific periods. This is the best way, according to Rusche and Kirchheimer, to see the links between what is applied as punishment and other forms of controlling the working class.

The problem with this view is that it 'seriously overestimates the effective role of economic forces in shaping penal practices. It grossly underestimates the importance of ideological and political forces and has little to say about the internal dynamics of penal

administration...' (Garland, 1990: 108). These problems are not inherent in the method which Rusche and Kirchheimer used without acknowledgement since Marx and Engels paid particular attention to the role of ideology and usually considered the economy in the context of political economy or politicised economy.

A related problem here is that Rusche and Kirchheimer did not distinguish between punishment and other practices which are tied up with it. Their theory is sensitive to this difference in the sense that they recognised that what is administered as punishment is not always linked to crime. However, they seem to merely subsume all punishment under control and failed to point out that penal control could be in the form of welfare, punishment, or victimisation. They assumed that people who are punished are not necessarily offenders but they failed to distinguish the punishment of offenders from the victimisation of innocent people.

A more sophisticated attempt was made by Pashukanis (1980) who argued that law is not based on force alone but more importantly on the exchange of rights and duties. His major contribution is the clarification that economic variables affect legal changes and are in turn affected by legal forms. He applied the theory of commodity fetishism which Marx developed in Capital and arrived at his concept of legal fetishism by which legal relations follow the market pattern of commodity exchange. To him, then, all law is bourgeois law and supposedly there was no law in pre-capitalist epochs, implying that law would wither away with the state under socialism.

The major error in Pashukanis' approach, which is continued in some Marxist traditions in criminology, is the interpretation of historical specificity to mean historical peculiarity (see Kennedy, 1977). To say that law takes a historically specific form under capitalism is not to say that law is peculiar to capitalism. The withering away of the state and law could only mean the withering away of the capitalist state and law. Pre-capitalist societies had legal forms or relationships just like socialist societies.

Secondly, by assuming that the legal person is the isolated individual, Pashukanis underestimates the fact that the legal system, even in the highly individualistic capitalist states, is never concerned with individuals as such but with groups and categories. However, he corrected this impression by emphasising that the law has a class character. His metaphor of commodity exchange captures the value element in the criminal justice system and the contentiousness that goes into the bargaining for justice. It also suggests that some groups are short-changed while others are duped and still others get good value for money.

The above contributions were long ignored by criminologists before Louis Althusser (1971) renewed the interest of Marxist writers in the relations between law and society. His major argument was that law is not just an epiphenomenon which only reflects the economic substructure of society but is also a 'relatively autonomous' constitutive element of all institutions including the economic. However, he developed this argument to mean that state power

functions ideologically and repressively through law in all facets of society. This view contrasts with the views of Pashukanis and Rusche and Kirchheimer but they all underestimate the ability of non-ruling class people to win advantages within the legal sphere.

The contribution of Althusser was strongly challenged by Thompson (1979) for equating historical research with empiricism. According to Thompson, the approach of Althusser leads to the theoretical and ahistorical study of the criminal justice system by combining labelling and conflict perspectives with a few quotations from Marx and Engels. Law came to be accepted as an instrument that functioned to meet the interests of the ruling class. The conclusion was that law reforms were doomed to failure and that the rule of law is a myth with which the ruling class defused the class struggle.

What has been known as the humanist interpretation of Marxism is due to Thompson (1977) who argued that the structuralist and the instrumentalist views of law are not false but are inadequate for understanding the popular support for the law in places where people simultaneously struggle against absolutism. He says that this is so because the rule of law is an 'unqualified human good' that does not benefit only one class and which does not merely reflect the economy but also forms part of the economy in such a way that economic life would grind to a halt if there is no rule of law.

However, it appears to be of little value to talk of the rule of law in general as being an unqualified human good. It appears to be qualified by the question, the rule of what law? Although Thompson

argues that he made his discovery by studying a bad law, his notion of the rule of law is suspect because it can operate under a bad law. What is being questioned here is not whether the rule of law is good but whether its goodness is unqualified. If it is unqualified, then the nature of the legal system and the nature of the society and the nature of specific laws will have no consequence for the rule of law. In such a conceptualisation, the rule of law will be an abstract ideal that can be demanded under oppressive legal systems without reference to oppression. The nature of the law and the nature of the state and the nature of the economy appear to be important variables that qualify the rule of law. To ask for the rule of law under a bad law in an unjust state and under an exploitative economy without at the same time struggling for the transformation of these material conditions is misleading.

Due to the above limitations, it has been argued that it is not possible to develop a radical criminology as a separate discipline and that the best that could be hoped for is the training of criminologists who are radical (Bankowski, et al, 1977). The doubt about the possibility of a radical criminology was directed at the promise of a New Criminology by Taylor, et al (1973). The aim of the new criminologists was to '... ask with greater emphasis the question that Becker poses (and does not face), namely, who makes the rules, and why?' (1973: 20). The instrumentalist assumptions about law and crime in their book were strongly criticised and the new criminologists have abandoned much of it to become 'left realists' who no longer dream of a crime-free and control-free society (Matthew and Young, 1992 for example).

Left realism spent a great deal of time trying to show how it differs from what it calls left idealism and right realism both of which it had much in common with. Left realism criticises left idealism in the form of the New Criminology of the 1970s for not taking working class crime seriously. It shares this concern over working class criminality with right-realism but criticises the latter for prioritising order over social justice in its search for solutions to broken windows in inner cities.

The difference here is that although both schools of realism take the issues of crime and order seriously, they see different ways of arriving at a solution. The new right argues that more or better law enforcement would produce or maintain order while the new left asserts that better law-enforcement is necessary but inadequate without social justice. The new right tends to see the cause of crime in 'human nature' while 'left realists point to the social injustice that marginalises considerable sections of the population and engenders crime' (Matthew and Young, 1992: 6).

This shows that left realism has left (or abandoned) realism somewhere in the sense that it is not realistic enough. Left realism does not seem to realise that marginalization does not necessarily cause crime: a majority of the marginalised manage to remain overwhelmingly law-abiding and many of the privileged also commit serious crimes. Significantly, Anderson, Kinsey and others (1990) have found that working class children in Edinburgh were no more delinquent than middle class children, suggesting that class is not

necessarily a cause of delinquency. The significance of this finding for the left realist preoccupation with working class criminality is yet to be theorised especially with reference to why working class children tend to be over-represented in the juvenile justice system.

The evidence for left realism comes from local crime surveys in which people were asked what crimes they feared most and how often they had been victimised by known or unknown offenders. However, the left realists failed to show how their adoption of the conventional survey method could be effective for understanding the material conditions of the working class and feminist concerns which they claim to emphasise in their work. Hence Walklate (1992) found tensions between the materialist theory of left realism and its individualist methodology.

The conclusion that working class people were disproportionately 'victims' of working class crime justifies a commitment to take crime seriously at the working class level of analysis and policy. However, such a conclusion does not justify any silence on the crimes of corporations and on the 'victims' of criminal justice. Except for a passing reference to 'crimes by the criminal justice system itself' (Lea, 1992: 73-74), left realism does not take seriously the problem of VAMP (see Ruggiero, 1992).

The framework adopted here is that of the historical materialist theory of the articulation, disarticulation, and rearticulation of race, class, and gender relations in social analysis which Hall (1980a, 1988) has been trying to clarify. This framework insists that the

analyses of race, class, and gender relations are not reducible to one another. The theory also recognises that these social relations cannot be understood in isolation from one another. The proper way to understand race relations, for instance, is to see how they are articulated, disarticulated and rearticulated with the capitalist class and gender processes that manifest in the historical epochs of slavery, conquest, colonisation, and imperialist domination. Such processes can still be found in subtle forms within the unequal exchange between the imperialist powers and the underdeveloped countries resulting in formal and informal restrictions on the access of people originating from the latter to services and opportunities available in the former.

The theory of the articulation of different social relations is borrowed from the Marxist political-economy of the articulation of different modes of production. Wolpe (1972) developed this as a critique of Weberian and dependency theories of apartheid. Wolpe used articulation in its two English meanings of 'joining together' and 'giving expression to'. These meanings suggest that the forces and mode of production of apartheid display the interplay of local and global formations which give expression to each other. The advantage of the theory of articulation over the dependency theory is that the former recognises the relative autonomy and internal dynamics of local formations which dependency theorists say are determined by global forces.

Hall (1980a: 322) abstracted this 'emergent theory of the articulation of different modes of production' and applied it to the

'analysis of racism at the social, political and ideological levels.' The result of this abstraction, according to Hall (1980a: 336) is 'the emergence of a new theoretical paradigm, which takes its fundamental orientation from the problematic of Marx's, but which seeks, by various theoretical means, to overcome certain of the limitations ...' which are exhibited by certain applications of Marxism that distort its contributions and expose the framework 'to effective criticism by many different variants of economistic monism and sociological pluralism.'

Although Hall (1980a) focused only on the articulation of race and class relations, Hall (1988) went further to analyse the articulation or race, class and gender as well as the disarticulation and rearticulation of these social relations by what he saw as the major character of Thatcherism - 'authoritarian populism'. The importance of the twin concepts of disarticulation-rearticulation is that they underline the belief of Hall (1988: 10) that 'organic ideologies' are not 'logically consistent or homogeneous'. This suggests that the articulation or joint impacts of race, class and gender does not mean that black women, black men and white women (as examples of ideological subjects) are 'unified and integral' nor that they are 'assigned to one political position.' On the contrary, according to Hall, identities and related ideologies are, in fact, 'fractured, always "in process" and "strangely composite".

The theory of articulation of social relations avoids the usual objections to certain Marxist contributions by recognising that class, race and gender are not separate but articulated relations that must

be analysed and understood in that light. The theory of articulation respects the two basic principles of Marxism; that analysis of social relations should be based on the material conditions of existence and that the specific form that these social relations take cannot be reduced to this economic base but has to be studied in its historical specificity (Hall, 1980a, 322). These twin principles of historical materialism are best illustrated with the clarification of this analytical method by Marx (1981, volume. Three, 927-28):

> 'The specific economic form in which unpaid surplus labour is pumped out of the direct producers determines the relationship of domination and servitude, as this grows directly out of production itself and reacts back on it in turn as a determinant. On this is based the entire configuration of the economic community arising from the actual relations of production, hence also its specific political form. It is in each case, the direct relationship of the owners of the conditions of production to the immediate producers - a relationship whose particular form naturally corresponds always to a certain level of development of the type and manner of labour, and hence its social productive power - in which we find the innermost secret, the hidden basis of the entire social edifice, and hence also the political form of the relationship of sovereignty and dependence, in short, the specific form of state in each case. This does not prevent the same economic basis - the same in its major conditions - from displaying endless variations and gradations in its appearance, as the result of innumerable different empirical circumstances, natural conditions, racial relations, historical influences acting from outside, etc., and these can only be understood by analysing empirically given conditions.'

This shows that economism is not inherent to Marxism but results from uncritical application of the theory and methods of Marx. It is from this theory and method that the focal theory for the present research - articulation - is derived. Although Hall regards the theory of articulation as something new and emergent, he also emphasises that it is derived from Marx and Gramsci. The methods of data reception and committed objectivity that form the data theory for the present research are also inspired by the background theory and method of Marxism.

The guiding assumption of this Marxist theory and method is that although a historically specific mode of production makes certain (but not all) ideological legal forms necessary, such forms are both relatively autonomous and also form parts or constituent units of that mode of production. Law contains a cluster of ideologies that are both economic and social structural, practical and philosophical. This dialectical materialist theory of law as a terrain of struggle, compromise and compliance can be applied to the study of black women and the criminal justice system.

The Marxist theory and method of historical materialism are not specific to the analysis of race, gender, class, crime, politics, or the economy but they are sensitive to the interfaces between these relationships and processes and aware of their mutual or independent effects on the problems which different groups and individuals face within ideologically loaded institutional practices. It is true that many historical materialists overlook or disregard some significant issues while emphasising the importance of social

structure and historical forces and Marx has been criticised for including gender relations in his 'natural conditions' whereas they are as socially constructed as class relations (Mackinnon, 1989).

This critique of a sexist bias in the classical Marxist texts is recognised by Marxists today (for example, see Eagleton, 1990: 221-22). What historical materialism emphasises is crucial for this research and this is what is usually overlooked or trivialised by other perspectives, that is, the crucial importance of class relations for the analysis of marginalization, victimisation, and empowerment.

Conclusion

The idea that the criminal justice system does not always give out punishment or welfare but also often deliberately victimise innocent groups and individuals is something that can be inferred from most historical materialist and most critical feminist theories of criminal justice. This is very significant in trying to make sense of the problems that confront black women in the criminal justice system. However, we will look at this in connection with the ways policies of victimisation and punishment administered by the criminal justice system also affect black women relative to other categories of people.

The legal sphere will be seen as an area of struggles that interpenetrate with other struggles in the wider society (Toyo, 1984). It is implied that black women share some of the values inscribed in the system and that they struggle for these. They also

oppose other ideological legal practices and they struggle against these. Such struggles are not simply concerned with the law only and support and opposition could be superficial or fundamental, selective and partial.

Although this thesis is critical of some writers for ignoring the plight of black women, it does not follow that they have nothing of value to contribute here. Similarly, those theories that are supported by this thesis might contain certain aspects that the present writer might wish to be distanced from. Finally, the works of Walter Rodney, Maureen Cain, Stuart Hall, bell hooks and many others are cited frequently here but the reader must not see the present thesis as an alternative to reading the original sources. The interpretations offered here are specific to the present context and readers are welcome to disagree with certain interpretations of certain texts and facts in this thesis.

Chapter Three:

Black Women and Justice in History

Introduction

The aim of this chapter is not to prove the universality of the victimisation of black women in the criminal justice system but to see what can be learnt from the specific form(s) of victimisation in the different epochs and thereby arrive at a better understanding of recent instances. Similarities in the experiences of black women in the different epochs would not be simplistically seen as evidence of gradual evolution of victimisation practices from the past to the present. Any similarities among specific instances of victimisation would be seen as being suggestive of similar social relations and similar material conditions of repression and resistance which form part of the historical consciousness of most black people in particular and the oppressed poor in general, corresponding to the historical lessons learnt by agents of the criminal justice system.

This chapter will try to compare the treatment of black women with those of black men and white women to know if black women were faced with similar or significantly different problems in the criminal justice system under different historically specific ideological formations. The historical materialist theory of articulation demands that the starting point for analysis should be the historically specific material basis of the cultural forms of interest. This chapter will attempt to demonstrate that the political

economies of plantation slavery, colonialism, neo-colonialism, and 'internal colonialism' manifested in their specific legal systems, the punishment, care, victimisation and repression of black women in particular and poor black people in general.

3.1 Black Women and Slavery

'Much of the rhetoric of the "New World Order" promulgated by the American government since the end of the Cold War', writes Edward Said, cannot fail to remind us of the odour of the bloodshed that greeted the other New World 'discovered' by Christobal Colon five hundred years ago 'with its redolent self-congratulation, its unconcealed triumphalism, its grave proclamations of responsibility ...' (Said, 1993: xiv). There is no need to rehash the well-documented history of the violence of the slave economy that built the old New World. The aim here is to reinterpret that history with emphasis on the struggles of black women against its manifestations and how black women were victimised in the name of punishment.

A classic example of such a reinterpretation could be found in The Black Jacobins (James, 1980: 6-26) which shows how severe the victimisation of enslaved black women was in San Domingo, now Haiti. James chronicled the scourge of the slavers who organised expeditions by arming rival societies with gin and gunpowder, exacerbating their struggles for domination. The propagandists of slavery claimed that the enslaved Africans were happier than their ancestors but James debunked this by showing that Africa was

relatively peaceful before the commencement of the slave raids. One of the consequences of the unnecessary wars in which Africans were forced 'to supply slaves or be sold as slaves themselves' was that 'the captive women became concubines and degraded the status of the wife' (James 1980:7).

The fact that they became concubines and not slaves disproves the propaganda or mistaken view that slavery was indigenous to Africa and that the slavers were only following a tradition which also allowed them to bring Christianity to the heathen[17]. Rodney (1972, 1970) showed the class character of the Africans who collaborated with the slavers. According to Rodney (1970) this was the role of the chiefs and feudal lords who had much to gain from the slave trade.

James (1980) provided a graphic account of the incessant revolts against the slave trade that was widespread in the interior and which continued at the port of embankment and on board the ships in spite of the practice by which the enslaved were chained 'right hand to right leg, left hand to left leg, and attached in rows to long iron bars' (James, 1980: 8). Without going into the details of the inhumanity of the Middle Passage or how the enslaved Africans

[17] Mack, 1992, wrote as if slavery - especially the enslavement of women who served as concubines and as domestic or agricultural workers for affluent families - was traditional to Hausaland in West Africa. Rodney [1972: 46] countered such arguments with the observation that unlike the Europe theorised by Marx, 'in Africa after the communal stage there was no epoch of slavery arising out of internal evolution, nor was there a mode of production which was the replica of European feudalism.' The point being made by Rodney can be illustrated with the fact that enslaved people in parts of Africa could rise to become great kings like Askia Mohammed and King Ja Ja. However, Rodney was opposed to using a few kings to illustrate the history of Africa. He would have preferred to use the example of the tradition of allowing enslaved people to marry their enslavers sons or daughters as enough indication that the content and the context of enslavement wherever that existed in Africa were not identical to what is known in the West as chattel slavery.

were worked like farm animals on the plantations, it is sufficient for our purpose to see the forms of victimisation which James called the 'harshest punishment' but which the slavers called the 'torture' that the enslaved received for the 'least fault' (James, 1980: 12).

The 1685 Negro Code authorised whipping and later, attempts were made to limit the permissible number of lashes beyond which the slavers should hand over the matter to the authorities of the plantocracy. In 1702 the maximum number of strokes any individual was free to inflict was 100. This was reduced to 39 and later increased to 50. However, the colonists never bothered to count the strokes and the enslaved were frequently beaten to death. Apart from whipping or in addition to that, the enslaved were also chained to blocks of wood to prevent escape, they were forced to wear tin-plate masks to prevent them from eating the sugar cane that they produced, hot wood was applied to the lacerations on the buttocks in the midst of whipping (James, 1980: 12-13).

All these may seem to have no relevance whatsoever to the problems that face black women in the criminal justice system today. The relevance is that much of these practices were what could be called the miscarriages of justice today because the Negro Code only authorised a certain number of strokes of the lash. Nevertheless, just as the so-called miscarriages of justice today cannot be understood as external intrusions into the criminal justice system, the victimisation of the enslaved could only be understood as part of the criminal justice system of the colonists.

As Sellin (1976) argued, the distinction between domestic justice for slaves and the official criminal justice system is misleading because many of the penal measures applied in the official criminal justice system emerged originally as punishment reserved for the enslaved in ancient Europe. According to him, such 'slave justice' was gradually extended to the wider population due, perhaps, to the end of slavery in medieval Europe. Similarly, those harsh penal measures were again applied to enslaved Africans in the New World at a time that they were disappearing from the penal codes of Europe. This appears to be a confirmation of the 'truism' by Rusche and Kirchheimer (1968) 'that specific forms of punishment correspond to a given stage of economic development.'

However, as was pointed out in Chapter two of this dissertation, the correspondence theory of the relation between economic stages and penal forms is inadequate for understanding the complex nature of legislation. In the case of enslavement in the Ante-bellum South, economic determinism of punishment ignores the non economic ideologies of racism that also inform legal formation as Bell (1973) demonstrates. Sellin talked about the enslaved as a class separate from the 'master class' of slavers and this is very true. However, the class formation of slavery is not all that there is to it. The race and gender formation of enslavement are equally important for understanding the nature of criminal justice. Sellin may have overlooked this because he was trying to generalise from ancient Europe to modern times without making allowance for the relative racial homogeneity of both the enslaved and the slavers in the earlier period. Again, Sellin ignored the warning of Rusche and

Kirchheimer that punishment does not correspond exactly with crime and so he missed the point that it was not all the enslaved who were 'punished' that committed any offence.

In this connection, Tombs (1982: 5-7) argues that 'the ethic of individual responsibility for conduct (is a) "legal fiction" which makes it possible for the slave status to be simultaneously recognised and denied by a legal system which regarded human beings as property and also as responsible agents. By characterising individual responsibility as a fiction comparable to the fiction of equality before the law, Tombs suggests that the chattel status of the enslaved, their lack of property and deprivation of liberty reflect the conditions of 'the propertyless members of the nation states emerging in the sixteenth century who, in turn, came to be regarded as the "dangerous" classes, and from whose ranks the bulk of the "convicts" were, and continue to be drawn.' Again, by putting 'dangerous' and 'convicts' in inverted commas, Tombs appears more sceptical than Sellin who saw what was being done to the enslaved under the law simply in terms of punishment similar to the punishment of offenders, past and present.

Moreover, Sellin presented the enslaved as being incapable of fighting back even through or because, according to him, the laws were created to keep them down. Just as people struggle in various ways against every manifestation of VAMP today, the enslaved engaged in similar struggles for liberation. The most relevant aspect of the evidence presented by James is the methodological question whether it is permissible to make a general claim on the basis of

particular evidence? We will come to this question again in section two of this dissertation but let us see how James posed and pondered the question;

> 'Were these tortures, so well authenticated, habitual or were they merely isolated incidents, the extravagances of a few half-crazed colonists? Impossible as it is to substantiate hundreds of cases, yet all the evidence shows that these bestial practices were normal features of slave life. The torture of the whip, for instance, had 'a thousand refinements', but there were regular varieties that had special names, so common were they. When the hands and legs were tied to four posts on the ground, the slave was said to undergo 'the four post'. If the slave was tied to a ladder it was 'the torture of the ladder'; if he was suspended by four limbs it was 'the hammock' etc. The pregnant woman was not spared her 'four-posts'. A hole was dug in the earth to accommodate the unborn child. The torture of the collar was specially reserved for women who were suspected of abortion, and the collar never left their necks until they had produced a child. The blowing up of a slave had its own name - 'to burn a little gunpowder in the arse of a nigger.' Obviously this was no freak but a recognised practice' (p.13).

The normality of the torture and victimisation of the enslaved was illustrated by James with the Le Jeune case that came up in 1788, more than 100 years after the Negro Code of 1685 attempted to standardise torture. Le Jeune was a coffee planter who suspected that the high mortality among those he enslaved was not due to their under-nourishment by him but due to poisoning - a method of resistance widely used by the enslaved to sabotage the plantation economy. As 'punishment' Le Jeune killed four enslaved persons and

tried to extort confessions from two women by roasting their feet, legs and elbows while also gagging them to stifle their cries. Contrary to the contention of Sellin (1976: 136) that the enslaved 'would find it difficult to defend themselves against accusations brought by whites and impossible to appear as witnesses against whites charged with crime', fourteen of the people whom Le Jeune enslaved went to court and denounced him even though he had warned them not to do so.

The judges appointed a commission that investigated Le Jeune's plantation and confirmed that the allegation was true. The two women were found to be still barred and chained, to be still alive though their elbows and legs were decomposing, and to have made no confession of any conspiracy to poison. The neck of one of them was so lacerated by an iron collar that she could not swallow. Le Jeune said that they were guilty of poisoning and produced as exhibit, a box that he said contained poison but which was shown to contain only tobacco and rat dung. While the court indulged in unnecessary delays, the women died in torture and Le Jeune escaped to avoid arrest. Finally, at the trial, the fourteen witnesses repeated their allegation but seven white witnesses testified in favour of Le Jeune and two of his stewards absolved him of any guilt. Other planters demanded that the fourteen prosecution witnesses should be given fifty lashes each for denouncing Le Jeune. Finally, the governor of San Domingo wrote, 'To put it shortly, it seems that the safety of the colony depends on the acquittal of Le Jeune.' He was eventually acquitted both at the primary trial and on appeal (James, 1980: 22-24).

This seems to support the claim by James that such forms of victimisation were widespread and not as isolated as they seem. Similarly, the practice of victimising innocent black women who are close to suspected black men today cannot be said to be a freak occurrence. It is impossible to say how widespread this practice is today; it is not possible to discern patterns or degrees from particular incidents. Nevertheless, the incidents we will examine in section two suggest the tendency or the form of VAMP as it affects black women.

Having briefly outlined the nature of the victimisation of enslaved black women as presented by James, it is important to note that rape was also used as a form of victimisation to which black women were particularly vulnerable and resistance against which exposed them to different methods of torture (Davis, 1981). Just as black women were said to have lost more to colonialism (Mba, 1982), it is argued that the oppression and exploitation of black women as slaves were qualitatively different from those of black men. This is because the former worked equally hard in the fields, were brutalised for little mistakes like the burning of the breakfast if they worked at home, were tormented by having to watch their babies being tortured, were sexually exploited and forced to breed people to be enslaved or breast-feed orphans over whom they had no claim or control, and were forced to endure the sexism of black men besides the jealousy and hatred of white women (hooks, 1981: 15-49).

Many of the women accepted their fate without question but most of them resented their dehumanisation and practically interpreted their oppression as a 'crime'. The three commonest ways in which enslaved black women resisted sexual exploitation were the risking of torture for abstaining from sex with the master, his sons, or enslaved black men; the practice of abortion to sabotage the forced reproduction of slave labour; and the smothering of infants to save them from the agony of slavery (Hine and Wittenstein, 1981).

However, some of the black women saw the need to fight alongside black men for the forceful termination of slavery. Such was the case of the legendary Nanny who led a military attack against the plantation farmers in Jamaica in the 1730s, that of Harriet Tubman who conceptualised and led, in South Carolina, a guerrilla action that started on 2 June 1863 and resulted in the liberation of hundreds of enslaved people, and that of the women among the maroons led by Toussaint L'Ouverture in the Haitian revolution that defeated three imperialist armies and hastened the abolition of slavery (Bilby and Steady, 1981; James, 1980; Davis, 1981).

The rebelliousness of the black slave woman earned her the label of a 'bad' woman or that of a sexual object for white men, an image that continued to be applied to black women explicitly or implicitly to excuse their victimisation with rape even after the formal end of slavery in the United States. (Davis, 1981). Davis argued that it was possible for enslaved black women to participate equally with enslaved black men in the struggle against slavery because of the relative equality and similarity between their conditions. She also

pointed out how the suffragette movement developed from lessons that women learnt through their participation in the struggle against slavery. Yet the early women's movement in America exhibited racism against the emancipated former slaves when they insisted that black men should not get the vote before white women and tried to prevent black women from participating in the suffragette club movement as equals.

3.2 Black Women and Colonial Law

Slavery was horrendous. It was abolished in most countries a long time ago. We have turned to the history of slavery to see what lessons there are for understanding the present problems facing black women in the criminal justice system. The major lesson learnt is that the victimised black women in slavery were not passive 'victims' but activists against victimisation. The history of the victimisation of black women in slavery has also contributed to our aim to move towards the decolonisation of victimisation from the colony of punishment. The realm of penalty remains inadequate as a concept for understanding the articulation of policies and social relations in the criminal justice system. Punishment tends to colonise some forms of victimisation and reconstruct them in analysis and policy as part of what is unproblematically known as the penal realm. The history of the VAMP suffered by the enslaved contributes towards the decolonisation of victimisation.

A similar historical look at the colonial situation of black women in Africa would yield similar lessons for our purpose. The torture of the whip was the most common form of 'punishment' under slavery. In the colonial situation, whipping was also used to victimise Africans. This can be illustrated with the painting, Colonie Belge 1885-1959 by Tshibumba Kanda-Matulu. What is offered here is only one possible interpretation of this historical painting.[18]

Durkheim (1982) seemed to argue tautologicaly that punishment is punishment is punishment is punishment by assuming that what makes an act penal is not its content but the definition of such act, by the collective conscience of society, as penal sanction. If 'Belgian Colony' was to be shown to Durkheim, he would say that the person being victimised in the picture is being punished for a conduct that

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[18] See appendix A for photocopies of 'Colonie Belge' or Belgian Colony by Zairean painter, Tshibumba Kanda-Matulu, Source: Young and Turner, 1985:4 (black and white) and Jewsiewicki (1991) for the colour photocopies of the painting by the popular painter-historian from Lumumbashi who mysteriously 'vanished' in the early 1980s. The comments here will be based on the black and white copy that was the form in which the present writer first saw the painting. Someone had used it in a seminar to illustrate her claim that the 'the punishment of the whip' was not applied to women and the present writer offered a completely different interpretation. However it is important to mention a few differences between that version and the version that was exhibited in the Tate Gallery in Liverpool (first colour photocopy). Notice that the colour version might also be an original account of a similar occurrence as the event in the black and white copy. The women do not have the parcels at their feet in the colour picture, one of them was almost framed out of the picture in colour and she was wearing a different dress. This suggestion that the two pictures might be episodes in a similar story rather than copies of each other is supported by the second colour photocopy that shows the same theme treated by different artists who claim to be reporting acts of repression from different parts of the Belgian Colony. Of course this might also be a case of a popular piece of work inspiring imitations in a competitive market for scarce income from artistic work. However, according to Jewsiewicki (1991), 'The work is guided by the desire to establish painted history in the realities directly known to the public.' The work should be seen as a metaphor for the neocolonial state in Zaire that is presided over by Mobutu Sese Seko who assasinated the Pan-Africanist hero, Patrice Lumumba, with the help of the CIA and enriched himself beyond the dreams of the kleptocrat, King Leopold II, who started the Congo Free State as a fraudulent private business concern. This suggests that the white man in the painting might be an image of Mobutu who makes a fetish of the national flag.

the colonial society regarded as a crime. This exposes the weakness of the Durkheimian approach which emphasises value consensus and ignores the fact that the colonial conscience (for instance) is more conflictual and contentious than collective.

If the same picture were to be shown to Magrite who painted a pipe and titled it 'This is not a pipe', he would have exclaimed, 'This is not punishment' (See Greeley, 1992). However, the two statements have completely different meanings. The former refers to the difference between an object and its representation while the latter refers to the nature of the object and not its representation. To say that this is not punishment is to say that what is represented in the painting is not punishment but victimisation. This is not simply because the painter understood the work in these terms, it would be authoritarian to assume that the author understands the text best. The point being made here is that the painting belongs to social realism rather than to the dream world of surrealism.

It is easy to dismiss this picture as irrelevant to the understanding of the problems that face black women especially because the only women in the picture seem to be dressed up like dolls and pedestal-placed, they are the only ones sitting down in the picture. They are not the ones lying prostate and receiving the whipping on bleeding buttocks and so it could be said that the whip was reserved for men in the Belgian Colony. However, the women do not seem to be in the picture as Foucault's public who were supposedly summoned to be entertained and controlled through the spectacle of the punishment and discipline of offending bodies. The parcels at the feet of the

women suggest that they went to the prison of their own accord to take food to their loved ones. Furthermore, unlike Foucault's public who occasionally rebelled against a particular sentence or a particular judge, Colonie Belge is an indictment on the bulk of Belgian colonial policies in the Congo from 1885-1959 and not merely a protest statement against prison conditions, against the torture of the whip, or against a particular colonial official.

Foucault could see the pipe-smoking colonial officer as the pan-optic representative of the power of the colonial state, conducting surveillance on everyone at once and on no one in particular. However, Foucault (1977) would not say this because, although he identified wide-ranging surveillance as one of the key features of disciplinary and penal institutions and although he analysed the growth of what he called the carceral society, he emphasised that surveillance is carried out institutionally and mechanically rather than through individual officers. Furthermore, Foucault believed that surveillance, like other control mechanisms, was becoming increasingly individualised contrary to the suggestions of Cohen and Mathiesen that it is going to be increasingly generalised and the contention in this thesis that it has always been generalised. Foucault recognised the phenomenon of 'the generalisation of punishment' but he analysed this with specific reference to 'the offender'.

The expression on the face of the officer wielding the whip appears even more sorrowful than that of the person with the lacerated buttocks. It could be the case that the colonial Sergeant is forced to

strike harder and harder or he himself would be struck to teach him the proper way to handle the whip. Commenting on the complexity of this sort of victimisation, Lumumba (1962: 80-83) details that, 'The majority of Europeans in the Congo are not in favour of the abolition of flogging' because, according to them, "If flogging is abolished that will be the end of discipline among the natives, they will no longer stand in awe of the Europeans and the representatives of authority, there will be disorder, etc."

Lumumba dismissed such argument as invalid because, 'You do not win the confidence, respect or obedience of a subject people by wickedness, cruelty or harshness, but by good administration, respect for the rights of citizens, and just and humane treatment.' He went further to discuss the class character of whipping by noting that a circular dated 31 August 1947 exempted the colonial elite from being flogged but, according to Lumumba, 'this prohibition is a dead letter' since some African members of the exempt categories get flogged if only to coerce them into repressing their own people even more brutally.

This passage is cited in detail to show the class character of victimisation and the exemptions that are authorised to guarantee its efficiency and also to emphasise that Colonie Belge is not a work of fiction as such but a historical documentation. Note that Lumumba never described what was going on as the punishment of offenders but correctly identified the people affected as 'victims' of wickedness. He also suggested that the viciousness of the Non Commissioned Officers could be explained by the fact that they were

trained as part of an army of occupation who were themselves vulnerable to victimisation unless they distinguished themselves as victimisers of their own people.

The number on the chest of the bare-footed, dark-uniformed African officer who is administering the whip add to this impression that there are thousands more watching the colonised. Note that there are six officials of colonial law in the picture, neatly matching the number of colonised African men in the picture. The fact that the women were not matched by officials in the picture suggests that the women were marginal to the drama unfolding or that they were marginalised as low security risk.

It seems that the suit-wearing Belgian official ordered the whipping of the prisoner in the presence of his loved ones. This might be because the man on the ground seems to be in meditation rather than in pain. The presence of his loved ones may have been ordered to make him show that he feels the pain, perhaps, by weakening his resistance through the outpouring of emotions by his loved ones. Since the women are the ones who seem emotionally disturbed by the whipping, it cannot be argued that they are unaffected by the 'punishment'. From this point of view, these women are being victimised. The woman on the left might not have started weeping probably because the man who is just pulling down his pants as if he is next in the line of those to be whipped, could be the one more closely related to her. Alternatively, maybe she is closely related to the man on the ground but chose to deny the colonial officials the pleasure of seeing her cry. Perhaps she is determined to take in the

beating with dry eyes like the man on the ground. This reading is supported by Jewsiewicki (1991) who states that, 'In the Belgian-colony subject, ... women usually express the sufferings of victims of violence. Thus a major trait of Zairean social structure appears in these paintings: the ideological and normative domination of women by the patriarchy.'

Furthermore, the women are not the only ones being victimised here. The man being whipped is also being victimised. Whipping as a form of torture is bad enough but whipping in the presence of loved ones seems to be calculated to emasculate the man on the ground. The prisoner seems to be a victim rather than an offender not simply because most of Belgian colonial policies were criminal in themselves but because his uniform was the same as that of those who are doing public works in the picture. The two men near LA POLICE building carry a bucket labelled T.P.M. which stands for the Public Works Department. The only indication of the type of public work contained in that bucket is the baton-wielding official who appears to be literally holding his nose against the stench of the bucket latrine that Fela Anikolapo-Kuti analysed as a symptom of imperialist crimes in his classic criminological song, 'ITT: International Thief Thief'. However, the nose-holding gesture could also be interpreted as a move to blow the whistle against a possible escapee, though the calm of the other officers suggests otherwise. This suggests that the people being victimised may not even be prisoners, they may have been mere suspects being detained by the police for alleged offences and being tortured to extract confessions necessary for convictions before they are sent to Le Prison.

However, it could be that La Police also served as Le Prison under the colonial situation just as some prisoners are detained or held in police cells today due to overcrowding in prison institutions. If the victimised were actually prisoners, it means that the colonial administration relied on prison labour for menial jobs which Africans saw as befitting of slaves. In the specific instance of Belgian Congo, forced labour was the basis of the plantation economy. Those who resisted this form of slavery ended up in jail to be tortured, killed, or forced to do the work that the threat of imprisonment for tax default alone could not get them to perform for the colonial authorities (Rodney, 1972).

The situation in the Congo is not representative of all colonial experiences. The British and the French did not rely on forced labour as much as the Portuguese and the Belgians did. The British and the French did not use whipping as a major form of penal policy probably because they preferred the more intimidating gun-boat diplomacy of massacres that all colonial states practised (Cashmore and McLaughlin, 1991). What Tshibumba's painting is pointing to is the nature of VAMP which affected black men and black women. The picture also carries the theme of resistance to victimisation.

The colonial system introduced new forms of legality to selectively and partially strengthen or replace existing ones. Black men and women responded by selectively compromising with, accepting or resisting the colonial institutions and practices that they found oppressive. As Fanon argued, 'The violence which has ruled over the

ordering of the colonial world, which has ceaselessly drummed the rhythm for the destruction of native social forms ..., that same violence will be claimed and taken over by the native' during the anti-colonial struggle (1963: 31), just as they did against slavery.

This subsection describes manifestations of the resistance organised by black people as a whole, and by black women in particular, for the purpose of countering colonial domination and challenging its imposed hierarchy of credibility. The analysis shows that the militancy of black women is not evidence of the docility of black men as some people assume (see Isikalu, 1988; Ndem, 1988), but a pointer to the fact that women, like men, were affected adversely by colonial law and order and that they fought along with men to overcome this form of oppression. The question is whether or not black women were victimised differently compared to black men in similar circumstances under colonial law?

The impact of colonial laws and courts on black women are seen by black women and their allies to have been more adverse than their impacts on black men (Mba, 1982). Some accounts of the impact of colonialism conclude that black women were pulled down from positions of relative equality with men, in traditional African society, to positions of relative powerlessness (see Steady, 1981). This is opposed to the official view that colonialism had a civilising and liberating impact on black women. A former colonial administrator, Adebayo (1985: 108), for example, in his

appropriately titled White Man in Black Skin[19] contended that 'the quality which most impressed the local communities was the sense of integrity, justice and fair play transparently demonstrated by British administrators.'

The basic error in the above two views of the position of women in pre-colonial Africa is that they try to explain the dynamics of a socio-economic formation with the aid of its ideological manifestation alone. The romanticists are right in asserting that Africa had queens and female warriors and that Africa has the highest incidence of kinship systems based on matrilineal descent. However, queens were mere figure heads and were succeeded by kings in patriarchal African societies and it is a 'matrilineal puzzle' that it was the mother's brother who controlled children and property in matrilineal societies (Richards, 1950).

On the other hand, the official view that African women were wallowing in repugnant traditions and powerlessness until colonialism liberated them begs the question, why did African women militantly resist colonial rule? It is most probable that African women had a tradition of resistance to domination. Sudarkasa contends that in many parts of Africa, the 'domestic sphere' of influence and the 'public sphere' of power 'considerably overlap' to the extent that, though subordinate, African women exercised a substantial degree of power, authority and influence by reason of their domestic power (Sudarkasa, 1981: 52). The

19 Appropriate because of the apparent reference to his own personal 'colonial mentality'.

imposition of an alien hierarchy upon the existing one further intensified their resentment and resistance. The way the protests of black women were repressed can be compared with the way black men were suppressed.

The religious, political, economic, and ideological domination imposed by colonial capitalism meant that most African women 'experienced a substantial loss in their economic and political status' (Ibid). This does not mean that African women did not benefit from colonial law in any way. The outlawing of child sacrifice in those parts of Africa where it obtained and the limited promotion of literacy and modern health technology were of benefit to men and women but such benefits could still have been introduced without exploiting and repressing African women in the way that colonialism did. Moreover, Rodney (1972) has persuasively argued that such 'benefits' were largely the unintended consequences of colonialism - a system that was based on exploitation and repression. They were not intended as welfare policies in aid of the colonised but as strategic measures for the maximisation of the goal of exploitation. They were therefore limited by their ability to disempower rather than liberate the colonised.

The most crucial reason why the colonial administration was set up was to ensure a conducive atmosphere for the expropriation of African natural resources to Europe. This was done through the exploitation of the surplus values of African labour. This is what the 'maintenance of law and order' practically meant- 'the maintenance

of conditions most favourable to the expansion of capitalism and the plunder of Africa' (Rodney, 1972: 179).

In pursuance of this grand design, colonial taxation was imposed to finance the repressive apparatuses of imperialism and, more importantly, to coerce the indigenous labour force into wage slavery. Although women were not directly taxed or forced into wage labour, the imposition of 'hut' taxes made women very vulnerable since most African polygynous husbands housed their wives in different huts. To make this burden light, African men with many wives built larger huts and housed all their wives in one hut, at the risk of increasing tension among the competing co-wives. The colonial authorities reacted by taxing every man for every wife in a system of poll tax that Shivji (1982: 43) called 'wife tax'.

The fact that women were not directly taxed in Tanzania could mean that they were policed and victimised in different ways compared with black men since the former would not be arrested for tax evasion. However, since they must have contributed to their husbands' or adult sons' payments of the poll tax without being recognised as tax-payers, they can be said to have faced double exploitation in this respect. First, they would be inconvenienced by being housed together in one hut or by the arrest of their male supporters and secondly, they were exploited through indirect taxation without being given due recognition.

The aim of such taxation was to extract surplus labour from the men who must leave the farms to their overworked wives to go and earn

their taxes in the plantations, the mines or the domestic establishments of colonialism. If there were no women left to work the farms, few of the men could have afforded to migrate seasonally or permanently. Furthermore, those who were convicted of tax-evasion were victimised with forced labour on colonial plantations or on the construction of roads for the evacuation of surpluses (Shivji, 1982: 46). There is some record that black women were victimised in this particular way.

Wipper (1989) documents how African women spontaneously took over the leadership of a mass demonstration organised by the East African Association under the leadership of Harry Thuku. The Association and its leadership were almost exclusively male but one of the issues that it fought to abolish was the system of conscripting young girls and beautiful women to work without pay in the plantations of the settlers or on the new roads being constructed for the evacuation of cash crops. Harry Thuku alleged that some of the colonial chiefs used this as an opportunity to seduce the beautiful wives and daughters of peasants and some of the young girls returned to the village with unwanted pregnancies.

The campaigns of Mr Thuku, 'Chief of Women', landed him in detention without trial and EAA called a general strike and a mass demonstration to set him free. The colonial authorities tried to negotiate with three of the men leading the demonstration and they returned to persuade the people to disperse. Some of the men actually started dispersing but one of the women, Mary Muthoni Nyanjiru, confronted the men by lifting up her dress and

challenging them to exchange it for their trousers if they were cowards. This traditional form of insult associated with the female genitals was said to have incensed the men so much that they joined the women who were already marching towards the prison with bayonets pressing against their throats. It was then that the Askaris were given the order to shoot and many women and men were massacred (Wipper, 1989). This was the high price that was paid to end the use of women for forced labour in Kenya. However, forced labour remained for the women in the sense that they were traditionally repressed through forced marriages that were supported by colonial authority (Mbilinyi, 1988).

Women resented the intensification of the exploitation of their labour when most of the peasant farms were left for them to work alone. Many of them were victimised for the 'offence' of running away from home. Single women were denied access to land and this meant that married ones could only flee from one marriage to another, resulting in violent confrontations between spouses and between husbands and the men to whom their wives fled (Mbilinyi, 1982: 7-8).

However, it appears that the running away of wives was a practice that antedated colonialism since the local people had a way of settling the matter by restitution. It may have been escalated by the crisis of colonial exploitation because the treatment of marital instability as an offence which women alone could commit was a severe victimisation of women who could be fatally beaten by

husbands, though some of them fought back and killed their husbands in the process (Ibid).

Since the fines imposed on runaway wives, with the approval of the colonial administration, were paid by the men to whom they fled, it can be said that men were also severely victimised. The privileged treatment of men is evident, however, in the fact that there were no cases of runaway husbands being tried even though some men must have abandoned their wives and children. Moreover, women who had no men to flee to would either continue suffering in silence or go into prostitution to face more insulting kinds of victimisation.

To this process of disempowerment, African women, just like their male counterparts, responded with widespread militancy that shook the colonial edifice. This can be illustrated (mainly, but not exclusively) with the case of the 'Women's War' against colonialism in Nigeria because it is one of the best documented independent struggles against colonial authority by black women. Some historians and colonial anthropologists wrongly labelled it 'Aba Women's Riots'. On the contrary, the uprising spread far beyond Aba and was called 'Women's War' Ogu Umunwanyi or Ekong Iban by the Igbo and the Ibibio activists, respectively (Afigbo, 1972).

The depression that hit Europe after the first imperialist world war meant intensified exploitation of the colonies. Writing about the 'double squeeze' of African peasants by multinational trading companies which control prices of both cash crops and manufactured goods, Rodney (1972: 172-173) reported that;

> Prices of palm products were severely reduced by the UAC and other trading companies in Nigeria in 1929, while the cost of living was rising due to increased charges for imported goods. In 1924 the price for palm oil had been 14/' per gallon. This fell to 7/' in 1928 and to 1/',2d in the following year (of the 'women's war') .... a yard of khaki which was 3/' in pre-war days went up to 16/'; a bundle of iron sheets formerly costing 30/' went up to 100/' etc.

At the same time, heavier taxation was being imposed on the people whose resources were being depleted. Women played a significant role in the resistance against taxation in particular, and against colonialism in general. Men usually escaped into the bush on sighting tax-collectors or the colonial police. In Biaseland of Nigeria, members of the women's secret society, Egip, usually confronted the invaders by parading nude in front of them and thereby embarrassing them into withdrawal (Attoe, 1988).

Why were such women not arrested? It is likely that if men had adopted a similar mode of struggle, they could have been arrested in spite of their nakedness. It can only be assumed that the women were spared because they were not the target suspects and there was no law against nakedness as such. The withdrawal of the colonial police when confronted by naked women suggests that the femininity of black women was a symbol of abuse since the 'sexist expectations of chastity and racist assumptions of sexual promiscuity combined to create a distinct set of issues confronting black women' in a world ruled by white men (Crenshaw, 1991: 69). It seems that those women used their sexuality to abuse or attack

the colonial authorities in a way that black men could not. They adopted a morally insulting mode of struggle rather than a militarily challenging one probably because they faced qualitatively different problems.

Since the poll tax was imposed on men in Nigeria after a census of adult men, the attempt by the unpopular Warrant Chiefs to conduct a census of women and their personal possessions in Nigeria was seen by the women as an exercise in tax assessment. Women rose up against the Warrant Chiefs and the corrupt 'Native Courts' where they presided. Women in Aba took the lead by marching to the house of Warrant Chief Okugo and following an assault on one of their members by the chief, the women destroyed his house. They also burnt down the Native Courts and attacked branches of the United African Company and other trading companies in the area (Afigbo, 1972). Their actions show that their 'war' which is deliberately trivialised as a tax riot was a far-sighted (or at least, a deep-rooted) uprising.

Through the long-distance trading networks of the women, the news of their militancy spread quickly to the surrounding areas. Characteristically, the colonial administration refused to negotiate directly with the women. Rather, the oppressors tried to use the new elite of men they had created to discourage the women in other areas from joining the uprising. The fact that the colonial administration never attempted to negotiate the grievances of men through women in Africa illustrates the qualitative difference in the domination of black women by the two hierarchies of domination.

However, it was only a minority of men who were co-opted by the colonial administration. Most men whose subordinate masculinities were repressed supported the women and the demands of the women covered the interests of men regarding taxation and village-headship.

The collaborators of colonialism appeared to have succeeded in restraining the women of Utu Etim Ekpo village. However, as soon as their 'fire brigade' reached the next village, they heard that the women of Utu Etim Ekpo, nevertheless, burnt down the Native Authority and Native Court buildings in the village. As a result, the Divisional Officer ordered his men to open fire and twenty-one women were killed while nineteen others were wounded (Isikalu, 1988: 59).

This must have taught the colonial officers that the women were acting independently of the men and that they deserved to be listened to in their own right. Thus Mr A. R. Whitman, the Divisional Officer for Opobo summoned all the women in the area to a meeting for the purpose of discussing their grievances. The women demanded as follows:

1. Government must not tax women.

2. Personal property such as boxes are not to be counted.

3. Any woman who practices prostitution should be arrested.

4. Women should not be charged rents for the use of common market stalls.

5. Licenses should not be paid for the holding of plays.

6. Women do not want Chief Mc Pepple to be head of Opobo town.

7. Women do not want any man to pay tax.

8. Women are speaking for Opobo, Bonny, Ogoni, and Andoni women. (Isikalu, 1988: 60).

It should be noted how the women democratically stated that they were representing themselves even when their demands covered the interests of men and those of other parts of the country. It was as a result of the misunderstanding of the principles of village democracy that Lord Lugard generalised the 'expedient' administrative hybrid, which he was forced to adopt in the highly feudal Northern Nigeria, to the whole country. However, the Southerners, especially the Easterners, were more used to village democracy in which everyone was given audience. Thus, they rejected the system of 'dual mandate' or indirect rule as a system of double exploitation and domination.

Note also the concern of the women about the commercialisation of sex that may have threatened their power and prestige. They stated their willingness to support the colonial administration in its control, perhaps, to show that the colonial law and order were busy repressing protests that the women considered legitimate while doing nothing at all to check what the women considered dangerous enough to attract penalty.

Naanen (1991) has linked this unprecedented concern about prostitution to the dynamics of the colonial administration that

disempowered traditional institutions of social control or abolished them completely. He argued that although the people of the Cross River Basin were sexually permissive before the advent of colonialism, the commercialisation of sex on a large scale was virtually unknown in the region. However, when the colonial regime widened the territory available for men and women to explore with relative ease and safety, colonial cities soon swarmed with disproportionate numbers of unaccompanied men who were engaged in wage labour. These opened up a lucrative alternative to many women who escaped from the domination of authoritarian patriarchs.

The hostility of respectable black women towards black prostitutes strengthens the argument of this thesis in the sense that neither VAMP nor VIP assumes that black women are diametrically opposed to the politics of law and order. What these concepts suggest is that the priorities and practices of the politics of law and order do not always reflect the interests of the marginalised.

The women, meanwhile, asked Mr Whitman to sign their demands as an agreement but he merely promised to inform the government about them. The women insisted and he became annoyed. At that moment, more women arrived by boat from the surrounding river areas. As they alighted with war cries and ran to join their comrades, Lt. J. N. Hill shot their leader, Madam Mary Adiaha Edem, and ordered his troops to shoot the rest. Twenty-nine women were killed and thirty-one others were wounded. The Legislative

Council in Lagos regretted the killings but rejected a motion to prosecute the murderers by thirty-five to two votes (Isikalu, 1988).

The three African Chiefs appointed to the Council predictably voted with their colonial masters and only the elected members for Lagos and Calabar voted for a trial. The three Nigerians who voted with the colonial government did not do so because they were men, as Isikalu (1988: 62) alleged. Even if they had voted otherwise, the motion would still have been lost by a scandalous margin.

This massacre illustrates the point made by Boerhinger (1977: 60) that 'under colonialism, there are changes in both the legal system and methods of ideological domination.' This refers to the inconsistency between the principle of individual responsibility professed by the imposed legal system and the practice of collective repression for the purpose of political and economic domination. What this account illustrates is that when black women militantly opposed colonial law and order, they were confronted with similar problems compared to men who did so.

It could be said that women reacted collectively and militantly against colonialism because they were used to mass movements of their own and also because men were reacting in much the same way. Perhaps, the reaction of women was more spectacular because, according to Mrs Ransome-Kuti, women lost more economic and political power to colonialism than men (Mba, 1982). The major grievance of Abeokuta Women's Union (AWU) was that they provided half of district revenues without having any say about the

expenditure due to the fact that they were not represented in the system of indirect rule. Taxes were introduced in the region in 1918 and since then, women were forced to pay from the age of fifteen whereas men did not pay until the age of seventeen. This was probably because young girls started trading very early in life by acting as hawkers for their parents or for older traders. The women were particularly provoked because tax collectors insulted them, chased them around, and were fond of stripping young women under the guise of assessing their age (Johnson, 1982).

After a series of petitions failed to elicit any positive response from the colonial authorities, AWU mobilised tens of thousands of women to refuse to pay any more taxes and to picket courts during the trial of their comrades. They organised an overnight sit-in at the palace of Alake, the so-called traditional ruler of Abeokuta who acted as the chief tax-collector for the colonial administration. As the women kept vigil, they sang abusive songs against Ademola, the Alake, and against the white men he represented. Two of the songs went like this;

Even if it is only one penny
If it is only a penny Ademola,
We are not paying tax in Egbaland
If even it is one penny

Ademola Ojibosho!
Big man with a big ulcer!
Your behaviour is deplorable.
Alake is a thief.
Council members thieves.
Anyone who does not know Kuti will get into trouble
White man you will not get to your country safely

> You and Alake will not die an honorable death (Johnson, 1982).

The response of the colonial administration was typical. The women were told off for insulting the Alake and their leaders were tried for tax evasion. Kuti was fined in court and she tactically chose to pay the fine rather than accept one month in prison because she was the only woman on the delegation to the Nigerian constitutional conference that was leaving the next week. In London for the 1947 conference, Mrs Kuti gave an interview to the Daily Worker - organ of the British Communist Party - in which she criticised the poverty, exploitation, repression, and oppression that faced Nigerian women under colonialism. At home, the conservative Nigerian Women's Party that aimed at acquiring British citizenship for Nigerian women, among other things, condemned Kuti for giving the interview but the radical Lagos Market Women's Association expressed their solidarity with Kuti and passed a vote of confidence on her.

The Alake and the colonial administration tried to intimidate the women but that failed. They promised to reform the tax but the women wanted it abolished. The Alake took a leave to let things quieten down but the women insisted on his abdication. Eventually, the Abeokuta Women's Union forced the Alake to abdicate from the throne in 1949, female taxation was abolished and four women, including Kuti, were appointed to the interim council that replaced the discredited Sole Native Administration system of dual mandate. (Mba, 1982: 136-64).

This is consistent with the recognised power of women to intervene collectively in some parts of Africa to discipline members of their family or to ritually cleanse the community (Meek, 1955). Nigerian men overwhelmingly supported this autonomous struggle of the Abeokuta Women's Union which soon expanded to become the Nigerian Women's Union with branches all over the country (Johnson, 1982). This supports the claim made by different scholars that although black women were oppressed and exploited under traditional African societies, they were not completely submissive to the dominant men. The type of radicalism exhibited by those women under colonial domination is likely to have borrowed from traditional strategies of organisation and militancy by African women in traditional societies.

There is unfortunately little evidence for the comparison of the problems that faced black women and white women in the colonial criminal justice system. This is because of the obvious reason that there were few 'Victorian' ladies in the colonies and the few present were paternalistically protected. However, even if there had been many white women in the colonial societies, there is no reason to believe that they would have faced exactly the same problems compared to black women and no reason to expect that they would have organised in similar ways around similar issues. The only comparable situation was in South Africa where the mining corporations turned a blind eye to prostitution - so long as it involved only black women. The moment white prostitutes appeared, the authorities responded by repressing brothel-keepers

and arresting women for soliciting or for living on immoral earnings (Van Onselen, 1982). It would be absurd to say that white women were controlled in the same ways that black women were victimised because it seems that the control of the former was protective rather than repressive as was the case with black women.

This section has tried to demonstrate that black women were victimised in different and similar ways compared with the victimisation of black men. Moreover, they were subjected to the authority and influence of black men in addition to those of the colonial administration. This seems to support the feminist theory of the state (Mackinnon, 1989) regarding the systematic repression and control of femininity. It also shows that men who were equally repressed may have participated in the intensification of the repression of femininity. However, it goes beyond a feminist theory of the state by indicating that men and women who are marginalised struggled together and independently in similar and variable ways to overcome their marginalization, to empower themselves, and contribute to a better future free from racism, sexism, and class exploitation.

This, means that the forcing of the colonial police to withdraw, the refusal to be forced into submission by black male collaborators of colonialism, the attack on the structures of colonial power - including their offensive against colonial chiefs - were expressions of power by the organised sections of black women, against the colonial state that was based on racism, sexism, and class exploitation.

Such militancy by African women reached its highest stage in the Algerian revolution with the result that the colonial administration defined its political doctrine as follows: 'If we want to destroy the structure of Algerian society, its capacity for resistance, we must first of all conquer the women .... Let's win over the women and the rest will follow' (Fanon, 1965: 15-16). This corresponded to a stage in the struggle when Algerian women carried bombs, grenades, and machine guns concealed in their veils and when they were 'arrested, tortured, raped, and shot down', according to Fanon. Algerian women were not so militant because Algerian men were docile. Rather, 'this was the period during which men, women, children, the whole Algerian people, experienced at one and the same time their national vocation and the recasting of the new Algerian society' (Fanon, 1965: 40).

3.3 Black Women and Neo-colonial Law

Fanon did not live to witness how neo-colonialism effectively blocked the aspirations that anti-colonial struggles inspired. Benalligue (1983), Urdang (1983), and Jacobs (1983) have highlighted how little women had gained from political independence in Algeria, Mozambique, and Zimbabwe, respectively, in spite of their immense contributions to the liberation struggles and in spite of the professed socialist orientations of those governments. Benalligue suggests that part of the reason for the continued exploitation of Algerian women compared to the men is that the contributions of the women to the liberation movement were reluctantly accepted by men who still harboured patriarchal ideas. Urdang argues that Mozambique

under Samora Machel recognised the unique plight of women and tried to address these seriously. Furthermore, Jacobs identified the process of land redistribution in Zimbabwe which favoured family holdings under the control of men as the main reason why women still laboured without recognition.

These accounts are typical of studies of the conditions of women in neo-colonial Africa. They rightly focus on the economic problems that face women. The few that venture into law restrict themselves to family law 'because it was identified by women throughout the region as one of their greatest concerns, and in many cases a major legal problem' (Letuka et al, 1991: 9-10). The limitation of such exclusive focus on the economic conditions of women and on family law is that statistics easily show that men were better off on the whole while concealing the fact that most men suffer severely under neo-colonialism. To compare men and women on the basis of gender without also considering the articulation of gender with class usually result in the conception of the emancipation of women 'as mechanical equality between men and women' against which Samora Machel warned (quoted in Urdang, 1983: 20).

Another limitation in the exclusive focus on family law is that the extent to which the familial ideology is reinforced by the criminal law is largely neglected. The few that focus on criminal law simply read off statistics the fact that African women share the global 'mystery' of women being less involved in criminality than men (Clifford, 1970: 40) or concentrate on why the criminality of women is fast increasing (Oloruntimehin, 1981). The present dissertation is

not concerned with rates of criminality but with the specific problems that men and women face in the criminal justice system whether or not they have committed any crime. There is hardly any comprehensive account of the victimisation of African women in the name of criminal punishment. However, something can be fleshed out from incidents and studies that slightly touch on this theme while focusing on other concerns.

The colonial instances of ideological repression of women by vested political and economic interests became more important under neo-colonialism. This is because the state acquired relative legitimacy with the acquisition of political independence and 'crime' now replaced 'race' as the major category of repressed phenomena except in Mauritania where Arabs still enslaved black Africans and in South Africa where racialism was still a major issue.

The methods and types of victimisation characteristic of the colonial state were partially and selectively carried over by the neo-colonial state in order to uphold and consolidate the inherited political and economic hegemonic ideology of capitalist underdevelopment (Nkrumah, 1968). This was the point echoed by Fabian and Fabian in their androcentric analysis of the painting by Tshibumba:

> Colonial experience, although chronologically a thing of the past, remains an active element of present consciousness. Paintings of Colonie Belge express the omnipresence of powerful, organised, and bureaucratic oppression of the little man as he feels it now, in a system whose decolonization remains imperfect and which constantly uses the former oppressor as a

negative counter-image (in Young and Turner, 1985:6).

Race was directly repressed under colonialism and yet it is a largely unacknowledged basis of colonial rule. Racial rule was implicit in the assumption of the racial superiority of the colonisers (Fyfe, 1992). This rule and hegemony of 'white power' has continued to be the case in the multi-racial African and Caribbean countries even where the leading politicians have become black men (Rodney, 1969). The colonial politics of racialism has been partially replaced with that of ethnicity and nationality in most African countries. However, the focus of neo-colonial law is not the preservation of the moral superiority of one ethnic group or another except in the caste system of Burundi and Rwanda[20], but the repression of the activities of the subordinate men and women whose liberation was considered dangerous to the neo-colonial state and whose continued subordination was necessary for the maximisation of neo-colonial exploitation.

The specificity of the victimisation of black women is evident in the strict regulation of women in neo-colonial Africa. As Mamdani

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[20] However, the conflicts in Rwanda and Burundi are not simply along ethnic or caste lines given that the predominantly Hutu army of Rwanda was suspected of shooting down the plane that was returning from a peace talk in Tanzania with the Hutu presidents of Burundi and Rwanda just as the 7th Pan African Congress was ending in Uganda, April 1994. Moreover, the Hutu prime minister of Rwanda was also alleged to have been killed by Hutu soldiers probably because the army saw the government as making too many concessions to the mainly Tutsi Rwanda Patriotic Front whose president happens to be a Hutu as well. To understand the conflict adequately, it is necessary to look at the ways that ethnicity/caste articulate, disarticulate and rearticulate with gender and class to ensure that even while the conflict was being reported as Hutus against Tutsis, peasants of both castes intermarried and fled together as refugees while the French who trained and armed the government troops (Hutu dominated) that were implicated in the genocide moved in quickly to secure a portion of the country for the defeated oppressive army (see Abdulai, ed., 1994).

(1983: 54) describes in the extreme case of Idi Amin's Uganda, 'Amin banned mini-skirts, 'hot pants', 'maxi-skirts with a V-shaped split in front', long trousers, 'tights and such like dresses', abortion, 'beautifying and skin-toning creams and lotion which change the natural beauty of women and make them look as half-castes' and so on.

This shows that the excuse of preserving African customs and traditions has been added to the familiar one of maintaining law and order to justify the repression of women. This is likely to affect poor women more because they are more exposed to the 'hooligans' who police cultural purity. It was not directed against men though poor men could suffer materially and emotionally when their wives or daughters were victimised. Again, such decrees were not expected to affect white women who have no need for 'skin-toning creams' and who could sun-bath in hot pants and swimming dresses without Amin's hooligans lifting a finger. However, this was an extreme case of the victimisation of black women in the criminal justice system and it was not formalised into law anywhere else in Africa except in Malawi under 'life-president' Kamuzu Banda where it was a crime for women to wear trousers.

The hypocritical campaigners for cultural independence in the face of political and economic domination pretend to be ignorant of the fact that the material and ideological bases for traditional culture have been completely disarticulated by imperialism. This disarticulation reduced the ability of men to contribute their quota

to the upkeep of their families and at the same time denied women equal opportunities to participate in the imposed capitalist economy.

Alice Lenshina was a Zambian woman who was recognised by a white missionary for her spiritual gifts. However, when the white missionary went on leave, his African assistants felt threatened by Lenshina and excommunicated the prophetess. She was forced to found her own church in 1955 and she borrowed ideals from traditional beliefs about morality and village communalism, while repudiating the authority of the village chiefs and condemning the worship of only male ancestors (van Binsbergen, 1979).

Her vision of the new society - headed by herself, collectivised and autonomous from the criminal justice system - was such a threat to the ideology of the hegemonic order that the colonial police burnt down her model 'Sioni Village'. Her followers moved into villages that belonged predominantly to her Lumpa sect. They bypassed the corrupt criminal courts and took cases to their trusted prophetess for arbitration and she collected exploitative tributes in cash and labour to expand the property of her church and grow food to feed her touring choir.

The local chiefs ganged up against her and the rivalry between her Lumpa sect and the nationalist party, United National Independence Party (UNIP), led Kenneth Kaunda to decide, three months before independence, to unleash military might on the Lumpas even though (or because) they were his former allies, his elder brother was a leading member of the sect, and he (Kenneth)

and Alice had gone to the same school and come from the same area (van Binsbergen, 1979: 379). Kaunda used the same colonial excuse that Lenshina's followers were living in an 'unauthorised' village to order them to quit. In July 1964, when the ultimatum expired, two police men on patrol in the village were thought to have come to effect the eviction and were killed. Kaunda retaliated by unleashing the army on them and 1500 villagers, mostly women, were killed, the sect was banned, Lenshina was detained until 1975, and thousands of her followers went into exile in Zaire.

Kaunda justified the massacre on the ground that Lumpa adherents were criminally attacking and killing people who did not share their faith. However, official figures show that before the two police officers were killed, UNIP attacks on Lumpa left 14 dead while Lumpa killed only seven UNIP members; UNIP burnt 121 houses compared to Lumpa's two; UNIP destroyed 28 churches and 28 grain bins while Lumpa destroyed only two grain bins; UNIP committed 66 assaults to Lumpa's 10; UNIP committed 22 acts of intimidation, destroyed one cattle kraal and 18 goats by arson while Lumpa did none of these (van Binsbergen, 1979: 414). The brutal response of the state can be explained by the fact that:

> 'Lumpa had ... struggled to regain local rural control and to create new relations of production (like tribute labour) not dominated by the rural community's wider incorporation in capitalism and the state. Once Lumpa had taken this road, the (secular) state, and nationalism ... were out of the question' (van Binsbergen, 1979: 415).

This shows that any challenge to conventional morality was repressed by the neo-colonial state in the same way the colonial state did. It can be argued that the murder of the police men provoked Kaunda into bombarding the villages but the murder could not have been committed by all the villagers and their collective repression was like the 'gun-boat diplomacy' of colonial administrators - implying guilt by association and causing VAMP.

It is not likely that a man could found a church and organise it against the ruling patriarchal interests the way that Lenshina did. However, it is likely that if such a church encourages the subversion of the criminal justice system to the extent of inciting the murder of police men, the reprisal could be as severe. The Watchtower and Kibangu sects were also banned by Mr Kaunda for being in opposition to a neo-colonial state desperately in need of legitimation. Probably because these other sects did not attempt to develop a mode of production that was disarticulated from the hegemonic one and because they did not resist militantly, their suppression was not as bloody (van Binsbergen, 1979: 378).

Lenshina became hostile to conventional morality and the state mainly after the missionary churches tried to repress her spirituality, the chiefs and patriarchs refused to sell land to her so that she could establish a settlement for her followers and after the ruling UNIP started intimidating her followers with violence. Many black women were forced or chose to go into prostitution which attracts harassment from state officials but which was usually not punished as crime (Clifford, 1974: 131).

There is no evidence of the harassment of male prostitutes in neo-colonial societies except in the case of the 'beach bummers' or 'toy boys' who earn a living off middle aged European women who visit the Gambia as tourists (The Sunday Times, 28 August 1994).. The young men had their hair forcibly shaven by the soldiers who recently seized power in that country. The young lieutenant who led the military government was reported as protesting that 'our people are not sex machines.' He suggested that the hair of the bummers were shaved to make them less attractive to women.

Although men and women are equally prosecuted for keeping brothels and women are specially prosecuted for soliciting, there is no record of the prosecution of men for buying sex in neo-colonial societies. Poor black women are therefore differently repressed in the sex industries of neo-colonial societies compared with black men or 'respectable' white women engaged in prostitution who operate from five-star hotels.

Analysing the popular protests by men and women in the Caribbean, Mahabir (1985: 1) writes that 'when ... majorities aggressively challenged the rule of law, resorting to acts of violence in many instances in order to secure their freedom ... they did not consider themselves criminals.' To consider such militants to be criminals would amount to taking the terms of abuse applied by the state as a given.

The perspective of articulation that is adopted here recognises the legitimacy of the resistance organised by the people against the oppressive state. The perspective of articulation is theoretically clearer than the law and order approach because many people who are 'punished' as criminals turn out to be 'victims' of criminalization. This does not mean that African women did not accept many of the colonial and neo-colonial laws dealing with personal safety and the safeguard of property. Thus, it is not everybody who breaks the law that can be seen as consciously fighting for freedom.

In different African countries, women are detained without trial for being the wives, sisters, or even the girl friends of men who are suspected of treasonable felonies. There is no reason why such women are victimised except that they are assumed guilty by association. Moreover, it is not the case that they are being held in order to compel the suspected men to give themselves up, a popular police tactic for dealing with lesser offences. In the case of the widow of Gen. Mohamed Oufkhir who was detained with her children for 18 years in Morocco, her husband was known to have committed suicide to avoid capture (Amnesty International, 1992).

When Mrs Dora Mukoro, the wife of an army officer wanted in connection with an abortive coup, escaped with her maid and five children aged 1, 6, 8, 10 and 11, from detention in Nigeria and fled into exile, The Directorate of Military Intelligence questioned the Human Rights Lawyers who had filed suits for their immediate release from detention. Some people started talking about how lax the national security was when the real issue was that, according to

article 7, Section 2 of the African Charter on Human and Peoples' Rights, (OAU, 1981), 'Punishment is personal and can be imposed only on the offender.' Otherwise, the 'punishment' should be seen for what it is, victimisation of the innocent and it should be internationally justiciable and punishable.

The Charter that came into force on 21 October 1986 following its ratification by a majority of the members of OAU was initiated by decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session in Monrovia, Liberia, 20 July 1979, and was adopted in a similar meeting in Nairobi, Kenya in 1981. By the time this historic document came into effect, following its ratification by a majority of the member states of the OAU six years later, Kenya which hosted its adoption was yet to sign, Morocco was not even listed as a member because it had left the organisation in protest over the recognition of the Saharawi Democratic Republic which promptly ratified the document. There were other notable abstentions and those countries such as Nigeria that signed continued to victimise and marginalise the people with impunity.

The Charter sounds very much as the U.N. Charter but differs significantly due to the emphasis it places on the struggle against imperialism in its preamble. The African Charter is also unique in its plural conception of freedom as something that is not only possessed by individuals alone but also by cultural groups of people. However, the pluralism of 'freedoms' raises the disconcerting question, 'how many freedoms have you got?' in a way that reminds

us of the 'Beasts Of No Nation' who, according to the social-critic-musician, Fela Kuti, pretend that freedom is a gift that they can give to us human beings. Even the OAU Charter which the charter on human and people's right cites, rightly, talks of 'freedom' as an indivisible whole without losing sight of its collective and individual forms.

The Charter also fails to extend its emphasis to the struggle against gender oppression and class exploitation and therefore does not promise much to poor African men and women. Although the Charter includes 'sex' among the unacceptable grounds for discrimination (Article 2), its language is consistently masculinist from beginning to end. It talks about the inviolability of 'every human being' and recognised 'his' right to respect 'for his life and the integrity of his person' (Article 4). There are more than 30 specific masculinist terms in the fifteen page document. These terms do not only assume that every citizen is male, they also assume that every person who chairs the investigative Commission of the Charter would be a man, a 'chairman' with 'his' duties.

The masculinist discourse of the African Charter is reinforced by the only references that are specific to women and 'the child' (no mention of 'children' in their own right). This is in Article 18 which is very patriarchal in its assumption that the family is a 'natural unit' of society and not merely a socially constructed unit. This indicates how seriously Africans regard family values, and quite understandably so, but the ways that such values are defined and safeguarded in the Charter appear contentious.

Article 18 arrogates to the State the duty of caring for the 'physical health and moral' of this organism called the family and equally passed the buck of caring for the 'morals and traditional values recognised by the community' back to the family. By classifying women and 'the child', the aged and the disabled together as deserving 'special measures of protection in keeping with their physical or moral needs', the Charter exposes the patriarchal nature of the neo-colonial regimes that adopted and ratified it with some notable abstentions. The point here is that if the charter is both masculinist and patriarchal, its claim to be a guarantor of the rights of women and the marginalised would be dubious because imperialist patriarchy and masculinism have been historically characterised by oppression.

Moreover, Article two gives two false impressions by not including class among the unacceptable grounds for discrimination; 1) that it is all women who suffer capitalist gender oppression, including millionaire women and the wives of dictators, and 2) that it is perfectly acceptable to discriminate against the poor on the basis of their class. Even though the Charter includes 'national or social origin' as unacceptable grounds for discrimination, these are not the same as class relations or class positions.

The class character of the charter is further illustrated by the duties of the individual towards his family and his parents (Article 29). This is the familiar macho view of the male as a bread-winner which implies that a poor man who has no bread for himself, how much

more for his parents and his family, would be seen and treated as other than male. This clearly shows that gender oppression could also affect men but in ways that are different compared to the gender oppression of women who are falsely assumed to be dependants with nothing of their own to offer when many women are the bread-winners for their families.

It could be argued that the women who have suffered victimisation in the bizarre ways documented above were not exactly poor and so they must have been victimised on the basis of their gender rather than their class or race. Wives of army officers, preachers and their children are among the most privileged in Africa. However, we must not ignore the class character of their victimisation because class relations are not completely determined by class positions - that is why it is possible for middle class people to be involved in working class politics.

It is interesting that these women and children were victimised specifically because of the subversive nature of the felonies that the men who were close to them were alleged to have committed. It is true that any such felonies were not by or for poor people but being associated with them must have excluded some of the relatively privileged from special immunity and exposed them to practices that are the daily experience of thousands of the poor.

According to the Committee for the Defence of Human Rights other detainees who were related to men suspected of taking part in the planning or execution of the 22 April 1991 coup in Nigeria were

quickly moved from the detention camps of the Directorate of Military Intelligence to Kirikiri Maximum Security Prison following the escape of Mrs Mukoro. These other detainees were Mrs P.T. Obahor and Mrs C.O. Ozeigbe whose criminality constituted entirely of being married to fleeing army officers wanted in connection with the coup. Others were Mrs Gloria Anwuri and Mrs Rhoda Heman-Ackah who had the misfortune of being sisters of Chief Great Ogboru who was suspected of having financed the coup. Also affected was Miss Gloria Mowarin, the pregnant lover of Mr Felix Aigbe - a business man also wanted in connection with the coup.

However, it was not only women who were detained oppressively in this manner. The men also detained without being accused or charged were Mr Ufuoma Onakpaya who transgressed gender boundaries by taking care of the children of Mrs Heman Ackah since her arrest and Mr Sarro Akpeneyi, a former Public Relations Officer of a company owned by the wanted business man, Ogboru. Also moved to the Maximum Security Prison was the 14 years old son of Mr Felix Aigbe, the other business man also wanted African Concord 16 September 1991).

The fates of these women, men and children illustrate the fact that Victimisation-As-Mere-Punishment (VAMP) affect men and women. However, the women were affected in gender-specific ways that differed from those of the men even though Mr Onakpaya could be said to have been repressed for crossing the gender boundary into child-care. It is true that no man was detained because his wife was suspected of having anything to do with the coup since no woman

was suspected in that manner. However, women are often suspected of other serious crimes like drugs trafficking and there is no record to show that their lovers, husbands, brothers or children get arrested as part of the punishment for the crimes allegedly committed by women.

Toni Morrison addressed this issue in her enchanting novel Jazz. She asked, 'Did police put their fists in women's faces so the husband's spirits would break along with the women's jaws?' (Morrison, 1992: 78). The question should be whether the police do so and not whether they did so at some isolated time in the past. Isabella Allende (1991) answered Morrison's question affirmatively in her story, 'The Judge's Wife', in which the judge caged the mother of a wanted criminal and tortured her in order to dare her son to surrender or attempt to rescue her and be damned.

These creative accounts prove nothing in fact but only serve as illustrations of a more general point. What is important for our immediate purpose is that Mrs Dora Mukoro escaped into exile. This is what many women in similar circumstances would do but unfortunately, foreign countries would not recognise all of them as refugees and most of them cannot afford the money to finance the trip. It is true that Mrs Mukoro was a political refugee because of the political nature of her persecution. However, many women, men and children face no less serious oppressive economic conditions from which they would be glad to escape at the least opportunity. This brings us to the constant efforts by many poor women, men and children to escape to Europe or America in search of economic and

political safety. Unfortunately, the conditions they flee from at home are not completely absent in the safe havens they seek abroad.

Ama Ata Aidoo (1992: 28) addressed the issue of political exile in her poem, 'Speaking of Hurricanes', dedicated to Micere Mugo and all other African exiles:

> But speaking of very recent events, my sister,
> have you met any of
> the 'post-colonial' African political refugees
> shuffling on the streets of
> London
> Paris
> Washington
> Stockholm and
> The Hague?
>
> Minds - and bodies - discarded
> because they tried
> to put themselves to good use?
>
> Please,
> don't tell me how lucky they are.
>
> They know. We know.
> They are the few who got away

Mrs Dora Mukoro was one of the lucky few who got away. The fates of those who were not so lucky remain shrouded in the secrecy that surrounds government, law, force, death and disappearances. It is an open secret that those who remain behind dream of escape too. But why the emphasis on European and American cities when most African exiles and refugees are still found in Africa? The emphasis is on European and American cities because they are more attractive to political refugees of various shapes and shades. They are more

attractive, not just because of their relative affluence but mainly because of their relative security against trans-continental hit squads. Those who remain behind in Africa do so out of the belief that they could help change things by being closer home or because they are too poor to afford the cost of escape. Most of the poor ones are those whom the immigration officials detain on arrival and deport at the slightest opportunity. At the same time, rich and powerful political refugees are routinely protected and encouraged to invest what they looted from their own people in foreign industries. What is even more disturbing, according to Aidoo (1992: 45) is that there is a flood of criminals from Europe to Africa:

> who remarked, somewhat wrily,
> that the trouble with neo-colonialism is that
> we have to cope with the same crimes, but
> there are no colonial sergeants to drill
> their own criminals and ours?!
> He must have referred to
> the current human flood from
> European Houses of Correction to our homes.

It is not fair to talk about the flood of criminals from Europe to Africa because a lot of Europeans in Africa are genuinely interested in helping to find a solution to the crises in Africa. Perhaps it is an overstatement to talk about a flood of human beings comparable to the transportation of convicts to Australia and Canada.[21]

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[21] Besides, Rude', 1978, has convincingly argued that, far from being all criminals, many of the transportees, especially Irish women, were merely political activists whose crimes, mainly arson, could be better understood as acts of political protest often committed out of a desire to join loved ones who had earlier been transported to relatively better prospects.

Nevertheless, just as Hannibal the Cannibal escaped to a hot tropical climate in the 'Silence of the Lambs', it is easy to imagine Europeans being deferred to in Africa even though some of them may be considered undesirable elements in Europe. However, Aidoo is right because some criminal activities involving fraud, for instance, might be sources of wealth and prestige for Africans and Europeans in Africa or in Europe. Yet no African country has any policy of excluding Europeans or of restricting the access of their crime films and television to Africa. On the contrary, the presence of Europeans is actively canvassed with blanket no-visa status for them. In contrast, many Africans need visas to enter some African countries and poor Africans are being deported en-masse from neighbouring African countries.

Rich and powerful Africans also find it relatively easy to secure sanctuary in Africa compared to the impoverished 'victims' of authoritarian regimes. For example, Nigeria's Ibrahim Babangida eagerly granted political asylum to Siad Barre, who presided over the devastation of Somalia. Civil Rights campaigners in Nigeria say that Siad Barre was a suspected criminal in Somalia and so it was unconstitutional to offer him political asylum in Nigeria. What is more, the campaigners point out that it is unjust to offer protection to a dictator like Barre while at the same time deporting innocent Chadian refugees who stood chances of being executed for opposing arbitrary rule in their own country (The Campaigner, Vol. 1, No. 3).

These are part of the reasons why many Africans are pushed towards seeking refuge in the domestic colonies of Europe.

Furthermore, the then Home Secretary, Kenneth Clarke, was pushing for tough European Community policies to 'force refugees to seek protection in their own countries' (The Observer, Sunday, 29 November 1992).

3.4 Black Women and 'Internal Colonialism'

The theory of internal colonialism was popularised by Hecter (1975) but Williams (1983) recognised that Lenin used the term much earlier to describe the development of capitalism in Russia. Hecter adopted this concept and applied it to the 'Celtic fringe in British national development'. Hecter argued that the areas within, but peripheral to, the metropole of imperial powers were exposed to forms of exploitation comparable to the 'colonial situation'. According to him, this is because there are two unequal and objectively distinct cultural groups within the nation, created by the historical accident of the uneven spread of industrialisation. As he put it, 'the existence of a culture of low prestige within a peripheral region is justification enough for the establishment of an internal colony category: without it, there can be no cultural division of labour' (Hecter, 1975: 349).

This formulation has been severely criticised for not being structuralist enough even while claiming to be a structuralist analysis. The major weakness of studies based on the Hecterian model is that they failed to account for internal colonialism in terms of imperialism (Williams, 1983: 12). This weakness is noticeable in

the fact that the original formulation by Hecter talked about a 'British national development' as if there is anything like a British nation. If Hecter had recognised that the Irish, the Scottish, the Welsh and the English are different nationalities that are culturally distinct, he would have seen the need to go beyond his narrow intra-national focus. In this light, the Irish sociologist, Liam O'Dowd (1990) argues that 'Northern Ireland is not only a domestic Irish, British or British Isles problem but, in many senses, part of the wider story of global colonialism.' Hecter (1983) hopes that by extending the theory of internal colonialism to Eastern Europe some of the criticisms of the theory would be overcome. However, that is not necessarily so, especially if Yugoslavia, for instance, is analysed as a nation instead of as a multinational state and if such an analysis fails to take into account the role of global imperialism. The intra-national focus therefore remains the limiting feature of Hecter's theory.

'Internal colonialism' is used in this thesis to refer to three different but closely linked processes. First, internal colonialism is being used to refer to institutional colonialism whereby one institution colonises another. This is the sense in which Habermas (1987) talks about internal colonialism as representing the reification of the judiciary by monetary power and vice versa. In this sense, the present thesis regards the institution of punishment to be imperialist because it tends to colonise other institutions and processes like welfare and victimisation.

Secondly, internal colonialism will be used in the Hecterian sense to describe conditions in industrialised countries where black people form a sizeable proportion of the citizenry but live mainly in poor locations that are the targets of special policing. The term is applied correctly here because the alienating conditions of such 'ghetto colonies' (Hall, et al 1978) and the special police tactics aimed at their residents are reminiscent of (though not identical with) what was experienced by the colonised people in Africa, Asia, Latin America and the Caribbean.

Thirdly, internal colonialism is being used here to refer to the process of imperialist domination that links black people abroad with those at home through policies like immigration controls and the war on drugs that are funded by the imperial powers and waged by the nominally independent neo-colonial states. Accordingly, the present thesis will touch upon the need for decolonisation in the institutional, intranational and global senses of the term. Institutionally, decolonisation of victimisation would aim at recognising the relative autonomy of victimisation from punishment and welfare. Intranationally, decolonisation would address the marginalization of the relatively powerless in the internal colonies and neocolonies of today. Globally, decolonisation will be used to emphasise the incompleteness of earlier decolonisation processes and the growth of what Said (1993) described as the recolonisation of the world by imperial powers.

The victimisation of black women in apartheid South Africa is illustrative of the continuity of colonial relationships in its classical,

neocolonial and internal colonial forms. No example illustrates the resistance against victimisation under colonialism, neocolonialism and internal colonialism by black women better than the example of their struggles against apartheid. The most dramatic of these was the Cato Mano beer hall protests and the anti-pass demonstrations of 1959.

The government had outlawed the sale and consumption of liquor in places other than halls controlled by the white mercantilist class (Kuper, 1965). Illicit beer brewing was the mainstay of the income of black women who were denied equal opportunities to earn wages at the mines and were victimised for exploiting their own sexuality (Van Onselen, 1982). They rose up to wage their own version of the 'women's war'. With characteristic colonial arrogance, the apartheid regime refused to negotiate with the women and asked them to tell their grievances to their husbands who would report them to the chiefs for onward transmission to the government. After a series of street battles during which women marched chanting 'Wathint' abafazi, wathint' imbokotho' - you have struck the women, you have struck the rock (CIIR, 1988), 624 Africans, mainly women were sentenced to a total of 168 years and/or fines totalling 7,130 pounds (Kuper, 1965: 16-18).

Most of the examples of the struggles engaged in by black women against imperialism given so far in this thesis concern manifestly political struggles. This is deliberately so because the present thesis is trying to avoid the emphasis placed on street criminality by many writers of the right and the left when discussing the politics of race

in the criminal justice system. With the manifestly political protests of black women as a background, it is now easier to see that discussions of 'black criminality' are also implicitly political in the sense that such discussions are articulated with policies that sustain the marginalization of black people and guarantee the continuation of imperialist exploitation in different forms.

'Black criminality' has been historically represented in various ways corresponding to the ideological orientations of the person(s) making the classification. As a matter of fact, black people have not always been closely identified with criminality as much as recent moral panics about 'black crime' would suggest. According to Gilroy (1987b:75) 'The Changing patterns of their portrayal as law-breakers and criminals, as a dangerous class or underclass, offer an opportunity to trace the development of the new racism for which the link between crime and blackness has become absolutely integral.'

The argument of Gilroy is that if black people embody the problems that are ordinarily attributed to them, then such problems would essentially remain the same and would be manifested by all black people but 'the precise shape and dimension of these problems have constantly changed, reflecting a shifting balance of political forces in the struggles between black settlers and both institutional and popular racisms' (Gilroy, 1987a: 75). Contrary to the claims of self-professed left realists that black people were identified with crime because of their marginalization which supposedly made it more difficult for them not to commit crimes in order to survive, Gilroy

and many others have convincingly argued that the identification of black people with criminality derives from the age-old tendency to view serious criminal acts as being alien, for example, during the garotting panic of 1862. In 1878, the 'Jack the Ripper' panic surfaced to reinforce the assumption that heinous crimes were un-English in conception and perpetration. It was widely suggested that the Jews of Spitalfields in East London were the likely source of inspiration for the Ripper and a spate of anti-Semitism followed.

When Parliament debated the issue of alien criminality, Russian, Rumanian, Polish and Jewish immigrants who settled in the East End of London were the focus of the debate. Furthermore, 'Jewish crime' was said to have one speciality of its own - the so-called 'white slave traffic' which allegedly involved the recruitment of respectable white ladies for prostitution around the world. The 1912 Criminal Law Amendment Act introduced flogging as part of the punishment for the men of 'almost entirely foreign origin who were engaged in this vile trade ...' (Gilroy, 1987a: 78). This shows that black people were not the first to be singled out and collectively victimised or criminalised. It also shows that the association of foreigners with criminality is also vaguely linked to a Eugenic concern about the purity of the dominant racial category.

Garland (1985: 196) argues that the association of crime with concerns about the nation and the quality of the white race can be found in 'the images and metaphors of 'efficiency', 'degeneracy', and 'fitness'' which were constantly combined with the evolutionary analogy of social Darwinism to link 'criminological proposals with

the future of the race and the empire.' This suggests that the foreignness of crime is not reserved for foreigners but is also applied to citizens whose crimes or abject poverty made them to be collectively seen as a 'blot' or 'stain' on an otherwise immaculate national conscience. Hence, criminals and the poor from the same dominant race and nationality were frequently categorised as "savages" or "semi-savages" with a "very low order of intellect and a degradation of the natural affections to something little better than animal instincts.'

The identification of black people with criminality started in the late 1940s and early 1950s with emphasis on issues of sexuality and miscegenation, this gave way to concerns about a 'flood' of 'illegal' immigrants in the 1960s. In the 1970s, the dominant label of 'black criminality' was that of the 'mugger.' This was quickly replaced in the 1980s with the image of the rioter and in the 1990s the emphasis is on gang warfare or the so-called 'Yardies' (Keith, 1993). Hence, newspaper reports that black pimps were living off the immoral earnings of white women were cited in a secret memo to the cabinet on 30 January 1954 by the then Home Secretary, Sir David Maxwell Fyfe. He carried this propaganda forward to a cabinet meeting during which he argued that popular opinion on immigration was highly negative because of increased crime which was linked to unrestricted immigration.

This was ambivalently supported by Sir Harold Scott, the London Commissioner of police between 1945 and 1953 who linked Cypriots, Maltese and Coloured British subjects with disproportionate

numbers of gambling, living on immoral earnings, and drugs dealing. This was ambivalent because he specifically disagreed with the assumption that increases in criminality was caused by increasing immigration. As far as he was concerned, 'Most of our criminals are home-grown' (Gilroy, 1987a: 79-80).

The home-grown thesis became the focus of widespread attack during the next decade and culminated in the infamous 'River of Blood' speech by Enoch Powell who predicted that in the 1980s 'the black man will hold the whip hand over the white man', causing blood to flow like a river. During the 1970s, the Home Affairs Select Committee on Race Relations and Immigration investigated 'police/immigrant relations and arrived at the ambiguous finding that black people were either less criminal than white people or that they were just as criminal as the latter but not more. The Chief officer from Leeds reported a 'special difficulty' with the high number of 'West Indian girls leaving home and sleeping rough for one or two days at a time' but concluded that in spite of this, prostitution among white women was far more widespread than among black women in Leeds (Gilroy, 1987a: 89).

These views about the overwhelming law-abiding nature of black people was fast giving way to increasing demonisation of black people even before the 1980s of Thatcherism. Hall et al, (1978) have argued that the demonisation of black people was already peaking in the late 1970s, following the mugging panic. The moral panic of the 1970s legitimised the 'law and order' campaign that contributed to the electoral success of Thatcherism. As the 'Party of Law and

Order' consolidated its power, the Metropolitan Police Force came out with unusual statistics to prove that 'mugging' was a predominantly black crime suffered by predominantly white 'victims'. This came in the wake of the widespread criticism against the police for provoking the street protests of the early 1980s through discriminatory policing against black people. The counter offensive by the police and the popular press found unusual allies in the new left who took black poverty as evidence of black crime-proneness and thereby reinforced the image of black people as criminals and of black women as whores.

Pryce (1986: 85-94) shows that some black men help to perpetuate this abusive image of the black woman. Some black men find black women too demanding and unhelpful. They prefer white women who are in better positions to help them financially. Black women have many tales of woe about how black men exploit them sexually and abandon them, how they keep chains of women at a time, and how black women admire white men because they are more faithful to white women. But this picture is not representative of the relationships between black women and black men since it seems to characterise only those that Pryce called the hustlers.

Moreover, Pryce confessed that he did not attempt to study how black women were coping with conditions of internal colonialism because he felt that a black woman would study that better. His generalisation on the nature of the relationships between black men and black women is contradicted by such a study by black women (Bryan, et al, 1985) which shows that black men and black women

struggle together against the oppressive conditions of internal colonialism, a 'survival' technique which Pryce ignored by not looking critically at the criminal justice system. The position of the present thesis is also a generalisation like that of Pryce but whereas the generalisation here derives from a conscious effort to study black women in comparison with black men, Pryce studied only black men and apologised in his appendix for not covering black women and yet he made very serious claims about them.

Pryce argues that 'the exploitative element of 'survival', so integral to the psychology of hustling, has come to be the dominant trait characterising the relationships' between black pimps and white women but he did not say whether there are white pimps too and if so, how they relate with black women and white women. He simply states that some hustlers pimp white women to earn money with which to maintain their black lovers in 'relative idleness.' Such black women do not seem to question the morality of being supported on money earned by white women. But when the pimp associates with a black prostitute, they feel threatened and attack her violently, resulting in arrests and court appearances. (Pryce, 1986: 80-81).

This helps to promote the myth that crimes committed by blacks against other blacks (and in this case, by black women against other black women) are the greatest threat to the black community. Reacting to official statistics published by Ebony magazine to demonstrate that more blacks are killed by other blacks in one year in America than were killed in the nine years of the Vietnam war,

Headley (1983: 51) argues that if this is compared with institutionalised violence against blacks, it will become insignificant and also be understandable as a consequence of the latter.

Such institutional violence is conducted through the colonial practice of collective victimisation of poor black men and women by which the crime problem becomes localised in the inner-city 'colonies' of sizeable black settlement. For example, the Institute of Race Relations (IRR, 1987) documents evidence of special police operations which hold poor black residents of the inner cities suspect. This originated from a 'moral panic' in Britain as early as the 1950s, the 'colony' came 'to be identified with a particular range of petty crimes, of which the most common were brothel-keeping, living off immoral earnings, and drug-pushing.' (Hall et al, 1978: 352).

It is clear from this policing focus that black women were still seen as bad women who must be policed to check mixing with white people, illegitimacy, prostitution, and drug trafficking. The failure of special police squads, targeted at the internal colonies, to stamp out the unwanted activities goes to show that '... it is not a policing problem; soaring street crime is caused by widespread alienation of West Indian youth from white society.' (Hall et al, 1978: 331). This sounds like the simplistic positivism of left realists but unlike them, Hall et al critically analysed the 'amplification' techniques by which 'crime' figures are used by the police to justify their special focus on black youth, resulting in the victimisation of innocent people. The policing of prostitution also affects poor white women who inhabit

the inner cities but the policing of street crimes, which is focused on poor young black men also expose black women to indirect surveillance due to their proximity to black men.

This shows that the problems of black women are similar in some ways but different in many respects compared to the problems facing white women and black men. Hall et al, (1978: 369) loosely compared the struggles of blacks and women and found that they are both sectors of the general class struggle. By so doing, they made the familiar mistake of defining black women out of existence. It is either you are in the black sector or you are in the women sector of the working class. The fact that black women are struggling in both sectors at once was not worth mentioning by Hall et al in their comparison of struggles but it is crucial in understanding what they saw as 'aligning sectoral struggles with a more general class struggle.' (Ibid.).

The struggles of black women who resist racial discrimination and demand justice and fair play have been documented in Bryan et al, (1985). It contains records of resistance against discrimination in work places and collective agitation by organisations like the Black Women's Group which picketed police stations to demand fair play for detained black men and women.

Conclusion

This section has tried to argue that, in some cases, black women are treated differently from black men and white women and in some

other cases, they are treated similarly. The problems facing black women appear different because they are relatively affected by the special police focus on the black community as well as by the predatory survival strategies of black hustlers. White women are relatively safe from the former, but share the latter to some extent. Black men are relatively free from the latter but are more closely affected by the former. Although the informal victimisation of black women (by hustlers and employers, for example) does not seem to involve the criminal justice system, the formal/informal dichotomy of victimisation breaks down when it is recognised that the informal victimisation of black women sometimes exposes them to encounters with the formal criminal justice system as 'victims' or as suspects and defendants.

The next session provides empirical evidence of the problems facing black women in the criminal justice system and how organisations of black women are tackling such problems. There is no attempt to measure the extent of the problems that face black women compared to black men and white women. What has been done in the next session is an attempt to understand the nature of such problems with a view to clarifying the features of Victimisation-As-Mere-Punishment (VAMP) and Victimisation-In-Punishment (VIP). However, such theoretical clarifications will largely wait until section three.

Section II

Criminal Justice and Black Women

Introduction

The previous section ended with a focus on the internal colonies of England and the present section takes off from there by looking more closely at the problems posed for black women and people like them by the criminal justice system in the internal colonies of London. This section presents evidence of the problems which face black women in the criminal justice system. The evidence is mainly from London but analogous evidence from other internal colonies is brought in where necessary.

The sources of the evidence were both documentary and observational. The documentary sources included official and unofficial reports and publications. The observational evidence was information provided by individuals and groups and the personal observations of the present researcher during the fieldwork. For a detailed account of the individuals and groups who provided information and how the fieldwork was conducted, refer back to the concluding parts of section 2.3.

Chapter Four:

Black Women and Policing

Introduction

During the fieldwork, there was no attempt to directly observe police behaviour towards black people in the same way that court appearances of defendants were observed because a lot more is known about police behaviour than about problems facing defendants and how they cope with such. An indirect approach was adopted for the assessment of the impact of policing on black women. This involved participant observation at the meetings of the Hackney Community Defence Association and the meetings of the 'Policing and Sentencing' committee of the Society of Black Lawyers. Those meetings indirectly provided insights to the problems that faced black people in the criminal justice system in general and policing in particular.

However, given that these groups were interest groups and therefore, might not be expected to give a balanced or impartial view of the issues, the observations and pieces of information that they provided were examined against the background of existing relevant research and publications. What is presented in this chapter is the reconstruction of the observations and available information to give a general idea of how the construction of 'evidence' and 'suspects' by the police is linked with the victimisation of innocent people in the

name of law and order (Leng, et al, 1992; McConville et al, 1991; Keith, 1993 and Gilroy, 1987a, 1987b).

4.1 The Construction of Criminal Categories

> 'Black people are ... on the wrong end of the rough/respectable, non-deserving continuum of the working class. They are identified as the new "dangerous classes". A false link has been made in the mind of the public, between crime and ethnicity. This clearly has its roots in the tradition of white, mainland British xenophobia. The effects of this is felt by the black population, and is often left out of crime surveys' (Brake and Hale, 1992: 91).

This section attempts to affirm the above statement by identifying the key elements in the mythical mental linkages between crime and the politics of race, gender and class which Mike Brake and many others have struggled to demystify. This is a critical tribute to Brake who died of cancer in 1992 shortly after completing the above-cited work with Hale as a tribute to another critical criminologist, Steven Box, who also died of cancer.

A possible criticism to be levelled against Brake is that while he made connections between conservative criminology and the conservative policies of Thatcherism, he tended to lump black people together with the 'working classes' as if black people do not have variable class relations. However, such a criticism would not be fair especially since the above epigraph, taken from his posthumously published book, refers to a 'false link' being made by the public and therefore recognises that black people are more complex than

popular stereotypes would presume. A proper tribute to Brake would be the deepening of his class-race-gender awareness in theory and in practice.

The aim of this section is to illustrate a small part of Brake's critiques of both left and right 'realist' positions around individual responsibility for crime and psycho-biological determinism versus authoritarian welfare populism and socio-economic determinism. This section will demonstrate that the self-professed realists of the right are not realistic enough for advocating individual responsibility while encouraging the victimisation of whole groups and categories of people, many of who happen to be innocent. Similarly, the section will demonstrate to what extent the self-styled left realists have left realism by focusing almost exclusively on street crimes contrary to the defence of the poor by Brake, Box and many others on the critical left who wonder why the majority of the poor are overwhelmingly law-abiding while many of the rich get away with murder and most prisoners are poor.

The self-professed left realists could retort that they too are committed to the defence of the poor but from the point of view of taking the crimes of poor people against poor people seriously at the level of working class politics. This is a valid concern that Brake would share for while he highlighted what was left out of crime surveys, he never implied that such surveys were false, he only emphasised that such surveys - upon which left realism draws in the form of local crime surveys - are inadequate to the extent that they leave out the politics of oppressive racialisation in the criminal

justice system and society and thereby ignore both the crimes of the powerful against the poor and the resistance of the poor against oppression in their ahistorical accounts of 'processes which take place at no place, always in the present' (Keith, 1993: 17). For a critical account of the possible links between the new left and the new right, see Gilroy (1987b), Gilroy and Sim, (1987). See also Scraton, (1990) for a critique of left-realists' exaggerations of the differences between themselves and those they styled left idealists.

By focusing on what Stuart Hall (1980b) would call the dialectical process of 'encoding/decoding' of a specific policy statement, the present section does not assume that crime is a fiction constructed by the authoritarian state for the oppression of the marginalised or that crime can only be deconstructed in order to be solved. As Hall (1980b: 134) rightly argued, what is being offered here is a 'dominant, not determined' interpretation of a historical event, bearing in mind that 'it is always possible to order, classify, assign and decode an event within more than one 'mapping''. Moreover, like Hall, the present writer believes that the interpretations being offered here are the 'preferred' or hegemonic interpretations because they 'have the institutional/political/ideological order imprinted in them and have themselves become institutionalised'. Readers are invited to draw their own conclusions or to read the following message in different ways, some of which are anticipated and responded to in passing within the present reading.

A copy of an URGENT NEIGHBOURHOOD WATCH MESSAGE issued by the Redland Police of Bristol, dated 27 August 1991 was

received by the present researcher through the Society of Black Lawyers who claim that the police have since apologised for the message. It is essential to include a copy of the notice in the form it was received so that any reader can interpret it independently with the help of the original emphases (See Appendix B)[22]

This notice appears to be an openly racist stereotyping and discriminatory targeting of black people by the police. Note how the focus of the Message becomes increasingly generalised from the 'Three Minute Gang' to 'Afro Caribbean Males' and then to any 'Afro Caribbean' or any 'group of Afro Caribbeans'. The fact that the gang was said to be operating 'AGAIN' suggests that they have operated before. In that case, the members might be known if some of them had been arrested before.

More probably, however, the members were not known at all and, perhaps, that was why the fifth message is so all-embracing; it could be anybody who is black. This collective targeting and its assumption of guilt by association suggest a special policing of black people because item five cannot be read in isolation from the earlier four and also because it is strategically or emphatically located both at the line in front of which the panicky word 'crime' is gigantically printed and at the point of the call to dial 999. The suspect group seems to be the whole of black people in the area who may be driving, walking, or making white people uneasy, even because of their appearance or clothing.

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[22] Source: Society of Black Lawyers, London, during fieldwork.

The present writer has never seen any evidence that the police target groups of white males with similar notices that could make anybody 'feel uneasy about the way either one or a group of (white people) are behaving.' The only such policing that affects mainly white people is the policing of travellers and joy-riding but the fact that travellers and joy-riders are mostly white is never mentioned in anti-traveller or anti-joy-riding propaganda, even when efforts are made to distinguish new age travellers from the more respectable Gypsies (see 'United We're Nicked' - the critical supplement on the 1994 Criminal Justice and Public Order Bill co-published by the NewStatesman & Society, 24 June 1994, and Civil Liberties Organisations opposing the bill).

Since the leaflet was a neighbourhood watch message, there is no doubt that it was issued or authorised by the police. It even carried the police seal of authority and stated that it is a 'message from Redland Police'. Neighbourhood Watch schemes are relatively autonomous from the police but, like any other aspect of multi-agency policing, they were initiated by top police officers in mainly white middle class neighbourhoods in Britain as in the old South Africa and they are expected to be under the control of the police (Brogden and Shearing, 1993). The colonisation of neighbourhood watch schemes by the police is especially true because, while the police generally look at the public as allies in the fight against crime, 'in the police view the public's judgement cannot be relied upon' (McConville and Shepherd, 1992: 161-162). Indeed, a book co-published by the Croom Helm press and the Police Foundation

claims that, 'Neighbourhood Watch schemes provide a convenient and economical way for police to disseminate crime prevention propaganda ...' (Weatheritt, 1986:82).

It is likely that propaganda pieces such as the one above could contribute to racism against black people and result in false alarms, malicious prosecution, and unlawful imprisonment. It is also possible that such criminalization of a defined group could provoke black resistance against being officially stigmatised by the police as members of a 'sub-culture' with a 'substantial criminal fringe' as Joshua, Wallace, and Booth (1983: 54) demonstrate in the case of the 1980 Bristol 'riots'.

This suggestion of racialised difference is strong because the image of community policing which the lithograph representing Neighbourhood Watch on the leaflet appears to show is that of a white police officer and a white family of a man, a woman and a girl, indicating that the 'community' is gendered and racialised in the threatening 'we and them' tones of the editorial of Daily Mail 8 October 1985.[23] Such discourses tend to exclude or marginalise black

[23]'Either they obey the laws of this land where they have taken up residence and accepted both full rights and responsibilities of citizenship, or they must expect the fascist street agitators to call ever more boldly and with ever louder approval for them to 'go back whence they came". This was written in the wake of the killing of PC Keith Blakelock but one of the Tottenham three wrongly convicted of the killing turned out to be a white man, an indication that the racialisation of black people would also affect poor white people adversely to some extent. The tone of this editorial is comparable to that of The Sun 30 September 1985, following what the paper called 'The Shame of Brixton': 'If decent men and women of West Indian origin do not maintain peace then there is a real danger that their communities will be permanently alienated.' Van Dijk (1993: 268) has correctly pointed out that, 'The main ideological point of "riot" coverage is their explanation in terms of the alleged criminal character and violence of blacks, and the exoneration of white institutions (government, police, and so on) from blame for the black revolt. This point is embedded in a broader ideological structure of nationalist racism in which minorities,

people. Certainly, the police leaflet was not meant for the gaze or consumption of the black community and it may have been designed to be hidden from black people in order to maximise its effectiveness.

This Neighbourhood Watch leaflet is similar to what Chigwada (1991:136) saw as, 'A glaring example of the racist stereotyping and assumptions made about black people by the police ....' She was referring to the leaflet that was distributed in 1987 to neighbourhood watch schemes and post offices in Wombourne, Staffordshire. Like the leaflet referred to above, it was written on police note paper and the message was reported by The Times, 13 October 1987) as follows: 'I would like sightings of blacks and coloured and their vehicle numbers. No prejudice. Intelligence gained that they are coming out of the city and committing crime (namely, house burglary)'. The local Labour Party denounced the leaflet as being 'overtly racist' and the Staffordshire police apologised, saying that the leaflet should never have been distributed (ibid) and that it 'was never intended to be racist' The Guardian, 13 October 1987).

Notice that the police emphasised that there was 'no prejudice' in the offensive leaflet and stated in their apology that it was never intended to be racist. Notice also that their apology relates to the distribution of the leaflet and not to the holding of the underlying

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immigrants, immigration and the multicultural society are associated with negative qualifications, and white British people, society, and culture are presented as positive and "under attack" by the aliens'.

assumptions that black people are more likely to commit certain crimes.

As far as the police were concerned, the leaflet was based on what police 'intelligence gathered' and presumably, there would have been nothing wrong with the information if it were not publicised as the guiding assumption of a specific police surveillance. In other words, When the Chief of Scotland's largest police force, Mr Leslie Sharp, 'joked' that if a robot cricket umpire was painted black, it would 'be no good because it would start smoking pot, mugging old ladies and robbing shops' (The Voice, 24 March 1992), he was saying something that seemed to be a principle of 'internal colonial policing' (Cashmore and Mclaughlin, 1991) or what the Institute of Race Relations (1987) called Policing Against Black People. Moreover, if senior police officers could hold such views, the attitudes of the beat officers can be expected to be even worse, given their greater discretionary powers and this expectation has been confirmed by numerous researchers (see McConville and Shepherd, 1992; IRR, 1987; Keith, 1993, for example).

Ian Taylor (1994) is critical of 'critically-minded social scientists' (with the exception of Betsy Stanko) for what he called their 'dismissive deconstruction' of the fear of crime revealed by opinion polls and local newspaper crime reports 'as contemporary instances of 'moral panics''. Such a critique would be unfair to Mike Brake, Maureen Cain, Steve Box, Penny Green, Paul Gilroy, Phil Scraton, Stuart Hall, Sandra Walklate and most critical criminologists who realistically emphasise, like Ian Taylor himself, that the (Tory)

Party of Law and Order is losing the fight against crime while successfully marginalising further those who are relatively powerless in society.

To say that leaflets like the one being 'deconstructed' here could lead to false accusations of innocent black people is not to deny that crime is on the rise or that the fear of crime is baseless. The claim being made here is that the fear of crime has been falsely conflated with the fear of black people and that this link is unfair to most people of whatever 'race'. This point is supported by Taylor (1994) when he demonstrated that the demonisation of Moss Side (which is 30% Afro-Caribbean) as the source of the crime problem in Manchester is largely false given the generalisability of what former Metropolitan Police Commissioner, Kenneth Newman, called 'symbolic locations' (see Gilroy and Sim, 1987: 100) to 'definitions placed on particular buildings and territorial spaces in the local neighbourhood, and also in the wider conurbation of Greater Manchester'. However, the generalisability of 'symbolic locations' should not result in the reduction of racialisation to deprivation in a way that could conceal or distort the special history of black people and the politics of law and order.

Besides, given the extensive use of publicity by the police with the active support of the mass media, some public concerns would obviously be constructions or reconstructions of problems already identified, magnified, and publicised by the police. Apart from the morality of such commercial games, it may be asked if they yield the desired results. Weatheritt (1986:82) indirectly pointed out an

aspect of the commercialisation of policing by noting that 'Neighbourhood Watch is ... a good way of increasing the market for the standard products of physical crime prevention.' A good way of increasing the consumption of security gadgets is not necessarily a good way to increase the prevention of crime. In other words, it is possible for the market in such gadgets to boom at times of high crime waves.

The present thesis will not go into the debate around privatisation. It is sufficient to note that the analogy with commercialisation suggests to the present research that the targeting of black people by the police does not have to develop from an anti black world view but that an anti black world view could and often does develop from such institutionally discriminatory practices that are found in major social institutions. This idea is more aptly captured by Hall et al (1978) with the concept of the amplification of deviance by the police and the mass media. To say that black crime is amplified is not to say that all black people are innocent saints who are unjustly criminalised but to point out that black people are no more and no less criminal than other categories of people in an authoritarian state like Britain. It is in this sense that Gilroy (1987b: 118) talks about 'The Myth of Black Criminality'. Brake and Hale (1992: 91) agree with Gilroy by stating that black people are now unfairly 'identified as the new 'dangerous classes."

It is important to note here that the 'monetization' of justice which Young (1987) observed goes beyond the reliance on fines as means of punishment and the buying and selling of legal and judicial services

which Adam Smith traced (MacCormick, 1981), to include the buying and selling of the idea of what categories of people are criminal or respectable. This is similar to the moral pictures exhibited in 'the gallery of folk types - heroes and saints, as well as fools, villains and devils' which according to Cohen (1972: 17) are 'publicised not just in oral-tradition and face-to-face contact but to much larger audience and with much greater dramatic resources.' What this suggests is that the publicity materials for policing that appear to portray overt racism at first sight could indeed be part of normal police work as well. If this is the case, and Leng et al (1992:119) argue that it is widely so, then racism could be said to be institutionalised in the normal ways the police do their work.

For instance, the Institute of Race Relations has argued that part of the reasons why black people are over-represented in the arrest figures of the police is that: 'Clearly, there has been a shift in policy in the 1980s which selects out inner-city areas, with their high concentration of unemployed black youth, for a particular form of policing- with its own policing assumptions, special tactics and specialist squads' (IRR, 1987: 1-2). The Institute referred to the tactic of 'targeting' which was applied to terrorists in Northern Ireland. It operates by isolating certain areas for closer police operational focus by means of surveillance, through paid informants, on 'selected individuals and groups and on what were termed 'symbolic locations' (Ibid, p. 2).

What the Institute of Race Relations did not indicate is that such a tactic was not always tacit but was also colourfully advertised for a

mass appeal that could render the paying of informants more or less redundant. The marketing techniques of publicity could be used by the police to manipulate the desire for individual security and encourage people to look for what the police have already constructed as clues to suspects. It should be pointed out here that like most marketing techniques, police publicity does not appeal to all sections of the public in similar ways. Some members of the public show more support for the police than others. The Institute of Race Relations details ways by which sections of the press serve the police with what Mr Justice Thomas of the U.S. Supreme Court opportunistically popularised as 'hi-tech lynching' of black people in their campaign for more stringent surveillance on the black community (IRR, 1987:51-55).

Similarly, Ericson, et al (1989;79) have argued that in Canada, 'For the accused publicity can be a form of punishment, with lingering stigmatic effects, even if she is found not guilty.' Two observations that could be made about 'the punishment of publicity' are that it is not punishment but what Brake and Hale (1992: 16) call 'invisible victimisation' or what the present writer called Victimisation As Punishment (Agozino, 1991). This is because it is not only the accused that are subjected to such negative publicity and that the punishment of publicity is not punishment but VAMP when the targets are innocent. Large groups of people are often stigmatised as suspects long before some of their members become accused. Moreover, even for those who are eventually found guilty, punitive publicity before conviction is a form of what we have called VIP.

It is likely that the more closely any group of people are watched, the greater the chances of innocent members of that group to be proceeded against mistakenly or maliciously. Apart from people who are released after wrongful conviction, the high proportion of black people released from detention without proceedings or discharged and acquitted shows that black people are more readily arrested when there is little ground for suspicion. A high arrest rate does not necessarily mean a high crime rate since it is not the case that all those arrested are necessarily criminal or that those not arrested are necessarily law-abiding. However, discharge and acquittal are not proofs of innocence but also of the adequacy of evidence and of a benefit of doubt, a benefit that cannot be expected to be enjoyed equally by the mainstream and by demonised minorities.

It could also be said that criminal justice personnel favour black people and that that is the reason why many black people are discharged or acquitted but such a suggestion would be wrong because it is not a favour to be arrested and then discharged without conviction and also because closer police surveillance is not a way to demonstrate fairness to black people. Moreover, to say that black people have relatively higher acquittal rate because the criminal justice system is relatively fair to them is to ignore the struggles in the black community and in courts against what could be called victimisation-as-policing.

The concern of the black community is very real and increasingly so given the proposal under Clause 55 of the 1994 Criminal Justice and Public Order Bill to revive the racist SUS law by authorising the

police to stop and search all vehicles and pedestrians in certain localities without giving or having any reason or justification to do so. The Bill also plans to set up prisons for 12-14 year olds, restrict the right to bail, abolish the right to silence, empower the police to take body samples without consent, and increase the fine for the possession of cannabis from £500 to £2,500, among other Leviathan measures (New Statesman & Society, June 1994).

The conclusion that could be drawn in this section is that Brake and Hale (1992) were right in pointing out that there are links between conservative economic policies of privatisation and the rise of the law and order society. They rightly pointed out that the concern of conservative politicians shifted from crime-reduction to plain retributivism or punishment for the sake of punishment. What this section has tried to demonstrate is that the conservative philosophy of individual freedom in a hypothetical market place has not always been put into practice by law and order officials because it is groups and categories, rather than individuals, who are targeted by the control culture. As a result of the continuation of the assumption of guilt by association or collective responsibility which is an essential element of moral panics, the legal ethic of innocence until proven otherwise seems to have been reversed especially for people marginalised on the bases of race-class-gender relations.

What this means is that the conservative propaganda that poverty does not necessarily cause crime could be true in the critical sense that 'the rich get richer and the poor get prison' (as Steve Box would say), not necessarily because they are more criminal but also

because they are too poor to effectively challenge their visible and 'invisible victimisation' by the agents of the law and order society. Given the adoption of the law and order ideology by Tony Blair as a Labour Party key electoral issue, Brake and Hale are right in pointing out how naive the self-styled left realists are for believing that the next Labour government would necessarily be the answer to the deepening crises of hegemony (Hall, 1988) which gave rise to the law and order society.

However, it must be said that Blair's concern with law and order is completely different from that of Thatcher because he also emphasises the need to take the causes of crime seriously. Moreover, this is not the first time that the Labour Party prioritised crime as a policy issue. In 1964, the party published the report of the study group chaired by Lord Longford, Crime: A Challenge to Us All, which again differs both from Tory claims that only the Conservatives are the Law and Order Party and from Blair's anti-consensus claim that only Labour can call itself a party of law and order with any conviction because Labour is committed to taking the causes of crime as seriously as it takes crime. The problem is that Blair agrees with left realism that social deprivation causes crime. This indicates that he is not taking the crimes of the privileged seriously enough. Secondly, he seems to evade the issue that social deprivation needs to be tackled, not just because it causes crime but more importantly, because it is criminally negligent to socially deprive people in the midst of plenty and turn round to criminalise or victimise the deprived innocents.

4.2 Victimisation as Policing

The police could argue that they do not have the resources with which to watch everywhere as intensively as they do the inner city 'colonies'. They could even argue that they saturate the inner cities in order to protect black people against racist attacks as Kinsey, Lea and Young (1986: 123) assumed for the sake of argument. The present research will not go into the debate around the adequacy of police response to racist attacks. The police are expected by the public and by the State to operate reactively on information and complaints from concerned members of the public and to act proactively, using their own discretion.

Contrary to the definition of 'targeting' by Kinsey, Lea and Young (1986: 151) as 'the observation and tracking of particular known offenders', available evidence shows that individual offenders are not always known and that targeting usually focuses on groups and categories, most members of which may be innocent, while certain known offenders may not even be targeted at all. The police fail to restrict their special operations to individuals whom they have any reason to suspect and they also proactively construct some of the concerns that the public later bring as complaints.

The Handsworth 'riot' Review Panel set up by the West Midlands County Council saw the maltreatment of black women by the police as the immediate precipitating factor for the 9 September 1985 uprising. The panel concluded that, 'large numbers of the people of Handsworth have a view of the police which accepts that the assault

and intimidation of black women is consistent (with) general police practice' (IRR, 1987: 20). This conclusion was supported by Solomos and Rackett (1991;48) who reported the allegation that the assault on a black woman by the police during an argument with a black man over a parking ticket was the 'spark' for the 'tinder ... of deteriorating relations between young people, especially blacks, and the police ...' in Handsworth.

Similarly, the death of a black woman, see case 2 below, during a police raid at her house precipitated the Broadwater Farms uprising during which PC Keith Blakelock was killed and following which two black men and one white man were convicted of murder. Although the inquest into the death of Mrs Jarett returned a verdict of accidental death, Chadwick and Scraton (1987) would say that the verdict was part of the discourse that they identified as speaking ill of the dead. The 'Tottenham Three' have now been cleared of the charges. What these cases illustrate is that attacks on black women by the police could have implications for black men (and for poor white people who share some of the problems facing black people) and vice versa.

The allegation of police victimisation of innocent black women can be illustrated with the following cases documented by the Institute of Race Relations. Note that what these cases show is a series of accusations or allegations from the point of view of the victimised. They do not prove that these accusations are true. In fact, some of the allegations were rejected as false by juries. However, juries are

politicised and often racialised in the criminal justice system[24] and so the rejection of the complaints and allegations by juries, as in the case of the acquittal of the police officers who savagely beat Rodney King with clubs and shot him twice with a stun gun in Los Angeles, is more of a cause for concern than a reason to pat the police on the back. The differences between American politics of race and jury trials and those of England, not withstanding, a brief comment on the Rodney King trials is in order here because any similarities between the two systems of politicisation would help us to understand the specifically English politics better.

Smith (1994) used this case to illustrate a hypothetical scenario which starts with black people committing an offence, followed by police attempts to arrest, a possible resistance by black offenders who fear police partiality, and then by police brutality, black riots and more police arrests. This is supposed to be part of the explanation for the over-representation of black people in the criminal justice system. However, Smith's hypothetical scenario is faulty in two important respects. First of all, it is not true that Rodney King committed any traffic offence, he was not tried for any such offence and the officers maintained that they simply suspected him of over-speeding on drugs. Similarly, most black people or any other category of people who are arrested are not offenders but suspects who must be assumed to be innocent until proven otherwise.

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[24] See Gordon, 1992 for an analysis of black struggles to be tried by juries that are truly their peers and the establishment view that black people are unfit to be jury members in cases involving black defendants.

Secondly, it is not true that uprisings like the Los Angeles 'riots' are simply cases of 'a huge number of offences (being) committed by black people in protest at the verdict' (Smith, 1994: 1048). The uprising was by people who were black and people who were not even if it was predominantly black. The protest against police brutality took mainly non-criminal forms like prayers in black churches and speeches or newspaper articles by political activists. In other words, it is important to distinguish between protests against police criminality and jury complacency from crimes that might be committed by a few opportunists under the cover of such protests. The present writer believes that the majority of the people who 'riot' do not engage in criminal activities except in so far as 'rioting' itself is a criminalised activity.

The four police officers who were unambiguously captured on amateur video beating Rodney King were initially acquitted by an all-white jury. The subsequent trial of the same officers for civil rights violations at the Federal level resulted in the jury acquitting two of them and finding the Sergeant in charge of the operation and the officer who delivered most of the fifty-six blows guilty of violating the civil rights of Rodney King. The two officers appealed against their convictions and the court of appeal upheld the conviction and also ruled that they should be given more serious sentences. By making it a civil rights case, the Federal court emphasised a widely shared belief that the officers discriminated against Rodney King on the basis of his race but such a presentation ignored the gender and minimised the class aspects of the actions of

the police officers. The present writer believes that the gender of Rodney King operated in the trivialisation of the police brutality by the all-white jury that acquitted the aggressors and by the Federal court that acquitted two of them and gave light sentences to the other two. Gender discrimination is not something that happens only to women.

There is little doubt that if Rodney King was a woman, he might not have been given so many blows and stun gun shots just to be arrested for overspeeding. No female member of the jury would attempt to defend the indefensible with the excuse that the victimised was in control of the beating. The ideology of masculinity makes it possible for black men to be seen as strong and macho, able to fight their way through and absorb hard knocks with the deadly smile of a Tyson. To quote Jesse Jackson (The Guardian), 5 May 1992), 'their primary offence was to be young, strong and black.'

This is not to suggest that black women, in particular, and poor women, in general, face less difficult problems than black men from the police. The gender of Rodney King is not just his sex as a man but, as the defence lawyers argued in favour of the police men, the fact that he was seen as 'a drug crazed giant'. This view articulates the macho strength of a giant with the drug culture which police officers closely identify with blackness. These were most likely also articulated with the working class or 'underclass' nature of the neighbourhood of South Central Los Angeles to produce the brutality for which the victimised was later to be awarded nearly four million dollars in damages.

The differences in the problems facing black men and black women are not only in terms of the degree of oppression but also in terms of the kinds of oppression that they are subjected to. This suggests that while a black woman might not be subdued with 56 blows from the police club, she might suffer the humiliation of being insulted as a sex object. Again, this is not to say that the stereotypically 'strong' black women have not been beaten and even killed by the police. The point is simply that gender discrimination affects black men too, but in very specific ways that are not identical with gender discrimination against black women.

All the same, the present research will use cases like that of Rodney King and the ones to be itemised shortly merely as illustrations of victimisation as perceived by those who suffered it rather than as evidence against the police. This is because very few of the narratives reflect the points of view of the police and also because the present research is not a court trial. In a sense, the whole research should be seen as a study of perceptions of the problems that face black women and comparable groups in the criminal justice system. It is true that some of the illustrations provided refer to black men and not to black women but the following cases will demonstrate that even when black men are the focus of action by the police, black women are often directly affected as well[25]

> 1 In February 1984 Linda Williams Lodged an official complaint after the police arrived at her Peckham home and demanded to see her son, Errol. Mrs Williams says

[25] Except for a few lines that are paraphrases, these are direct quotes of the descriptions offered by the victimised as published by the IRR

that when she asked to see their search warrant she was dragged downstairs by the hair and, while she was on the floor, she was repeatedly kicked in the back by one police officer while another stood on her legs. Mrs Williams was pregnant at that time.

2 On 5 October 1986, Floyd Jarett was stopped on suspicion that he stole his own car. While in detention, the police took his key to go and search his Tottenham home for stolen goods. They entered the room without permission and when Floyds's mother asked how they got in, they said that the door was open. She asked for a search warrant and one of them pushed her aside. She fell and broke a table and lay unconscious. The four police men ignored her and conducted the search but found nothing. Her daughter called the ambulance but Mrs Jarret died on reaching the hospital. The inquest returned a verdict of accidental death and the officers were not even charged.

3 On 28 September 1985 a team of officers went to the home of Mrs Cherry Groce in Brixton, South London, to arrest her son, Michael, who was wanted for armed robbery. In fact, Michael Groce no longer lived there. The officers smashed down the door with a sledge-hammer and then an inspector rushed in shouting 'armed police'. With his finger on the trigger, Mrs Groce said, the officer suddenly rushed at her, pointing a gun at her. She tried to run back but he shot her. She is now paralysed and confined to a wheelchair.

4 In April 1983 an Instant Response Unit of the police arrested a black youth, Emile Foakes, and accused him of taunting a group of white youths. According to him, the police grabbed him and called him a 'black nigger'. When his mother, Mrs Esme Baker, attempted to intervene, she was forced into the van, her dress was torn open and her breasts exposed. An officer prodded her in the breasts with a truncheon and said; 'I didn't know a nigger woman had breasts.' Both Emile and his mother were acquitted of the charges of threatening behaviour and of assaulting the police

5 North Kensington Law Centre (1982) documented this one in their report, Police and the Nottinghill Community. At a bus stop, the police were said to have accused a black

man of loitering with intent to pick pockets. When he objected, the police accused him of stealing his own trousers because they looked too big for him. A black woman who was present called out that she would be a witness for him even though she did not know him. At that point, the police called for reinforcement and both the man and the woman were charged with assault. On the way to the van, according to the woman, she was deliberately tripped to the ground and one of the officers stamped on her groin.

6 In June 1986, two police officers tricked their way into Mrs Sheila Maddix's flat in West Norwood, South London by claiming that they were council estate officers. Then they admitted that they were police officers without showing any identification or search warrant. They said they had come to question her 21 year-old son, Paul, about a rape. The family was prepared to co-operate and Paul went into his room to get dressed. Then 25 more officers stormed the house, pushed Mrs Maddix out of the way and handled her so roughly that she had to go to hospital for treatment. Paul was taken away, questioned for four hours and released without any charge (IRR, 1987: 16-26).

Furthermore, while reconstructing an attack on the Pembury estate of Hackney, The Sun, Thursday, 4 July 1991, published a statement that, 'A suspected crack factory was busted in a commando-style raid, by nearly a hundred police ...' But what did the police find in the suspected crack factory? Out of the 13 people arrested, none was charged with manufacturing or selling drugs, four were charged with public order offences just for being present during the raid, one man was charged with driving without insurance and another was handed over to immigration officials. One other man was charged with stealing and illegal use of a library card! Only six people were charged with the possession of small quantities of drugs (Panther, Summer 1991, No 4).

The way these arrest statistics were constructed by the police was narrated by one affected black woman, Lucille Lawrence, aged 49. According to Mrs Lawrence, the officers sprayed gas into her face as she tried to close her windows. Then they smashed through her door with a sledge hammer. They pushed her and as she fell back, they ran into the sitting room, into the bedroom, and into the bathroom. Then they took her household, including a toddler, into the kitchen with one policeman at the door and a policewoman guarding the sink. They were refused entry into the bedroom, sitting room, or the toilet which Mrs Lawrence specifically demanded to use. According to her, 'They closed the doors- we don't know what they planted inside there.' After ripping the whole flat apart, they strip searched her daughter and his son's girl-friend in the toilet. Then five of the officers fell on her son, Trevor, boxed him and sprawled him on the floor just to handcuff him (Panther) Summer 1991).

This raid was the subject of a campaign by the Hackney Community Defence Association during the fieldwork for the present research. It involved a black man who returned to the estate where he lived and was arrested by the police who had earlier raided the estate for drugs and fire arms. His daughter came out to ask why he was being arrested and she too was arrested. His grand daughter came to find out what her grand father and her aunt had done and she too was arrested. The grand daughter was later on released without charges, then re-arrested and charged with common assault against the police, and finally, all the charges against her were dropped. She now appeared scared to go forward to the police and testify for her grand father and her aunt who were charged with causing grievous

bodily harm and actual bodily harm, respectively. Both charges were later reduced to actual bodily harm and common assault, respectively.

According to the man's daughter, 19 year old Claudia McCalla who received bruises on her face and arms, her father had told the officers that he was just returning from a course, that he was tired and that he was eager to enter his flat because he was worried about his family. The officers reportedly said that he was not going anywhere and started to hurt him. That was when Claudia told them, 'Leave him, he's my dad. He lives at number 2, we all live there.' Their response was to push and grab her by the neck and by the legs. People were shouting, 'Stop holding her by the neck, you're going to kill her.' They put her on the ground and cuffed her hands behind her back. While still on the ground, one kneeled on her back and another pushed his knuckles into her head, pushing her face against the ground. In the van, they continued pushing her head against the wall. She protested saying, 'You can take your hands off me now. I'm hand-cuffed, I'm not going anywhere, I'm not a dog.' They replied, 'You are a dog 'cause you're acting like one .... Don't think we're going to treat you any different because you're a girl.' Treating her like a man, perhaps, included charging her with assaulting four police officers at once!

The HCDA condemned this raid on the estate as an instance of 'fire brigade policing'. They protested that black people were specially targeted during the raid with the result that many innocent people got victimised and brutalised by the police. On 10 September 1991,

the Mayor of Hackney wrote to the HCDA to warn them never to send their newsletter, Community Defence to him again because, 'Like 99% of the residents', he was fully in support of the police in their efforts to rid the community of drug dealers and armed robbers. He also threatened that an association like theirs that received council funding should not specialise in attacking the police.

The association resolved to send an open reply to the Mayor through the press and through posters, saying that even if it was only one per cent of the community that were being unjustly harassed and criminalised by the police, they deserved support and defence. They pointed out that the police had even written a letter to every flat on the estate apologising for '... any inconvenience this evening's police operation may have caused .... We have used a large number of police officers in order to protect...the residents of the estate ...' However, the HCDA believed that the residents appeared to need more protection against the police, given the provocative ways that they operated.

Illustrations are not strong proofs because they could be challenged by different illustrations, especially from the police, to show that these instances are fabricated, or that they are not racist, or that they are not only racist because they are also shared by white women and by poor men of all racial groups. These illustrations serve to indicate the nature of the problem as it affects black women and as they and their organisations perceive the problems rather than as proof of the extent of the problem. However, there is reason

to believe that these instances of perceived Victimisation-As-Mere-Punishment (VAMP) are only a tip of the iceberg even as they affect black women. The informants claimed that such incidents were common but that many of them were not publicised because many people would be glad if the police dropped charges against them and would not turn round to accuse the police.

This was implicitly denied, however, by Mr Benard Taffs, the Chief Superintendent of Hackney and City Road Police Stations, who claimed that his division dealt with about 10,000 custody cases in 1991 and 'only a small percentage resulted in complaints' (The Guardian 6 April 1992). Mr Taffs wrote this to express regrets over the 1989 assault on the 73 year old great grandmother, Marie Burke. It was reported that WPC Tina Martin, a martial arts expert, violently pushed the St. Lucian-born Marie Burke to the ground when she brought medicine to her bed-ridden 79 year old husband, Mr Edgar Burke, who was being dragged away, half-naked, by the police. Mrs Burke was initially charged with assaulting four police officers and when the charges were dropped, she struggled and won fifty thousand pounds worth of damages awarded by a jury against the Metropolitan Police.

Mr Taffs seemed to be saying that those who did not make formal complaints had nothing to complain about. This was disputed by those who offered information for this research. They claimed that the fear of further victimisation and limitations of access to legal representation were the main reasons why many 'victims' did not make formal complaints against the police. Mr Taffs also asserted

that the assault on Mrs Burke was not racist because the jury threw out any suggestions that that was the case. But instead of alleging that the proportion of complaints were small and that such complaints were not usually against racism as such, it will be more informative to monitor the rate of success of complaints by race, gender, and class.

Such monitoring could come from the Police Complaints Authority but in their 1990 annual report, (PCA, 1991: 22) they stated that they have deliberately kept quiet on racism since they were founded. They said that they now wished to respond to the widespread demand for ethnic monitoring of complaints. Their response was in the form of an excuse that they could not keep such statistics because they lacked the necessary facilities and partly because they were 'totally impartial' and so race and gender were completely irrelevant to their assessment of cases. They also reported that cases that concerned racist behaviour by police officers were few probably because the accusation of racism is very difficult to prove. It requires proof beyond all reasonable doubt at the PCA to prove racial discrimination as a disciplinary offence as if it would be treated as a criminal offence whereas it could be proved on the balance of probabilities in civil cases.

After series of complaints from the Hackney Community Defence Association and from affected individuals, the Police Complaints Authority launched 'Operation Jackpot' in 1991 into allegations of corruption at Stoke Newington police station, Northeast London. Three officers were suspended during the investigation, eight

officers have been transferred to other stations since and the only officer named was Detective Constable Roy Lewandowski who was jailed for 18 months for stealing from the home of a dead man. Crown Counsel Kenneth Aylett told the appeal court that in the light of the material gathered during Operation Jackpot, the Crown did not wish to sustain the convictions of one black woman and three black men who claimed that drugs were planted on them by officers from Stoke Newington station.

The Crown Counsel expected more appeals as the PCA released more material from Operation Jackpot. Already, the Crown Prosecution Service has offered no evidence in 17 drug cases and 17 defendants have been acquitted in 17 other cases. Four more cases were waiting to be heard, seven cases - including the four successful ones - had gone to appeal while 12 civil actions were pending (The Scotsman, 3 March 1993). This suggests that some of the black women and black men who are in prison for drugs offences and who still protest their innocence may be actually suffering VAMP. It is noteworthy that the success of a civil suit against the police does not increase the chances of successful criminal proceedings against the officers concerned.

Judges often strike out such criminal proceedings on the ground that the defendants could no longer face a fair trial given the difficulty in recollecting events that took place a long time ago and given the fact that the prosecution witness would reveal to the jury that he or she had already won a civil suit with damages awarded against the police. This happened in the case of PC David Judd who

was charged with perjury and perverting the course of justice after Rupert Taylor of the Notting Hill Carnival Committee was awarded 60,000 pounds worth of damages for being wrongly accused of possessing drugs that PC Judd allegedly planted on him (The Guardian, 24 November 1993.)

The extent to which the problem of victimisation-as-policing was shared by categories other than black women would indicate the extent to which social relations apart from those of race are also operative in such encounters. In the absence of a comprehensive data on all such cases, ordinal and interval measures of the extent, rates and ratios of victimisation appear impossible. The present thesis is not suggesting that the most important social relations in these encounters of VAMP are either those of race, gender or those of class relations. The suggestion of class as the most crucial social relation in this context is tempting because all the black women who were affected happen to be poor and all the white women, white men and black men likely to be similarly affected are the poor ones. And given also that '... London's black communities, especially their youth, the latest heirs to London's run-down, 'high crime' areas (are the) prime targets (of).'saturation policing' (Jefferson 1990:5), it is likely that poor black women would be victimised in different ways compared to poor white women because of their closer proximity to poor black men. However, the present research believes that the poverty of the people affected cannot be understood without reference to the race and gender relations that affect them.

While these cases do not prove that all black women who get into contact with the police are innocent, they demonstrate that black women could become targets of special policing through their association with suspected black men. This is the familiar colonial police tactic of collective responsibility for crime and guilt by association. Whole communities could be bombarded for attacks on colonial officers by few individuals or groups (whether or not such attacks were excusable as self-defence by the colonised).

It is difficult to say whether victimisation-as-policing was a simple case of transference of colonial policing techniques to the 'internal colonies' of London just as such techniques were said to have been originally transferred to the colonies from the militarised policing of Ireland. For example, Ahire (1991:53) states that,

> 'The training and orientation of the British police was deemed to be unsuitable for services in the colonies. The only appointments made from Britain were of persons who could 'show that they have had military training in the armed forces of the Crown', or that they were ex-officers of the Royal Irish Constabulary (RIC)'.

The argument of a reverse transference from the colonies to the internal colonies has been forcefully put by John Rex (1987:103) who states that

> '... Handsworth is a purpose-built ghetto .... Around the year 1960 it was becoming clear that the population of Birmingham's inner-city wards was becoming increasingly black .... The labour-led Birmingham City Council decided therefore to appoint a Liaison Officer for Coloured People - not, it should be noted, a Race

> Relations Officer to ensure that no citizen had his rights diminished on grounds of race, but a Liaison Officer to maintain liaison with an 'alien element' in the population. To this post it appointed a former colonial policeman, thereby making it clear that the task envisaged was a colonial one, and a policing one.'

This dramatic evidence appears persuasive but it can be doubted on two grounds. First, a retired colonial police officer could take another job without turning it into a colonial or a policing one. Such an officer could become a bus driver, for example, and nothing would make it 'clear' that the duties of such a driver involved colonial and policing tasks. Secondly, it could be argued that not all colonial police officers were racist until their retirement and beyond. As Memmi (1990: 85) put it in his 1957 classic, 'every colonizer does not necessarily become a colonialist.' Some police officers may have been anti-racist in colonial service or they may have acquired the consciousness of anti-racism as a result of their colonial tasks.

Rex could respond to these doubts by stating that the duty of a bus driver is not the same as those of a race liaison officer. The latter is unlike any other job in the sense that the experience of colonial police service might make the black community to have little or no trust in the designated officer. There is no doubt that the policing of the internal colonies learnt one or two things from the techniques in the 'external colonies.' However, it would have made little or no difference if the designation of the officer was what Rex wished for and if the appointee was a race relations researcher and not a retired police officer while the policy remained the same in practice. Perhaps the policy would not have been the same but the 'internal

colonies' had since got Race Relations Officers who had neither colonial nor policing experiences and yet the only thing that changed was the increasing number of black people who were being over-represented in criminal justice statistics.

To argue for direct colonial links would imply that if there had been no colonies, such tactics might not have developed. However, guilt by association and collective responsibility are not peculiar to colonial situations. They appear to be a feature of the policing of marginalised groups in most capitalist societies. The targeting of poor black people appears to be a continuation of the special policing of poor people dating back to the rise of capitalism and public policing (Thompson, 1977). It appears to be safer to conclude with Jefferson (1990:9) that the tactics may not have been re-imported from the colonies directly but that they were all similar to the '... planned aggression of the arrest and dispersal tactics ...' of colonial policing that were applied to the industrial disputes of the 1980s in Britain.

It is likely that the victimisation of black women that results from collective targeting and the assumption of guilt by association also affect black men who may try to protect their women from police brutality as in Broadwater Farms. It is possible that poor white women who also live in the internal colonies and especially those who associate with black men as wives, friends, or mothers are sometimes victimised by the police but this is not likely to be identical with the policing of black women. This is because, as the

above illustrations and references have suggested, the target of such special squads is particularly the black population.

The above illustrations are consistent with gender analysis which suggests that the way black women who have committed no offences are affected by the encounters between black men and the police should be examined even when the subjects are men (Gelsthorpe 1990). As we shall see, the evidence is also consistent with class and race analysis in the sense that the affected women may have relatively escaped victimisation if they were rich enough to afford residence in the suburbs, outside the internal colonies, or if they were white and were associated with white men instead of black men. There was no evidence of black men being victimised because they were related to suspected black women, except in the case of pimps who lived with prostitutes and were therefore not as innocent as the victimised black women referred to above or in the case of black men who confronted the police as in Handsworth and Broadwater Farms when the police victimised black women.

There were many similar cases of white women who were victimised by the police in much the same way as black women (see Hillyard, 1993). They were the Irish women who were arrested each time there was an IRA bomb blast in an area. Many such women became victimised because they happened to be the girl-friends, sisters, mothers, or wives of jailed or wanted IRA men. However, the specificity of the 'racism' against the Irish who were virtually in a state of war with the British, demands a separate analysis that could not be fully tackled here.

The present researcher came across only two cases of the victimisation of white women by the police just because they happened to be associated with suspected black men. The first case occurred in November 1982 when a disabled Rasta man, Mr Patrick Wilson, was stopped by the police shortly after driving his white girl-friend, Miss Susan Farbridge, to the mini-cab office where she worked. Patrick said that when the police became abusive, he drove back to the mini-cab office so that people could witness their abusiveness. The police followed him there and arrested him for reckless driving. When Susan came out to confirm that Patrick was disabled and that whilst he could drive, he could not walk, she too was arrested. They were both strip-searched at the Tower Bridge police station in London. Susan was further humiliated by being forced to jump up and down whilst naked. They were both awarded damages later but the police officers were not prosecuted (IRR, 1987: 13,19,41).

Similarly, the HCDA informed the present researcher that a white woman was harassed because of encounters between the police and a black man. The black man in question happened to be her son and she was pulled by her hair when she went to ask the police why they were dragging him away in handcuffs. She reported to the HCDA, that her son's solicitors advised him to ensure that his witnesses were not black, otherwise the court might doubt their sincerity. Members of the HCDA present at that meeting said that that was an outrageous thing for a solicitor to say and she modified her statement by saying that it was not put as clearly as that but that

there was no mistake about the meaning. As it turned out, the HCDA had got eight people who were willing to testify and they were all white.

Perhaps some of the women who were harassed during the arrest of black men could not bear to watch their loved ones taken away by the police whom they had little reason to trust. Perhaps their emotions ran high and they did not only ask what was the matter but also verbally protested or hauled insults at the officers. For such 'threatening behaviour' they could be arrested and charged. However, the charges of actual bodily harm and of common assault initially brought against some of the women suggest an unusual scenario where women (including a 73 year-old grandmother) physically take on groups of police men.

It could be claimed that black people were over-represented in the criminal justice system because they actually commit more crimes. Ian Taylor (1982), for example, asserted that, 'In Britain, 'mugging' is, indeed a form of self-employment (and maybe a primitive form of street-level anti-white politics) that is disproportionately practised by unemployed West Indians.' This is supposed to be a left realist position that was supported by Lea and Young (1984: 165) who confidently asserted that 'black people have a higher crime rate than would be expected from their numbers as a proportion of the population.' The main bases for claims like these are official statistics, local crime surveys and structuralist claims about black family life and black culture as a criminal subculture (see Reiner, 1992, for the key models of interpretation).

Official statistics, as McClintock (1974) convincingly argued, are better measures of the political accountability of the criminal justice system. Similarly, victimisation surveys more accurately measure attitudes to crime and to black people than what Gilroy (1987b) calls the 'mythical' high level of black criminality. Gilroy (1987b) has argued that this so-called realism of the new left exemplifies 'how radical and conservative, socialist and openly racist theories and explanations of 'race' have been able to converge dramatically.' By placing the assertion of Taylor against that of Kenneth Newman, Commissioner of the Metropolitan Police and former commander of the Royal Ulster Constabulary who alleged in 1983 that; 'In the Jamaican, you have a people who are constitutionally disorderly ... It's simply in their make up, they're constitutionally disposed to be anti-authority', Gilroy (1987a: 72) demonstrated that such assertions are ahistorical. They tend to ignore the fact that black people in Britain were not originally seen primarily as a crime problem and that their construction as such was closely related to immigration control and the law-and-order government of the Tories as was seen in the discussion of internal colonialism (see section 3.4). Gilroy clarified his critique of the left realist position on the 'race and crime debate' as follows:

> The argument against it should not be read as a denial of the fact that blacks engage in criminal acts, though there are a number of unresolved questions around the extent of black participation - in particular around the role of official statistics in verifying their involvement. It is no betrayal of black interests to say that blacks commit crime or that black law-breaking may be related to black poverty as law-breaking

> is always related to poverty. The possibility of a direct relationship between ethnicity, black culture and crime is an altogether different and complex issue (Gilroy, 1987b: 99).

It could be said that Gilroy overstated his case by conceding that 'law-breaking is always related to poverty.' This is an overstatement that could be used to justify police surveillance on black communities that are relatively poor whereas the majority of the poor, be they black, brown or white, manage to be overwhelmingly law-abiding and many of the rich and powerful get away with murder. The convergence drawn between left realism and the nonsensical biologism of Newman also seems to be overstated. However, this second apparent overstatement is more justifiable in the sense that it sharply illustrates a common preoccupation among left and right realists with working class criminality - a point that Lea and Young (1992) indirectly confirm while trying to distance themselves from the right realists in other respects. Gilroy's critique of the empirical bases of such claims is both convincing and important as a critique of the over-policing of black communities.

It would be unwise to assume that all black people who were convicted of offences were innocent 'victims' of selective policing. Jefferson (1991: 178) made a slightly similar point when he stated that 'when all is said and done, most commentators conclude that at least part of the explanation for higher black arrests has to do with higher offending behaviour'. He warned that such approaches that rely on the comparison of statistics tend to be atomistic by obscuring 'the more general point about the police focus on deprived areas' (Jefferson, 1991: 182) Moreover, it would be a case of blaming the

victimised if 'black over-offending' is held responsible for black 'over-representation' in arrests rather than for some criminal activities like every other category of people. Furthermore, it would be even more incorrect to suppose that all black people are crime-prone or that whoever was targeted or arrested in the partial and selective ways that black people are policed was necessarily being 'criminalised' rather than being victimised as the present thesis suggests.

For example, the Policy Studies Institute have documented relevant examples to show that the policy of stopping people may appear superficially discretionary but it 'is inseparable from a tendency to assume that black people have committed crimes and that whoever has committed a crime must be black' (Smith and Gray, 1983: 130, 137). This sounds like an overstatement but the observations of the authors during their research, indicated a strong tendency to assume that certain criminals must be black until reported otherwise. However, the authors warn that, 'There is no proof that the race of the suspects was a reason for the bad behaviour (of the police), but this seems likely.'

4.3 The Question of Attitudes

The fact that the two white women mentioned above were harassed because of their association with suspected black men suggests that they may have been victimised partly for crossing the racial frontier. There was no case of a black woman similarly affected by actions

originally targeted at a white man. During the fieldwork, Stuart Hall personally observed that white women who were married to black men were often subjected to ridicule and harassment by wide sections of the public and that he would not be surprised to find that such a racist ideology was shared by sections of the police force. However, Hall (1979: 13) warned against the 'utterly cynical and quite unacceptable proposition' aimed at the mitigation of police racism with 'the police inevitably reflect the society' sort of argument. According to Hall, the argument of inevitability suggests that the police cannot do anything about racist officers whereas they give a high profile to their campaign to weed out the so called 'bad eggs' or criminal elements in the force without taking racism equally seriously.

Hall has been frequently criticised for 'placing too much emphasis on the role of ideology in the social process' (Hall, 1988:9). His argument that ideologies are not class-specific but are 'discursive' in the sense that they are articulated, disarticulated, and rearticulated from different elements in society is persuasive. Yet it could be doubted because ideology cannot be given primacy over social relations in social analysis since ideological beliefs, no matter how widely shared in the society, affect different categories of people differently relative to their class, race, and gender.

Hall (1988) insists that ideology, culture, race, gender, and class are all central to the analysis of the contemporary crisis in Britain. This is the relevance of his formulation of the theory of articulation to the present research. The question of how many centres there are in the

present analysis could be answered by stating that there are as many centres of analysis as there are issues to be analysed. When two or more issues are articulated, as is often the case in social relations, some issues are likely to be more central than others. This is especially the case with the analysis of the specificity of the crisis in criminal justice where the vast majority of the people involved were poor even though they differ ideologically, sexually, and racially. However, the present research is interested in how these social relations are articulated and the implications of their articulation especially for black women rather than in the ranking of race, class, and gender relations. Such a hierarchy of social relations is hypothetically impossible within the perspective of articulation that presupposes the integration of the different social relations while recognising their differences.

Far from being critical of Hall for emphasising the role of culture and ideology, the present thesis recognises the relevance of such an emphasis to the arguments presented. Such an emphasis is similar to the very important call by Cabral (1972) for revolutionaries to take 'the weapon of theory' seriously by going back to the cultural roots of the resistance against domination and oppression. According to Cabral and also according to wa Thiong'o (1986), culture is not just what Cultural Studies theorise as 'popular culture'. According to these cultural activists, culture is part of the struggle in the sense that it is produced in the struggle and employed either for domination or liberation. While the present writer agrees with Hall's 'discursive' defence against the critique of the prioritisation of culture, the present thesis does not wish to leave the impression

that there is no doubt about Hall's claim that ideology, class, race and gender are all central to every analysis.

The doubt about the centrality of everything makes allowance for the alternative interpretation that there could be as many centres to any analysis as there are issues or analysts even though some issues could be seen to be more central than others. The reformulation here is that social relations appear more central than the ideological considerations behind them. It is true that race-class-gender are ideological but it is also true that they are more than ideological, they are also materialist. The slight difference between the application of the theory of articulation here and that of Hall is that the latter regards the theory as 'emergent' or 'brand new' whereas the former regards it as good old historical materialism.

What Hall (1988) tries to avoid is a reductionist discussion of 'law and order' that is based exclusively on policing strategies. He emphasises the overall ideological crisis of hegemony without making the mistake of what Shaw (1984: 186) calls the 'minimising (of) the concrete effects of repressive police tactics.' Similarly, Hall could not be said to be reducing the problem to individual attitudes because he emphasises that, 'Racism is seen and experienced by black people as having much more to do with the way in which institutions work towards them than with the particular attitude of this or that individual' (Hall, 1987: 48).

In spite of the gravity of the problems facing black women because of the policing strategies targeted at black communities, and in spite

of the greater readiness of black women than black men and white women to organise self-help, it is surprising to find that some black women believe that the police were fair to all in the ways they did their work. One black woman asked the researcher whether he had 'chips on (his) shoulders' when she was asked if she experienced any problems at the hands of the police. She was further asked whether she believed that the problems would go away if people did not talk about them. She said that she had not noticed any problems and that if she had problems in the criminal justice system, it had nothing to do with the fact that she was a woman or a black person. It depended, according to her, on her personal conduct. Another woman present quickly disagreed with her and they launched into a long debate in which the first one maintained that black people were not the only ones who had problems and the second one insisted that the problems facing black people were special in many ways. The debate was deviating from the central concern of the present research and so they were asked about their personal experiences with the police.

The first woman praised the police for treating her very well. She said that she was even treated better than a white friend of hers whose car had been similarly stolen and who had to wait much longer to recover it even after the police had found it. She said that the police treated her very well because she was very polite to them but it seemed that she suspected that her car was stolen by a black person. She said repeatedly that a black person was more likely to hurt a black person than a non-black person would be. Empirically valid as this claim may be, it neither proves that black people are

more criminal than white people nor that the black people who are treated unfairly by the police are only those who are not fair to the police. The same thing could be said of white people because 'most interpersonal crime is intra-racial' (Harris, 1992: 108). The favourable perception of policing by this woman seems to support the conclusion of the Policy Studies Institute that

> 'Where West Indians were victims of crime in specific instances, they give a favourable assessment of the services provided by the police ... and there is evidence that the police tend to make more efforts on behalf of West Indian victims than on behalf of white victims' (Smith and Gray, 1983:333).

Less surprisingly, given the long history of discriminatory policing that black people have had to resist, the second woman was sure that she was being prosecuted for reckless driving because she was a black woman. However, she admitted that she was wrongly driving along a one-way street when a white man jammed his car into hers as if deliberately. She said that it was under a heavy rainstorm and that the man was able to get witnesses from the white people around while she was too shocked to move from her car. She believed that the man was drunk because of the melodramatic way he went about recruiting witnesses to the accident but the police did not give him a breath test and paid her little attention. The man had reported that his car had been kept off the road in order to claim more damages but she saw him driving in it and wrote to inform the police and that was when they decided to charge her.

These two contrasting opinions show that some black women might not be aware of the problems that face black women in the criminal justice system and that some black women may believe that the police were discriminatory in a specific instance where they might not be. Listening to them made the present researcher resolve more strongly not to ask people whether they felt that they were being treated unjustly or fairly. It was more useful ask them what kinds of problems they faced and how these differed from the problems faced by other people. But no matter how hard the researcher tried to avoid asking about attitudes, the informants returned to it time and time again.

For example, another black woman said that a lot depended on the officer making the arrest and a lot depended on how polite the arrested person was. This sounds very sensible except that it ignores the institutionalised ways that the police interact with black people as Hall (1987: 48) pointed out above. The woman seemed to see the problems entirely in terms of the attitudes of this or that individual. Her emphasis on the attitudes of black people appears to be contradicted by her personal experience because she said that she was shocked into silence and did not try to resist arrest. Yet one of the police officers who arrested her was mocking her in the van and telling her to take a last look at the sun because she would go down for a long time. The woman was happy that the black officer present tried to comfort her, telling her not to take any notice of what the white officer was saying. She said that she would have been happier if he had done or said something to call the white officer to order since they were both of the same rank.

The woman believed that such comments which assumed that the suspect was guilty even before she was charged could drive someone into a frenzy. She claimed that this might have been the case with the two women with whom she was detained. One was suspected of being mentally ill and the other was remanded in custody for obtaining property by deception. She claimed that she was given access to facilities to wash in the morning, probably because she was very polite or because she was treated as a colleague, being a social worker, whereas the two women who talked back to the officers did not wash, according to the woman, probably because they did not ask for it.

She also claimed that the drug found on her was given to her by 'a very close friend', meaning the man who was charged with her and who was remanded in custody while she was given bail. This seems to illustrate that even when the institutionalised ways that the police work against black people are overlooked, even when only the attitudes of individual officers and particular suspects are being considered, it is not proper to treat the attitudes of officers and those of the suspects as if they have equal potential impacts on the outcome of cases. This is because officers are in positions of power which they could abuse in a way that could cause individual suspects to become indignant or abusive. If the two women mentioned above did not wash, it could be because they were not told that they had the right to wash or that there were facilities for such. The point is that even if the women were abusive without

provocation, the police had the duty to inform them what their entitlements were. Carlen (1988: 123) found that

> A few women admitted that they had always taken a confrontational stance towards all 'authority' figures and that they themselves provoked the police into violent retaliatory measures. But it was police harassment of black people that was mentioned most frequently as being both unprovoked and provocative.

One black woman believed that if she was white, the police would not have doubted her when she told them that she was living alone in her housing association flat. They could have phoned the housing association to confirm this but they detained her and went to her house and returned to say that they did not find anybody there. They only released her on bail when her sister came to confirm that that was indeed her flat.

When the informants were asked if it would have made any difference to have more black women as police officers or to treat black women like white women, most of them reported that it would not have made any difference if such black officers did nothing to challenge discrimination and if they started practising repression against black people. Moreover, they said, white women were also being repressed by the police even though black women were more strongly repressed.

4.4 Organising Community Self-Defence

The suggestion that the police and the public share some racist ideologies about black people and that such ideologies have class, gender, and race-specific outcomes for individuals and groups was made by one case brought to the notice of the Hackney Community Defence Association in the presence of the present researcher. A light-complexioned man reported to the HCDA that he had a 'slight misunderstanding' with his wife and that 'being a black woman, she was naive enough to go to the police' with a complaint that he threatened her life. The police arrived, kicked down the door and beat him up. They took him to the station and later charged him with public order offences for which he was bound over to keep the peace. He intended to bring a civil action against the police for maltreating him, saying that neither his drinking problem nor his past offences, which he said he had clearly left behind him, entitled the police to treat him brutally.

One of the black women present challenged him for saying that his wife was naive because she was a black woman. Everybody wanted to speak on this at once and some thought that it was a diversionary issue on which those who were interested could organise a separate seminar. The woman who raised it was reminded that she rarely came to meetings and that, in any case, the said wife had admitted that she was mistaken. The black man chairing the meeting ruled that the issue should be shelved and returned to at the end of the meeting. Unfortunately, the man at the centre of the controversy

had left, like most other people who came to solicit the support of the association, soon after getting assurances of support.

When the group returned to the matter, most people were tired and most had left. But those still remaining agreed that it was too serious a matter to be fully discussed at that particular meeting. Some suspected that if it was a case of a black man married to a white woman, he would not have got off so lightly. The woman who raised the matter suggested that HCDA should choose and pick cases to avoid supporting common criminals. Others said that even common criminals deserved to be defended if the police went out of their ways to brutalise them when no offences committed or alleged to have been committed by them deserved such treatment.

They suggested that since it raised the serious problem of the inadequacy of police protection for black women who suffer domestic violence, it should be the subject of a seminar or conference in the future. This issue was touched upon at the 8 September 1991 meeting of 'Black Community Against Women's Oppression' that focused on the subject of Black Women and Housing (Black Voice, Vol. 23, No. 1, 1992).

The meeting highlighted racism, sexism, and class exploitation as the main foundations of various forms of oppression that manifest in various ways, including the inequalities in housing. The meeting noted that black people have been historically concentrated in the poorest quality housing in the private market and when they

applied for council housing, they seemed to be treated as if they were seeking favours rather than demanding their legal rights.

It was also argued that the belief that black women were favoured compared with black men in the allocation of council housing was an under-estimation of the delays and discrimination that black women face in accommodation, compared with white women who seemed to get allocations more quickly, a fact that has been confirmed by MacEwan (1991). The meeting agreed that a black man might move in with a woman without allowing their relationship to develop and afford the woman the time for a free choice in the relationship. The premature cohabitation usually led to strains in the relationship and this could result in domestic violence. The observations at the meeting point to the belief that domestic violence was not a simple matter for the police to resolve but a complex issue that could only be faced by also tackling the problems of racism, sexism, and class exploitation. This conclusion is supported by the findings of MacEwen (1991: 21) according to whom 'ethnic minority women are ... more likely than women generally to be poor and to encounter difficulties in obtaining suitable housing and employment.'

Even a campaign group that fights against police harassment might not always focus attention on the gender implications of cases that apparently affect only black men. One of the recent campaigns of the HCDA was captioned, 'Self Defence is no Offence' and it concerned a black man who was referred to in an earlier leaflet of theirs as a 'mixed race man in his late twenties.' He was a recreation attendant for Hackney Council and a sculptor. On 25 October 1990, he was

driving along Kingsland Road in Hackney when he was attacked at a red light by two men on a motor bike. They called him a 'Paki bastard' and punched him in the face. He sped away from them and thought that he had escaped but they caught up with him at the garage. One of them attacked him with a heavy chain and he was wounded. He pulled out a small clay-modelling knife with which to defend himself. He fought back in self-defence and wounded the bike rider.

The police charged him with wounding and intent to cause grievous bodily harm. In court the bike riders admitted to abusing him racially and to assaulting him. When asked why, one of them answered, 'It's obvious isn't it?' Many witnesses testified to the fight and gave contradictory accounts but none of them saw the chase. The defendant had good character references and no previous convictions but the jury found him guilty of actual bodily harm and the judge gave him 18 months jail sentence.

Even before his conviction, he was suspended from work by the council which reasoned that the mere fact of being arrested and released on bail disqualified him from working with the leisure services. After his conviction on 4 September 1991, a disciplinary hearing was held in his absence and without being represented by his union as he was entitled to be, he was officially sacked on 13 September. The HCDA concluded that he 'was attacked on the street, attacked in court, and has now been attacked by Hackney Council; a Council that claims to be anti-racist!...We uphold the right of black people to defend themselves against racist attacks. We

condemn the empty words of Councils' anti-racist policies when in reality they reinforce the racism of police and courts.' This echoes the call by Gilroy (1990) for an end to trendy anti-racism by organisations like Rock Against Racism that were out of touch with the reality of the situation of black people.

This man was to appeal against his sentence and the HCDA members were picketing his place of work to demand his reinstatement and his release from prison. It seems striking that the association centred the campaign around the man without highlighting how his imprisonment may have affected his family. One of the women present was said to be his 'partner' and that she was obviously feeling the crunch of his loss of income and the psychological strain of the harassment. His appeal was being handled by a black solicitor who was said to be 'incompetent'. The group was reluctant to approach a new solicitor and start new briefings because the sentence was fast running out. They suggested approaching other black lawyers to ask the one handling the appeal to act fast. But they were yet to raise 200 pounds to pay for the transcripts of the case without which the solicitor could hardly prepare grounds for appeal. The idea that the black solicitor was incompetent happened to be a stereotype held by even white solicitors and judges (see Kennedy, 1992). According to a black QC, Roberts (1991) black barristers, including Queen's Counsels, are still struggling against such presumptions.

All these indicate that the politics of gender, race, and class were also played out within groups that were dedicated to the defence of

individuals on these bases. Perhaps this was one of the reasons why women try to organise separately and autonomously but it would be too simplistic to assume that women did not treat women on gendered, racialised, or classified bases. This is not the place to go into the internal politics of campaign groups but that could be an interesting project for future research.

If the readiness to organise collective self-help is taken as a partial indication of the extent of perceived problems facing a category of people, the problems facing black women would be said to be more urgent compared with those facing black men and white women. This observation was taken up with the Hackney Community Defence Association that was set up following the shooting of Colin Roach in a police station where he had gone for protection because he feared for his life. The police said that he had shot himself and calls for public enquiry were refused (RFSC, 1989). If black men were the most frequent targets of police harassment, why then did they not organise most constantly and separately for collective defence? One of the leaders of the HCDA, a white man, told the researcher that black men appeared to be very macho and tended to have a mistaken belief in their ability to defend themselves individually in any conflict situation. Black women seemed to recognise their vulnerability in conflicts with predominantly white male officials and so tended to be more willing to organise separately for collective strength.

This opinion seems to reflect contemporary feminist organisation and consciousness as well as the historical tendencies in colonial

Nigeria, for example, where women rose, almost exclusively, to resist the imposition of taxes on women whereas such had already been imposed on the men with relative success. It also echoes the puzzle of why it was possible for the apartheid regime to impose the pass laws on men but faced an uprising when it tried to extend this to black women. Less remotely, the greater readiness of black women to organise for self-help was seen in the fact that most voluntary organisations that care for black people in the criminal justice system were for and by black women.

However, this apparent reluctance of black men to organise resistance is misleading because all it shows is that the organisations of black women were more issue-specific whereas the organisations founded by black men tend to be more-embracing. In other words, it would be nonsense to assume that only women resisted the pass laws, for example, since the Sharpville massacre arose from the mass demonstrations called by the Pan African Congress against such laws.

A close look at the HCDA showed that more black men participated in their activities than black women. Two black men turned up to support two white men who appeared in court, charged with assaulting police officers and were later found innocent of the charges. No black woman turned up in court to support those men and at the group discussions of the association that were observed, there were more black men than black women. There were more white women and white men in the association and the only Asian

who was noticed was there to complain about wrongful imprisonment.

To ask why there was nothing like a 'Black Male Prisoner's Scheme' is like asking why there is nothing like male groups in political parties and men's editors in newspapers. It could be argued that the interests of more men were reflected in the structures of social institutions and this is what made the organisation of specialist interests by women appear to be complementary. Such a complementarity seemed to be reflected in the fact that the organisations set up by black women did not tend to be separatist. Groups set up and run by black women also campaigned on behalf of black men and black organisations that were male-dominated, like the African Research and Information Bureau, seriously addressed the issues of gender and class inequalities in society.

A more likely explanation of gendered organisational patterns would be that of the relative exclusion and the relative invisibility of the specific concerns of black women in organisations of black people. It is noteworthy that this was one of the reasons given by the only organisation run by black men for black men to justify their existence. According to Mercer and Julien (1988: 98), 'One of the many reasons why the Gay Black Group came into existence was that we found our specific concerns were excluded and invisible in the agendas of the white left and gay organisations and the black organisations that many of us had also participated in.' A similar justification was offered by Cockburn (1988) for 'much more separatism in socialist feminism.'

The Gay Black Group were not contacted during the fieldwork because their specific interest in sexuality is outside the focus of this thesis. Perhaps this justifies their claim that their interests tend to be invisible in issues tackled by the black community. However, it is possible that the policing of sexuality and the ideology of homophobia may affect black gays and lesbians more adversely than their white counterparts. Such issues could be investigated by researchers who are interested in the politics of sexuality.

The white women and the black men who provided information for this research agreed with the view that the police and racist attackers target black men most often for victimisation. The informers also agreed that such attackers pick on black women more frequently than on white women but the difference is not only in terms of frequency, it also has to do with the nature of such attacks. Attacks on black women and on black men by neo-fascists may not be only racist but also sexist in character. Black men were said to be picked on for daring to go out with white women and black women were often stereotyped as whores. Some of the informants suggested that black people were being attacked more frequently by the police probably because black men and black women were less likely to sue the police for wrongful treatment than white women. This does not appear to be true because the level of complaints against the police and the number of civil actions brought against the police by black people is proportionately higher than would be expected from passive 'victims'.

For example, more than half of the five hundred thousand pounds worth of damages paid out by the police in 1989 alone went to black complainants (The Voice, 6 March 1990). Nevertheless, the suggestion that black people were not challenging police injustice as much as they should appears to be true. Although a 'proper' level of complaints can never be ascertained for any category of people, no black person should perceive police or racist victimisation without challenging this for fear of further victimisation or because of lack of access to legal representation.

In what was described as a 'landmark victory', a Nigerian woman was recently awarded $215,000 as compensation following her humiliation by the U.S. customs officials who strip-searched her for drugs, found nothing, and sent her to a clinic for more intimate search and x-ray but still found nothing (West Africa, November 11-17 1991). That such a victory could be hailed as a landmark when the humiliation of black men and women was almost routine in international airports is an indication that much more could be done to challenge undue victimisation.

Conclusion

This chapter is based upon the interpretation of documents, opinions and perceptions received from a small and selected set of informants. It is therefore not safe to make general quantitative claims from the above interpretations because the method and data seem inappropriate for the measurement of the extent of victimisation. The limited claim made by this chapter in particular,

and this thesis in general, concerns the nature of the victimisation as perceived by those who suffer it and by those who were working to counter it. It could be said that the perceptions of these groups and individuals and those of the present researcher do not represent proofs of the facts of victimisation but they suggest the nature or pattern of the perceived victimisation. When these perceptions appear to support findings by other researchers, the present researcher was persuaded that such perceptions were not isolated or unique to the perceivers. It is only in such cases that the present researcher was persuaded to generalise beyond the particular perception while recognising that the same perception may be interpreted differently by a different researcher.

Chapter Five

Black women and the Courts

Introduction

The previous chapter has tried to present the problems that face black women in particular and poor people in general. The picture presented above is incomplete because the police do not work in isolation from other agencies and also because the focus of the discussion was primarily on black women and incidentally on black men and white women as well. Poor white men and Asians were left out of the analysis because they were not as comparable with black women as black men and white women were. In this chapter, the discussion will go beyond the police and consider the impacts of the courts on black women, black men, and white women. The focus will still not be extended to white men and Asians for the above reason. Wherever possible, statistical figures for white men, Asians and 'others' will be tabulated along with figures for the focal groups. This would give a fair sense of the general distribution and permit the comparison of white women with white men in the same way that black women and black men are compared.

Since the focal interest of the research was the differences and similarities between black women and black men, and between the former and white women, the field observations of the researcher were restricted to these three categories. By so doing, something was lost in the sense that the observations were not comprehensive.

However, something was also gained in terms of time and material resources.

5.1 Disparity and Discrimination

It is the disproportionate representation of black people in the penal institutions that gives the impression that the courts were not completely free from the ideology that informs the policing of black people. However, if the courts were to deal fairly with the people appearing before them, then, the Commission For Racial Equality insisted that 'the criminal justice system must now make a concerted effort to ensure that its decisions are not only fair but (are) seen to be fair.' (CRE, 1989: 5).

Studies of discrimination and substantive inequality in the politics of race by the courts are inconclusive. Mair (1986), McCoville and Baldwin (1982), and Crow and Cove (1984) all concluded that there was no significant difference in the treatment of people of different races in the courts when the circumstances were similar. These findings differ from those of Walker (1988) who stated that 'More blacks tended to receive custodial sentences, this difference being partly attributable to the higher proportion of violence and robbery offences sentenced which tend to receive harsher sentences; but even within this group they received more custodial sentences.' This is supported by Hudson (1989), Gordon and Shallice (1990) and Hood (1992).

According to Thomas (1970:64), 'Disparity of sentences is frequently considered the fundamental problem of sentencing.' This problem is even more serious in cases where two or more people are charged with a common offence but receive sentences or bail conditions that do not relate to one another. According to Thomas, the principles that make such 'discrimination' justifiable are the respective responsibility for the offences by each defendant. A mitigating factor like age might apply to one and not to the other, and the previous offences of one might justify the use of individualised measures for one and a tariff sentence for the other, based also on the sentencing options available to the courts rather than entirely on respective culpability. The convincing inference here is that some forms of discrimination (in the sense of discretion) are justifiable and so discretion could also be discriminatory when unjustifiable. What is interesting in Thomas' argument is that even discretion could be biased if unjustified. The question is not whether or not discrimination exists but the nature and the extent of discrimination.

However, the present research is limited to the discussion of the nature of perceived discrimination and leaves the measurement of the extent out of the analysis. A more urgent task is to show that the kinds of disparities Thomas tried to justify as principled do not surface only at the stage of sentencing. In the preliminary hearings of the application for bail such details as respective responsibilities, offending history, and mitigating factors were not supposed to be known to the courts, and yet the courts granted and refused such applications in ways that suggest discriminatory assumptions about

re-offending and possibilities of surrendering. The barristers who provided research information emphasised that black people in particular and foreign defendants in general were perceived to be greater threats. The following observations of cases will illustrate that black women were perceived as more or less threatening in some specific instances than black men and white women (see Table 5.1).

Much of the controversy over the nature and extent of discrimination in the criminal justice system derives from the fact that researchers focus too much attention on discrimination (especially in sentencing) as if it is the only problem facing black people in the criminal justice system. It is suggested here that it is appropriate to broaden the focus to include other problems of disparity that may or may not be the consequence of discrimination but which might (at the least) be indicative of serious problems deserving attention. Let us start with prosecution rates, an area where the overlap of criminal justice agencies is most profound.

The group 'other' in the table below includes non-British Europeans, Arabs and people of mixed racial parentage where one parent was not black. It also includes those who refused to declare their ethnic origin. Asians and 'others' were left out of the comparison by ratio but they were represented on the table to give a general impression of what the distributions were.

TABLE 5.1: PERSONS PROCEEDED AGAINST PER 100,000 OF THE POPULATION OF GREATER LONDON MPD 1984 AND 1985 BY SEX, AGE, AND RACE [26]

MALES

Ages	Whites	Blacks	W:B Ratio	Asians	Others
10-13	1,000	2,000	1:2	500	800
14-16	9,000	37,000	1:4	3,900	5,500
17-20	19,30	53,100	1:3	11,000	16,700
21 Plus	3,500	14,800	1:4	3,100	6,900
10 Plus	4,700	20,200	1:4	3,500	7,200
FEMALES					
10-13	100	400	1:4	40	160
14-16	1,000	3,800	1:4	200	400
17-20	2,400	9,400	1:4	1,300	4,000
21 Plus	600	2,600	1:4	700	2,900
10 Plus	700	3,300	1:5	700	2,500

This table shows that the average black man in London was four times more likely to be proceeded against than the average white man. The average black woman was also five times more likely to be proceeded against than the average white woman in London and six times less likely to be proceeded against than the average black man. This can be interpreted to mean that black women faced different problems compared to black men and white women in the criminal justice system.

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[26] SOURCE: H.O.S.B. 6/89, 10 March 1989: 'The ethnic group of those proceeded against or sentenced by courts in the Metropolitan Police District in 1984 and 1985' Table 2.

A different interpretation would be that in comparing black men with white men and black women with white women, the one point ratio difference between black women and white women is not significant. This suggests that all women faced different problems compared to all men in the criminal justice system. This suggestion is doubtful because the ratio of black women to white women is higher than that of black men to white men in all age cohorts except in the 14-16 years and the 21 and over age groups. Juvenile and young black women have a 1:4 ratio in comparison with their white counterparts and the juvenile and young black men have the higher ratio of 1:2 at the ages of 10-13 and 1:3 at the ages of 17-20 compared with young and juvenile white males of similar ages.

Statistics conceal as much as they reveal about the problems that face black women. That is why they should be read as indicators of the likelihood of officials acting against individuals from different backgrounds rather than as evidence of the criminality of those concerned (McClintock, 1974; Kitsuse and Cicourel, 1963). This is evident from the next table which shows that it is not everyone who is proceeded against who is necessarily guilty of any offence.

TABLE 5.2: PROPORTIONS PER 100,000 OF THE TOTAL POPULATION OF PERSONS TRIED AT THE CROWN COURTS AND AT THE MAGISTRATES' COURTS WHO WERE ACQUITTED OF ALL INDICTABLE OFFENCES BY SEX AND RACE IN 1984 AND 1985[27]

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[27] SOURCE: H.O.S.B. 6/8910 March 1989: 'The ethnic group of those proceeded against...in 1984 and 1985' Tables 5 and 6.

Court	Whites	Blacks	Asians	Others	No rec.	Total
Magis'						
Male	7	8	8	7	14	7
Female	7	7	6	5	22	7
Crown						
Males	24	25	27	29	24	25
Female	28	24	34	29	26	27

This table was collated from tables 5 and 6 in the original and this was done to make the differences and similarities of outcomes for the focal groups in the two courts easy to grasp.

The table shows that, whereas black women were more likely to be proceeded against than white women as we saw in table 5.1, black women stood fewer chances of being acquitted at the Crown Courts (with proportions of 24% compared with 28%) and an equal chance of being acquitted at the Magistrates' Courts (equal proportions of 7%) with white women. This relationship appears to be reversed between black men and white men. Black men had slightly higher proportionate acquittal in both courts or 8 and 25 per cent compared with 7 and 24 per cent for black men and white men in magistrates and Crown courts, respectively.

However, when black women are compared with black men, the former stood fewer chances of being acquitted at both courts, implying that they faced different problems. It is interesting that black women were the only category of women who had lower acquittal rates compared to men of the same racial category in the

crown courts. With these figures, it is not surprising that black women were over-represented in penal institutions given their much lower proportion in the total population. However, it could be argued that the acquittal rates of women suggest that only women with cast-iron evidence against them were tried while some men were tried on weaker evidence.

The above table does not bring out the differences in the seriousness of the problems facing black people as clearly as the written parliamentary answer from John Patten, Minister of State at the Home Office, to Alex Carlile MP, 30 October 1987. He reported that the percentages of those remanded in custody who were later acquitted or not proceeded against were four per cent for whites, seven per cent for blacks, six per cent for Asians, and six per cent for other in 1985.

The percentage discharge and acquittal rates are higher for black people than court acquittal rates for black people precisely because the table for acquittals only (5.2 above) does not include the proportion of people detained and released or cautioned without trial. What the figures reported by Alex Carlile show, according to NACRO (1988: 5) is 'that black people may be more likely to be inappropriately remanded in custody.' However, released or acquitted black people may have been appropriately remanded if the police officers dealing with them believed that they were likely to commit more crimes or unlikely to turn up for proceedings. Their high discharge rate suggests that the police were prejudiced against

black people who may be seen as being too crime-prone and unreliable to deserve bail.

This is supported by Voakes and Fowler (1989) who maintained 'that more black people find themselves in prison, than whites who have committed the same type of offences and who are likely to have worse criminal records.' Similarly, Smith (1994) argues that 'Afro-Caribbeans may tend to be remanded in custody rather than bailed because their family circumstances tend not to meet criteria commonly used in making decisions about awarding bail.'

Smith concludes that this might affect conviction rates 'probably' because it is more difficult to prepare a defence in custody. He suggested that a recognition of the Afro-Caribbean family patterns and traditions as normal would ease the difficulty of obtaining bail and moderate the ways that the law in England and Wales traditionally 'express national identity' by excluding or marginalising 'present-day ethnic minorities' (Smith, 1994). What is not clear here is what Smith regards as Afro-Caribbean family traditions and identities. However, if this is a reference to single-parenthood, it must be emphasised that there is nothing that makes single parent families traditional to Afro-Caribbeans.

This suggestion of racialised prosecutions of black women and black men is supported by Chigwada (1991: 149) who cited the National Association for Mental Health as saying that 'a large number of black women sanctioned by police action (Under section 136 of the 1983 Mental Health Act which gave individual constables wide

discretionary powers to detain people suspected to be mentally disturbed for 72 hours of compulsory psychiatric observation without authorisation from any court and with no right to a solicitor or to redress if diagnosed normal) were later diagnosed "not mentally ill" at the hospital. This claim has been empirically supported by Dunn and Fahy (1987) and by Faulkner (1989).

5.2 Support and Isolation

One hundred and thirty (130) appearances at the magistrates' courts were observed by the present researcher during the fieldwork. Most of these appearances were at the Camberwell Green Magistrates court. Some of the defendants appeared more than once, following adjournments and remands. Not all the appearances at the courts were observed because the researcher missed some of the appearances that were called while he was discussing with people who had earlier appeared and also because he often kept the afternoons free for discussions with individuals and groups.

The greater number of proceedings initiated against men may explain why women appeared to be relatively more likely to appear as supporters of men in court than the reverse. It was observed that black women and white women were much more likely to accompany their male friends or relatives to the courts to give them support than the reverse. Most women were supported by their fellow women, usually of the same race. This appears to support the assumption of Gilligan (1982) that women were more likely to give

support to people in trouble. This pattern of support appears less surprising because men dominate the number of defendants appearing in court. However, such predominance of men should have brought more men to court to stand sureties for fellow men or just to give them support but the reverse seems to be the case.

One of the women who discussed the problems facing her with the present researcher said that she did not inform her husband about her appearance because she did not want her family to be involved in any way. She would prefer to get it over and done with as quickly as possible and maybe tell him afterwards. However, she accepted that her husband would have told her if he was the one in her situation and that she would have made out time to go and give him support. She was grateful to the present researcher for sitting with her most of the day and discussing with her, suggesting that she would have been more confident if she had friends or family to support her. Some of the barristers told this researcher that many men might refuse to go to court to support their women probably because they were involved in the alleged offences and might be scared of being identified and arrested in court.

This is different from Victimisation-As-Mere-Punishment as far as the elusive men are concerned.However, it may be suggestive of VAMP if the women were not involved in the first place but were pressurised under patriarchal domination to take the 'rap' for their men. It could also be suggestive of VIP if the women were actually involved but the fact that they were standing trial alone would

make them fully responsible for acts that they may have been partially responsible.

Members of the Hackney Community Defence Association told this researcher that the larger the turnout of supporters at a trial, the greater the likelihood of the defendant getting fair consideration from the court that takes such support as a measure of public interest in the case. This suggestion is worth investigating in future research. A female probation officer was of the view that many women accompany their men to court because they did not want them to be tempted and 'snatched' by young female court officials. This appears to be simply what the probation officer suspected but a similar problem was slightly experienced by the present researcher when he tried to discuss with a woman who practically fled to her boy-friend. When the researcher tried to explain, he was told to find someone else to chat up because the woman was not the only beautiful woman in the world. The researcher apologised for the inconvenience he caused and told them why he wanted to talk. The researcher was told that everyone had his or her own problem and that the researcher should just get lost. This suggests that the woman felt threatened or isolated in court and would have felt more vulnerable to manipulation if she had no one to run to at that moment of doubt.

The probation officers who provided research information emphasised that race was a factor in establishing rapport with probationers. They were of the view that black defendants tended to trust black probation officers more and black officers tended to be

more sympathetic with black clients. The officers told the researcher that they were aware of the inequalities that disadvantage black defendants in the criminal justice system and that they try to balance these a bit by being more supportive of black clients.

The probation officers reported that when a probation officer recommended supervision as a form of sentence, such an officer would invariably be the supervisor. The tendency, therefore, was for officers to recommend other sentences or to make a 'null report' when they were not comfortable with the prospect of supervising a given client. The probation officers were also of the view that the courts did not regard probation supervision as a serious sentence whereas it was more serious than absolute or conditional discharge. They said that they now try to recommend conditional or absolute discharge more often but the courts did not always follow their recommendations.

This was supported by Voakes and Fowler (1989) who concluded that the social enquiry reports produced by probation officers were not responsible for the more frequent use of custody for black defendants. Although they observed that the higher number of 'nil' report on Asians in SER requires improvement in the practice of probation officers, they maintain that 'such improvements will be wasted without alterations in the practice of magistrates and judges.'

Jefferson and Walker (1992: 90), in a study of Leeds courts found that 'A 'cocky' demeanour, one possible explanation for harsher

treatment, was only rarely observed, more often with white than black youths.' No evidence of the mythical defiance by black women in courts was found by the present researcher. This view was recently popularised by the play, 24% by the Jamaican-born playwright, Paulette Randall. This play recently toured High Security Prisons probably because it was written from a perspective that blamed the high proportion of black women in prisons on their supposed defiant postures in courts. According to the author: 'Black women don't (say sorry) because that's not part of our culture' (The Guardian, 29 April 1991).

The closest evidence of demeanour that the present researcher found was that nearly half the white women who were observed in court during the fieldwork pleaded guilty compared to few black women and even fewer (proportionately) black men who pleaded guilty. Such pleas do not indicate defiance but are more understandable in the light of discriminatory policing and the greater likelihood of victimisation that could result from the special targeting of black people in crime control excesses. Such pleas do not reflect only perceptions of guilt and calculations of bargaining for less severe sentences, they also reflect perceptions of innocence and expressions of rightful indignation.

Even in the public gallery, the black women were very quiet and did not try to heckle the magistrates and the police witnesses like the white women and men. When one of the black women shouted, it was to correct her address because the court had got it wrong and they were going to give her son bail on the condition of residence

There was only one case of a white woman who was cursing loudly in the dock and she was remanded in custody 'for her own good' pending psychiatric report. The same happened to the black man who was frequently leaping up to interrupt the proceedings and give instructions to his counsel.

There was some evidence that the defendants were discouraged from speaking in court. Those defendants who were not represented or who wanted to conduct their own defence had their cases adjourned again and again with the usual advice that they should get a solicitor for their own good. It seemed that the defendants did not trust the barristers adequately because most of them had never seen their legal representatives before the morning of the hearing. Some of the defendants who insisted on representing themselves against the advice of the magistrates said that legal aid barristers were not likely to be sympathetic enough to their cause and they were not rich enough to hire trusted barristers.

The barristers also criticised the provision of legal aid for being so inadequate that there appeared to be one justice for the poor and another for the rich. This brings to mind the theme of the reification and commercialisation of criminal justice which was mentioned in chapter four. This commercialisation was probably why many of the defendants saw the judicial process as a financial transaction in which the poor got the worst deal. As one of the probation officers put it, 'If they are middle class, they tend to be business-like about it; they pay money to get good solicitors or pay the fine and get off.'

The extent to which gender relations were taken into consideration in cases involving black men was significant. One was said to be a 'family man living with his girl friend and children.' The sentencer saw a child whom the defendant was sitting with a moment earlier in the public gallery and asked if that was his child. He said yes and he was told in a non-threatening tone that he was not supposed to bring a child into the court. Women who brought children into the public gallery were always ordered out of the court by the attendants. Many of the men got bail because their mothers came to stand surety or to guarantee bail on condition of residence.

A very interesting case was that of a man charged with abusing his two step-daughters aged 11 and 15. The prosecution said that the step-daughters were reluctant to testify against him but that they maintained that their allegations were true. He had been refused bail on two previous appearances and the social worker reported that it would be in the interest of the family to give him bail. The police officer asked whether the safety of the children could be guaranteed and the social worker gave assurances. It was a three-women bench and the sentencing magistrate addressed the man without asking him to stand up as usual. He was given unconditional bail and his wife hugged him outside. This appears to have been an instance of what is known as family paternalism which is supposed to aim at protecting the whole family rather than protecting only women (Daly, 1987). The support from the wife and the emphasis of the probation officer on the interest of the family may have persuaded the court to grant him unconditional bail even though he had been refused bail on two previous occasions.

Throughout the observational visits to the courts, the focus of attention was not on the legal arguments and counter arguments advanced in courts though these could not be ignored. The focus was the language of the court room 'business' and how it borrowed from ambiguous conventional symbols of commerce and how such 'loose talk' affected the outcomes for different categories of people. Too much attention to procedure could result in such paradoxical views like the assertion that, 'Racial discrimination was not observable (in courts), though proportionately slightly more Blacks and Asians were subject to harsh treatment' (Jefferson and Walker, 1992:90).

This is paradoxical because it claims that discrimination 'was not observable' and at the same time claims that the 'harsh treatment' of blacks and Asians was observed. The harshness suggests roughness as Roger Hood (1992) found in a comparative study of Crown courts in Dudley and Birmingham - black defendants in Dudley were given more severe sentences than the ones in Birmingham even though the seriousness of the offences they were charged with was similar. According to Hood, 'The evidence strongly suggests that black offenders at the Dudley courts, especially those with black co-defendants, did not get the benefit of mitigating factors as frequently as did whites, nor as did blacks dealt with at Birmingham.' This suggests that 'harshness' is a function of particular benches rather than that of defendants but this suggestion ignores the evidence that such harshness is often institutionalised and widespread rather than being subjective and localised (see Cook and Hudson, 1993).

A look at the symbolic language and rituals of presentation could indicate that the commercialisation of criminal justice had greater impact on black people as a whole and on black women in particular, given the higher level of unemployment and deprivation among black people. At a conceptual level, the concepts of charging suspects and making convicts pay in cash and or kind suggest the increasing process of monetization which Young (1987) analysed with specific reference to the fine. Moreover, beyond this semantic evidence for commercialisation, the present thesis will now attempt an interpretation of the symbolic ways black women, black men and white women are presented in court. For a detailed analysis of the use of language in this way by the courts, see Carlen (1976) and Eaton (1993).

5.3 The Hierarchy of Discredibility

The perception of 'dependency' appeared to be conveyed by the order in which men and women were mentioned in cases where men and women were jointly charged. There were seven such cases and in all of them, the cases of the women were called only after those of the men were mentioned. In one of them a white woman was alleged to have fled with a white man after he allegedly committed an aggravated robbery at a post office. The prosecution argued that mere presence could be aiding the offender but the magistrate said that there was 'not much of a case against her'. The man was

remanded in custody for three weeks and the woman was granted bail on condition of residence.

The outcome was different when a black man and a black woman were charged with the obtaining of property by deceit, including many claims of social security benefits for which they were not qualified. The defendants were French-speaking Africans who needed an interpreter. However, the interpretation was whispered to the defendants and the court did not slow down the proceedings to allow the interpreter enough time. The prosecution asked for an adjournment to enable them to get forensic reports. The defendants were committed to trial at the Crown Court and remanded in custody for one week. Although they were charged with the same offences, the woman's case was still called after that of the man had been called and he was asked to sit down in the dock as if the two cases were separate.

In a slightly similar appearance, a black man and a black woman were charged with the possession of, with intent to supply, substances analysed to be 'crack' cocaine. The prosecution did not hesitate to magnify the detail that 'they were found in bed together', probably to present the woman as a whore and partly to establish the closeness of their relationship as evidence of their conspiracy. Items suspected to be used for the manufacture of crack were said to have been found in the house. The man was found with two hundred pounds and the woman with five hundred pounds in cash whereas they were both unemployed. The man was said to have been deported from the U.S. to Jamaica and he later came to Britain with

a forged passport. The woman had lived at that address for seven years and had only known the man for three months but claimed that she did not know about the drugs.

The prosecution objected to bail on the grounds that they had connections with drug dealers abroad and were likely to interfere with witnesses. The defence counsel stated that the said international connections were family members and not drug dealers, that the woman was married and only recently separated from her husband, and that she had a two-year old son to look after. The court remanded them both in custody because of the seriousness of the offences, the irregularity in the man's identity, and the likelihood of re-offending.

One magistrate sentenced a black woman to fifty hours of community service for her role in a burglary with two black men. The 1991 Criminal Justice Act made community service orders conditional on the convict accepting that form of penalty. Probably in keeping with this provision, the sentencer felt that it was necessary to ask the black woman whether she thought that she was being discriminated against when each of the men 'seemed to walk away' with fines of one hundred and eighty pounds and three months imprisonment suspended for two years. She said that she did not mind. This is interesting in that it was the only time the court was observed asking a defendant if the sentence was too severe. It is also noteworthy that part of the reasons why the men were fined rather than given community service was because they had both just secured employment from which to earn money and

from which they might find it difficult to make out time for community service.

This seems similar to the case of a black woman and a black man charged with theft and with resisting arrest. The woman was given bail on condition of residence and the man was remanded in custody pending the provision of a surety to the tune of two hundred pounds to ensure that he would attend in two week's time. The same thing happened in the case of the woman who was detained overnight and then given bail by the court while the man with whom she was charged was remanded in custody to await the results of the analysis of the substances found on them which were suspected to be drugs. She stated that she was treated well by the court because the man accepted that he was the one who gave her the substances that were found on her but such a confession was not supposed to have been known to the magistrate at that stage. It was more likely that she faced qualitatively different problems because she had been working with some of the court officials as a social worker investigating child abuse.

In another case, three black men and one black woman were charged with theft. The prosecution asked for a two week's adjournment to enable them to complete an identification parade on the men. The first man was granted bail on the condition of two sureties and curfew at his mother's residence. The second man was granted bail on the condition that he returned to the court in one week for the identification parade. The third man and the woman were then given unconditional bail. Apparently the linking of curfew

with mother's residence could result from the fact that the mother was the one who came to court to support her son and stand surety. However, it is likely that by coming forward with such guarantees, women who had committed no offences may become directly or indirectly exposed to control by the criminal justice system.

The last case of a man appearing with a woman that was observed involved two white people accused of possessing cannabis. The prosecution applied for the case against the man to be adjourned to enable the court to take it with another case pending against him that had to do with possession as well. The man was granted bail and the woman was then tried for possessing 25 grams of cannabis. She pleaded guilty and it was revealed that she had previous convictions. Her counsel argued that she suffered from asthma and that she used cannabis medicinally. The court learnt that she had four children to bring up on a social security benefit of one hundred pounds a week. She was fined sixty pounds in addition to twenty-five pounds cost to the prosecution. She was given six weeks to pay.

Some of the black women who were facing drugs charges said that a black woman could not have got off so lightly. This was supported by the barristers who spoke with the researcher. They were of the view that there appeared to be a shift in policy against women in general and against black women in particular. They said that offences for which women without previous convictions could have been given probation now attracted higher tariffs probably because the courts were sensitive to allegations that they were paternalistic. Such shifts in policy were likely to affect black women differently. The

systematic data that seem to support this claim are presented in Table 6.1 which shows that the proportion of black women in prison was rising much faster than that of black men in prison. This may suggest that black women are becoming increasingly involved in criminality but if we make allowance for the fact that all prisoners are not necessarily criminals, then it is more likely that prison statistics suggest increasing surveillance on black women in particular and the black community in general. Although most crimes are 'solved' through reactive policing, the imprisonment of most black women is drugs-related and this category of offence is 'solved' mainly through proactive policing.

There were no cases of black men standing trial with white women nor of black women standing trial with white men and no black women appeared together with white women. There were a few appearances by black men and white men but those were not the immediate concern here. What can be inferred from the cases of women being charged with men of their race for similar offences is that the women appeared to be seen as less responsible for their acts than the men. The only cases where the women appeared to be assumed to have equal responsibility with the men were the two cases of the black women who were remanded in custody with black men. However, even then, they were mentioned after the men, not before. It seems that the order in which men and women were mentioned suggests a hierarchy of discredibility.[28] If the man

[28] A reversal of Becker's hierarchy of credibility in such a way that men are seen to be more discredible than women and so the disposal of cases depended more on discrediting the defence of the men than on testing the reliability of the accounts provided by the

pleaded guilty, it could be taken for granted that the woman with whom he was charged would also plead guilty. Such an assumption could not easily be held in a patriarchal society if the order of mentioning were reversed.

This order of mentioning is ironical for a Western society like England that traditionally believes that it is courteous to mention ladies before gentlemen. Heidensohn (1985: 101) referred to the symbolic ranking of gender statuses and roles as 'sexual dimorphism' but there are also racial and class dimensions to it that make it a 'trimorphism' of social relations. Goffman (1979) analysed 'function ranking' of gender roles in the family and found that this was reflected in the representation of gender in advertising, resulting in 'the ritualisation of subordination.' Eaton (1986) would argue that the presentation of defendants in courts and in official records also contribute to the affirmation of the existing hierarchies.

The suggestion of an informal hierarchy was also reflected in the order by which men and women were presented on the case lists. It was startling to find that the case lists each day usually began with the cases involving men while women usually came in nearer the bottom of the lists. This might be related to the apparent presentation of women as secondary actors (Allen, 1987). If this was the case, then it could be expected that the name of the woman would be listed immediately after that of the man when they were charged together but this was not the case probably because even

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women. It suggests that the discredibility of the women was dependent on that of the men and not vice versa.

when people are charged for the same offence, they are presented as if they are involved in two separate offences. Moreover, the names were not listed alphabetically. The court officials were not asked why this was the pattern until the final week of the fieldwork. The clerks at the 'listings' office said that the whole thing was computerised and that the rule was to list the older cases first. The clerks searched through the old lists until they found a list that was topped by a woman. This suggests that men might have been topping the list because they were greater in number and therefore had a greater probability of being listed first.

However, from the day the present researcher called the attention of the clerks to the case 'league tables', it was observed that at least one list was topped by a woman each day. This might be by chance or because the clerks were not comfortable with the earlier observation and wanted to grant women some formal equality or it might mean that women got shorter adjournments because they were usually involved in minor offences. The second suggestion was partially corroborated by the probation officer on court duty who explained that the tendency was to try minor offences immediately except where the defendant pleaded not guilty whereas serious offences took longer for both prosecution and the defence to prepare their cases. No matter who topped the lists, anyway, the attendants did not follow them systematically in calling cases. One of them told the researcher that they usually checked to see which defendants were present with their counsel and then call them up accordingly.

As far as the present researcher knows, the only cases in which women were mentioned first while being tried with men were not English cases but they further illustrate the suggestion that the order of mentioning was hierarchical. This was the case of Winnie Mandela who was charged with being an accessory to assault 'after the fact' and with kidnapping. Mrs Mandela was mentioned before her driver who was charged along with her and who was in turn mentioned before Mrs Mandela's less prominent female friend, Xoliswa Falati (London Times, 4 June 1993). It is likely that Mrs Mandela's class relatively disarticulated her gender - even though her victimisation could be linked to that of her husband (Mandela, 1984) - just as the class of her driver relatively disarticulated his gender in the rearticulation of the hierarchy of discredibility. For a fuller commentary on this case and how it exemplifies VAMP, see Agozino (1991).

A similar articulation of class, race and gender was obvious during the trial of Angela Davis. The Press observed a break with the court tradition according to which the cases of women were called only after those of the men with whom they were charged together had been called. Moreover, when this informal hierarchy of male and female defendants was reversed as in the cases of Angela Davis and Winnie Mandela, it goes to suggest that class is articulated with race and gender in the ranking of individual defendants. For example, Angela was always mentioned before Ruchell Magee who was '... 'the other defendant' in the Angela Davis case ... overshadowed by the newly acclaimed heroine of black revolutionaries' (San Francisco Chronicle, 18 January 1971). The

press made a big issue of the different class backgrounds of the two defendants, emphasised their blackness and stressed their gender differences, forcing them to separate their cases and pursue the same issues in different courts.

Perhaps the cases of these two women were called before those of the men with whom they were charged because the women were celebrities and because they were black women who are frequently assumed to be macho. If that was the case, then the suggestion that the order of mentioning was hierarchical would seem to be supported. There might be similar cases in which some women in England were called first when standing trial along with men but the limited coverage of the observation for this research did not reveal any. This suggestion of the operation of a gender, class, and race hierarchicisation of defendants needs to be studied further to see how generalisable it could be. The only thing that has been demonstrated here is that many women were mentioned after their male co-defendants and it is being suggested here that this might be a reflection or a reinforcement of conventional societal hierarchies.

The suspected hierarchies of race, gender and class (though still only a suspicion yet to be proved) appear so consistent in the presentation of research reports that it is no longer persuasive to call them informal or chance occurrences. They appear to be the formal ways of doing things to reinforce conventional ideologies of superiority and inferiority. This may be as a result of the political nature of criminal justice and criminology. However, even in Statistics that prides itself with being the apolitical (and therefore

'mature') social science (Garland, 1985), the presentation of categories of people is not simply nominal but also ordinal in the hierarchical sense. Many official statistics begin with the category of 'white', then go on to that of 'black', from 'males' to 'females', and from 'adults' to 'children'. This order ensured that white people usually came first in official statistics and in most research report tables.

A notable exception is that of South Africa's annual Race Relations Survey[29] in which the order of presentation was 'African', 'Asian', 'Coloured', and 'White'. This appears to be an innocent obedience to an alphabetical order but the choices of group labels curiously correspond to the racial hierarchy of apartheid in an ascending order. If the government had chosen to classify 'Africans' as 'blacks' at least to emphasise that all South Africans are Africans, then the ascending order of presentation would have collapsed alphabetically.

Similarly, women usually came after men and so on in statistical tables. This 'order' seems to be obeyed uncritically by researchers even when their focus dictated otherwise. Another notable exception was Jefferson and Walker (1992) who start with the category 'Black' followed by 'Asian' and then by 'White'. However, because they did not theorise this arrangement, it is capable of being interpreted as an ascending order resembling the superficially alphabetical

29 See Cooper, et al, 1990, who reported that the South African Government chose to retain the racial classifications provided by the Population Registration Act upon which most apartheid laws were based. The government intended to retain the classifications, even though the PRA was repealed in 1991, until the tricameral parliament that was based on the population register was replaced after a democratic election.

hierarchy of South African official statistics. That Walker and Jefferson did not theorise the order of their presentation suggests that the hierarchicisation of statistical presentations is a taken for granted practice among researchers rather than a deliberate attempt to uphold conventional statuses. However, to say that this order of presentation is not necessarily conspiratorial is not the same thing as saying that statistical hierarchies are of no consequence in the perception of categories of people and practices directed at these categories. This is probably an over-interpretation of the facts but it goes to warn that a mere alteration in the order of mentioning would not result in greater justice if the unjust hierarchies in the wider society are not removed.

Such apparently dubious hierarchy was deliberately rejected in the tabulation of the field observation, not because of the wish to reverse the hierarchies but, because the primary focus of the present research was on black women. Hence black women were listed in the tables before black men and white women followed. The official statistics have been left in the 'order' in which they were received just to show how much is taken for granted when statisticians claim to allow facts to speak for themselves. This might be what Hacking (1991:194) had in mind when he wrote that, 'The bureaucracy of statistics imposes (order) not just by creating administrative rulings but by determining classifications within which people must think of themselves and of the actions that are open to them.'

5.4 Observations on Procedure

In this sub-section, the field observations will be presented with specific reference to the problems that faced black women compared with black men and white women. The comparisons were based on observable differences and similarities in the procedures and outcomes for similar cases. Only appearances by black women, black men and white women were recorded because they were the critical groups of interest. Some of the issues already discussed above may come up again in the tables for further discussion.

TABLE 5.3: THE DISPOSITION OF DEFENDANTS PLEADING GUILTY BY RACE AND SEX.[30]

Dispositi on Type	Black Women	Black Men	White Women	Total
Condi. D	2	2	-	4
Fine	2	7	4	13
Sus. Sent	-	4	1	5
Custody	-	1	-	1
Report	-	3	5	8
Comm. S.	1	-	-	1
Total	5	17	10	32

Notes: Cond. D = Conditional Discharge, Sus.Sent = Suspended sentence; Custody = remanded in custody or given custodial sentence; Report = remanded for probation or psychiatric report; and Comm.S. = Community Service.

30 SOURCE: FIELDWORK, LONDON, SUMMER, 1991.

The interesting thing here is that the fine was the single most frequent disposition relied on by the courts as Young (1987) and Bottoms (1983) have demonstrated. Of the two black women who were fined, one was immediately discharged because she had the option of spending one day in prison whereas she had spent four days in detention. On the contrary, one of the four white women was fined four times on four charges of loitering and another reminded the court that she had a second matter pending but the court discounted it, saying that it must have been entered in error. One of the black men who was fined could be refunded the money if he kept the peace during the time he was to be bound over.

It is also noteworthy that none of the black women was remanded for a social enquiry report. This might be because very few of them pleaded guilty or because those of them that pleaded guilty happened to be involved in relatively minor offences that could be disposed of without any need for a report. The second possibility appears to be supported by the fact that two of the black women were given conditional discharge while no white woman was given this. However, severity of the offences alone could not explain this since all the organisations and professionals who provided research information highlighted the lack of social enquiry reports for foreign defendants as a major problem facing many black women who were sentenced especially for drugs-related offences. This is not a problem of selective perception by the organisations but a practical problem that has been the subject-matter of their campaigns for some time now. The category of foreign women will be discussed later in chapter six but it is not desirable to separate them from black

women who are British citizens in this chapter because, as Bryan et al, (1985) argued, all black people are perceived as foreigners by most white people in England.

One of the organisations that provided information, Akina Mama wa Africa stated that one of the prisoners they were working with complained that an official from her country's embassy brought a character reference written on her behalf by a top government official but the judge ruled it inadmissible on the ground that he believed that everything could be bought with money in her corrupt country. Another organisation, Women In Prison was experimenting with the possibility of providing Home Circumstances Report to enable foreign women to qualify for parole. WIP were running a Female Prisoners Welfare Project named Hibiscus in Nigeria. The Criminal Justice Act 1991 specified the requirement of Social Enquiry Reports in all cases for which custodial sentence was being considered but it was not clear how this would be applied to foreign nationals in general and black women in particular.

As we have seen, only one black woman was given community service and the magistrate asked her if she thought that the sentence was too severe. One of the white women remanded for social enquiry reports had appeared because she was missing appointments with probation officers who said that they were willing to give her another chance. She was advised to 'take advantage of the their generosity' or she would be sentenced without the report. This seems to confirm the information from probation officers according to whom women appeared more embarrassed than

men and tended to conceal their cases from relatives. Women were said to be more likely to evade appointments for a SER even when sentencers insisted on it.

TABLE 5.4: CONDITIONS OF BAIL BY RACE AND SEX.[31]

Conditi	B.Wom	B.Men	W.Wo	Total
R. in C.	3	12	3	18
Uncon.	11	19	4	34
Reside.	3	8	2	13
Curfew	-	8	1	9
Surety	-	3	-	3
Passpo.	-	1	1	2
PsychR	-	1	1	2
Total	17	53	11	61

Note that Conditi = Condition of bail; B. Wom = Black Women; B. Men = Black men; W.Wo = White Women; R in C = Remanded in Custody; Uncon = Unconditional Bail; Reside = condition of Residence; Passpo. = Surrender of Passport; and PsychR = Psychiatric Report.

Once again, the numbers are small but the greater number of black women being given unconditional bail suggests that their alleged offences were not serious. One of such cases concerned a black woman who was accused by another black woman of damaging her car. The defendant told the researcher that she was provoked into inflicting the damage. Another observation worth noting is that two of the black women who were remanded in custody were remanded along with black men whereas no white woman was remanded with

31 SOURCE: FIELDWORK,LONDON, SUMMER, 1991.

a man. The fact that three out of 11 white women were remanded in custody compared to 3 out of 17 black women suggests that the white women had a higher remand rate but this could also be interpreted to support the earlier suggestion that the black women were charged with minor offences for which white women could have been cautioned. The smallness of the sample would not permit a wider generalisation of these results but when viewed in the wider context of how policing affects black women and that of their over-representation in the criminal justice system, the cases might be indicative of serious problems of victimisation and injustice that could be uncovered through research focusing specifically on remand decisions.

The black man and the white woman who were remanded for psychiatric reports had been shouting and cursing in the dock. One of the white women who was remanded happened to be four months pregnant and her aunt came to testify that she would provide her with accommodation and make sure that she did not fail to appear if she was given bail on the condition of residence. The magistrate turned down the application for bail on the ground that the defendant appeared 'to be living what social workers would call a loose life.'

The present researcher observed that women were more likely to appear as witnesses for men than vice versa. Similarly, all the instances of people being given bail on the condition of surety had women as the providers. In one instance, the amount was 20,000 pounds and it was guaranteed by the mother of the accused. This

same pattern was followed in the cases of the condition of residence - defendants were usually required to live at their mothers' addresses.

On the whole, it was rare for a foreign defendant to be granted bail and when this was granted, the magistrate explained that the conditions had to be stiff because the defendant was a foreign national. Even a defence counsel said in a plea of mitigation that his client was 'a Ghanaian born in this country.' It is possible that the extra precautions taken with the foreign defendant were discretionary but this was likely to affect black women more adversely than white women. Two of the black women who were remanded in custody with black men were foreign nationals and one of them needed the services of an interpreter. Tarzi and Hedges (1990) have shown that out of 150 sentenced foreign prisoners, 46 were refused bail, 64 did not apply for bail because they had no fixed address or lacked sureties, and only 17 were granted bail on the condition of high sureties that they could not afford.

TABLE 5.5: OUTCOMES OF CONTESTED CASES BY RACE, AND SEX.[32]

Outcome	B.Wom	B.Men	W.Wom	Total
Fine	-	4	-	4
Crown C.	2	10	2	14
Custody	-	2	-	2
Dismiss	-	4	-	4
Drivers	-	2	-	2
Total	2	22	2	26

[32] SOURCE: FIELDWORK, LONDON, SUMMER, 1991.

Note that Crown C. = cases sent to the Crown Court for hearing; Custody = Custodial Sentence; Dismiss = cases dismissed or withdrawn; and Drivers = those who were disqualified from driving.

The importance of table 5.5 lies in the indication of the number of black men who had the cases against them withdrawn or dismissed (4). This seems to suggest that proceedings were initiated against black men quicker and without adequate grounds as NACRO (1988) observed. It is probable that black women who were close to such men would also be affected unnecessarily. This picture will become clearer if linked back to the statistics for the trial and acquittal of men and women at the Crown and the Magistrates courts in London (Tables 5.1 and 5.2). The suggestion that black men were more likely to be acquitted than black women is further illustrated by those tables.

The statistics on the ethnic origin of the people given probation supervisions are not very reliable because the Home Office reports that the officers in the inner city district where blacks predominate refused to participate in the survey. However, the returns from those asked questions suggest that black women were disadvantaged compared with both black men and white women (Table 5.6).

Black women were one per cent higher than black men in the most serious type of supervision - criminal court orders. This appears insignificant when viewed against their equal percentage overall representation in 'all types' of supervision. However, this difference

is noteworthy because white women were proportionately less than white men by the same percentage except in domestic supervision and 'all types' where, like black women in the earlier types, they were one per cent higher than white men. When this is compared with the high proportion of black women in prison, the relative uniqueness of the problems facing black women is further suggested.

TABLE 5.6: PROBATION SERVICE CLIENTS BY TYPE, SEX AND RACE OF THOSE SUPERVISED, 31 MARCH 1987[33]

Type	Whit	Blac	Asia	Othe	Refu	Tota	Not
Sex	e.	k.	n	r	sed	l	Ask
CRIMINAL COURT ORDERS							
Male	93%	3%	1%	1%	2%	56,060	6,900
Fem	92	4	1	1	2	141,540	1,390
AFTER-CARE							
Male	88	5	3	1	3	33,220	6,400
Fem	87	6	2	2	3	1,150	260
DOMESTIC SUPERVISION							
Male	93	1	3	1	3	2,570	370
Fem	94	1	2	1	-	32,480	330
ALL TYPES OF PROBATION SUPERVISION							
Male	91	4	2	1	2	91,850	13,670
Fem	92	4	1	1	2	17,790	1,980

These variations may be as a result of the error of coverage because the number of women asked questions increased disproportionately in the after-care category. Moreover, when the number of men not

33 SOURCE: H.O.S.B. 1/89, 31 JANUARY 1989: 'The ethnic origin of persons supervised by the Probation Service, March 1987', TABLE 4.

asked almost equalled that of women not asked questions (in domestic supervision), black men and black women recorded equal percentages. It is interesting that domestic supervision is the only category in which the representation of black people is proportionately lower than their overall proportion in the population. This is probably because, unlike criminal court orders, domestic supervision is voluntary aftercare and so not many black people volunteer for further supervision if given the choice.

Mair and Brockington (1988: 124-25) concluded that female offenders were generally more frequently given non-custodial sentences because they are more likely to be subjected to social enquiry reports. They stated that this may be a sign of leniency to female offenders but also argued that, 'if women are being subjected unfairly to what might be perceived as wide-ranging intrusion into their private lives ... then women are being treated neither equally nor justly.' One response could be that equality or justice for women does not lie in their being given as much imprisonment or as few probation orders as men because men are neither the standard bearers of justice nor a homogeneous group against which women could be measured for equality. Probation orders are preferable to immediate custody but what Mair and Brockington suggested is that the view of probation as a soft option could result in women who deserve absolute or conditional discharge being given probation. Garland (1985) and Young (1976), among others, have also argued that although probation orders were formulated as 'welfare sanctions', they are actually intrusive.

Black women are more likely to be given criminal court orders and after-care supervision than black men or white women. If the argument of Mair and Brockington is right, it suggests that black women are more closely supervised probably because they face qualitatively different problems compared white women and black men. This suggests that the black woman still wears the tag of the 'bad' woman (Bryan et al, 1985; Wilson, 1985) which makes her the target of closer surveillance by the criminal justice system than those who are given conditional or absolute discharge.

Conclusion

This chapter has tried to present the observations of the present researcher along with some information from individuals and groups with whom discussions were held during the fieldwork. The evidence or race-class-gender discrimination in the criminal justice system is not strong in this chapter. This is probably because the present research was not designed to test whether there is any such discrimination. The present thesis assumes that such forms of discrimination exist and attempted to find out the possible forms that they would take and how those affected have tried to deal with them.

The observations on disparity and discrimination, support and isolation, the hierarchy of discredibility and observations on procedure go to suggest the forms that discrimination could take in the courts. It is true that observations about the relative isolation of the female defendant in court and those about a possible hierarchy

of discredibility do not directly reflect discrimination. However, they serve to point out how the problems that face black women in courts reflect or affect problems that are faced by black women and people like them in society.

Similarly, although this chapter talks about the greater likelihood of black women being affected adversely by race-class-gender politics in the courts, this should not be interpreted in quantitative terms only. Given the limited size of the observations and the small sizes of the statistical difference, the importance of the differences in frequency should be seen more qualitatively. Such differences are seen in the present thesis as suggestive of the qualitative differences in the race-class-gender relations that affect black women compared to black men and to white women. The smallness of the quantitative differences suggests the similarities in the social relations that affect these three categories of people and thereby justifies the comparative approach adopted here. However, the smallness of the quantitative differences suggests important qualitative differences among the three categories that cannot be fully explored in the present chapter or thesis. The next chapter will throw more light on the qualitative significance of quantitative differences especially when related to the methods and findings of Hood (1992) and others.

Chapter Six

Black Women In Prison

Introduction

This chapter concludes the presentation of evidence for the uniqueness or otherwise of the problems that face black women in the criminal justice system. Chapters four and five covered the problems that faced black women, in particular, in the ways and means that they were policed in the community and processed through the courts. Chapter six covers problems facing black women in prison service establishments.

Much of the evidence presented in this chapter is from the voluntary organisations that worked with black women in prison and also from documents and publications. As in chapters four and five, the method of comparison between black women, black men and white women involves the use of triangulation of different sources of data. This helped the researcher to evaluate the claims of one source against evidence from other sources.

6.1 The Gender and Race of Prison Populations

At the time of the present research, the prisons in Britain were mainly male institutions: women were less than four per cent of the total prison population in 1989. However, the population of women in prison was growing faster than that of men. According to NACRO

(1991) the average daily population of women in prison was 1,767 out of a total daily average of 48,610 in 1989. In the same year, 37% of imprisoned women (including fine defaulters) were sentenced for less serious offences like theft, handling, fraud and forgery. This compares with 23% of men imprisoned for similar and less serious offences. The percentages for serious offences were reversed for women; 12% of women and 19% of men were sentenced for serious offences. Moreover, the women tended to be imprisoned for first offences. For example, available data on 30 June 1989, show that 30% of women imprisoned had no previous convictions compared with 9% of the men.

This picture is even more gloomy for black women because, according to the voluntary associations that provided information for the present research, many black women in prison were not only first offenders but also recent immigrants to an unfamiliar culture and many of them still protested their innocence. Their experience is that of being inside 'a prison within a prison' - a phrase attributed to a foreign white male prisoner but generalised by Tarzi and Hedges (1990). They suffer from isolation and inadequate communication with more distant relations as well as from the prison regime that all prisoners experience in different ways. According to NACRO (1991) black women were 26% of all women prisoners on 30 June 1990, whereas they were less than 3% of the total population of women in Britain.

Maden, Swinton and Gunn (1992) have attempted to explain the over-representation of black women in prison populations but

concluded that black women were not over-represented among the women in their sample who were serving sentences for drugs offences. The claim here is that when only U.K. residents were considered, 83% of drug offenders sampled were white and 13% were black. The conclusion that 13% representation of black women among U.K. residents is normal seems to distort the fact that black women make up only about 3% of the general population. To say that 13% representation of black women is normal is to suggest that black women are relatively more criminal and so, their apparent over-representation is actually normal, given their 'mythical crime rate'. The present research assumes that it is impossible to measure crime rates of categories of people in the general population from prison statistics or from samples drawn from prison populations. Thus, the over-representation of black women must always be related to their proportion in the total population and to the accountability of criminal justice officials rather than to an attributed crime-proneness.

The present researcher is aware of the 'inferential fallacy' (Hood, 1992) of concluding that there is discrimination from disparities apparent in statistics of prison populations. Hood (1992: 6) has argued strongly that discrimination may 'be the result of a cumulation of small 'race effects' at different stages of the criminal justice process. He found that about 80% of the over-representation of black men in prison populations 'was due to their over-representation among those convicted at the Crown Court and to the type and circumstances of the offences of which black men were convicted.' The remaining 20%, according to Hood, are due to

'differential treatment and other factors (like not pleading guilty) which influence the nature and length of the sentences imposed' (Hood, 1992: 179). As for black women, Hood concluded that there is no discrimination against them when compared to white women and that when compared to black men, the 'chivalry thesis' that women are generally treated more leniently than men is confirmed.

The present research is not interested in the treatment of black women in the criminal justice system as such but in the problems facing them as perceived by affected individuals and voluntary associations that are working with them. However, the findings of Hood regarding the treatment of black women calls for at least three responses that are relevant to the present research. First of all, to say that chivalry applies to all women irrespective of race is to assume that chivalry would have the same impact on black women as on white women whereas chivalry is historically a white patriarchal practice that claims to be protective of white women.

This reference to the historical origins of chivalry is relevant here because of the ahistorical empiricist methods through which Hood arrived at his conclusions. He reviewed seven methodological inadequacies found in previous sentencing research, especially sampling, inferential, and comparative errors, but he did not mention their ahistoricity which his own research shares. Reference to the well-documented history of the discriminatory policing of black women should have warned Hood to look beyond the isolated cities that he observed in one single year before making generalisations about the truth of the chivalry thesis. Although

Hood proved beyond doubt that some of the disparities in the treatment of black people in courts cannot be accounted for without reference to discrimination, he tried to localise the problem of discrimination as if it is something that happens only at the courts in Dudley.

Although Hood found that 36% of black women received custodial sentences at Dudley courts where they had a probability of custody measure of 26% he concluded that overall, their probability of custody measure was similar to their observed rate of custody just as in the case of white women. This conclusion does not say anything about the fact that Coventry courts were included in the comparisons whereas 41 white women (or 39% of them, the highest in any of the other courts) were sentenced to custody there and no black woman was sentenced to custody there. This fact may have contributed to the evening out of the differences between the overall observed rates of custody for black women and white women.

Again, by talking about the seriousness of the danger and distress suffered by 'victims' of 'mugging' with which black defendants were disproportionately charged and without mentioning the seminal analysis of the 'amplification' of this kind of crime through colonialist strategies of control and communication (Hall, et al, 1978), Hood makes the questionable suggestion that those who are convicted of such crimes were necessarily the actual offenders. He and his colleague studied sentencing in some criminal courts but as soon as the defendants were sentenced, they started calling them offenders instead of convicts. This conventional way of describing

convicts conceals the fact that not all prisoners are offenders of any sort.

Secondly, the sophisticated methods of Hood and his colleague were designed to 'isolate' the effects of race on sentencing. For this purpose and due to 'the sensitivity of the subject' they required difference at a high level of statistical significance (Hood, 1992: 21). This suggests that the problem of racism is entirely or even mainly quantitative and not also, or even mainly, qualitative. Furthermore, the attempt to isolate race as a factor seems inappropriate for the purpose of understanding racism which is never experienced in isolation but in articulation with gender and class discriminations. Jefferson (1992) may have been referring to this methodological fallacy when he contended that the 'dominant approach' of using 'sophisticated techniques' to reveal 'the purely "racial" dimension' to criminalization 'is a bit like sieving flour with ever finer meshes: eventually there is too little getting through to enable anything to be made' from the final results.

Analysis of the differences between men and women should be sensitive to the extent to which black women were affected by actions that were originally directed specifically at black men as the Institute of Race Relations documented (IRR, 1987). Hood found that many of the black women got custodial sentences partly because they were charged with other defendants who were black but he did not say whether the co-defendants of black women were male or female. If they were male, it could be the case that the women got charged along with the men when they may not have

been accomplices and this may be the reason why many more black women pleaded not guilty and ended up receiving longer sentences. This reluctance to plead guilty should not have been too easily written off as evidence of confrontational demeanour because it could actually be suggestive of Victimisation-As-Mere-Punishment by which innocent people are included as targets of actions taken against individuals who are close to them. However, the concept of VAMP or that of criminalization does not assume that all black women who end up in prison were innocent or wrongly convicted.

Furthermore, to say that 'disparities are not the same thing as discrimination' (Hood, 1992: 48) is different from implying that disparities are irrelevant to the understanding of the problems that face black women in the criminal justice system. Section 95 (1) (b) of the Criminal Justice Act 1991 which Hood cited, without making racial discrimination by judges a criminal offence, urges the Home Secretary to

> 'publish such information as he considers expedient for the purpose of ... facilitating the performance ... (by persons engaged in the administration of criminal justice) ... of their duty to avoid discriminating against any person on the grounds of race or sex or any other improper ground' (Hood, 1992: 191).

The implementation of this section is seen by the former Chairman of the Commission for Racial Equality, Michael Day, in a foreword to Hood (1992), as being capable of helping to check discrimination. However, the provision is not an innovation but a confirmation of

the view of McClintock (1974) that criminal justice statistics are provided primarily for the purpose of accountability and although inadequate for the purpose of accountability, they are completely inappropriate for the purpose of studying criminal propensities. The present research is therefore using these figures as a rough guide to the accountability of criminal justice officials.

TABLE 6.1: POPULATION IN PRISON SERVICE ESTABLISHMENTS ON 30 JUNE, BY ETHNIC ORIGIN AND SEX, 1985-89.[34]

ALL MALES AND FEMALES

Year	White	Black	%Black.	Asian	Mixed	Other	Total
1985	39,383	3,854	8.11	1,080	1,059	2,127	47,503
1986	38,998	4,105	8.80	1,290	1,034	1,208	46,635
1987	42,041	4,753	9.45	1,355	996	1,120	50,265
1988	41,185	4,869	9.82	1,358	1,014	1,152	49,578
1989(p)	39,600	5,280	10.87	1,350	970	1,330	48,540
ALL MALES							
1985	38,156	3,662	7.97	1,052	1,009	2,047	45,926
1986	37,767	3,915	8.68	1,259	973	1,141	45,055
1987	40,755	4,449	9.17	1,316	937	1,050	48,507
1988	39,951	4,525	9.46	1.329	955	1,042	47,802
1989(p)	38,400	4,930	10.53	1,320	920	1,200	46,780
ALL FEMALES							
1985	1,227	192	12.17	28	50	80	1,577
1986	1,231	190	12.02	31	61	67	1,580
1987	1,286	304	17.29	39	59	70	1,758
1988	1,234	344	19.36	29	59	110	1,776
1989(p)	1,210	340	19.31	30	50	130	1,760

Table 6.1 shows that the proportion of all black people in prison service establishments was more than twice their proportion in the total population of England and Wales. Moreover, while the percentage for black men in prison was consistently slightly lower than the overall proportion of black people in prisons, that of black

[34] SOURCE: H.O.S.B., 12/90, 'The prison population in 1989', 1 APRIL 1990.

women was consistently nearly twice that of the overall percentage of black people in prisons. For example, in 1989 the percentage of black people in the provisional prison population figures was 10.87%, that of black men compared with the total number of males was 10.53% and, that of black women to all females was 19.31%. The percentages were the proportions of black prisoners calculated from the total prison populations by year and sex.

Table 6.1 shows that on 30 June 1989, 7,600 or nearly 16% of all prisoners were known to be from 'the ethnic minority communities.' This was one per cent proportionately higher than figures for June 1988, continuing the increase from 12.5% in 1985. On 30 June 1989, 10.53 per cent of male prisoners were known to be black in origin, compared with 9.46% in mid-1988 and 7.98% in mid-1985. For females, the proportion was 19.31% which is similar to the 19.36% of mid-1988 and therefore breaking the almost consistent increase from 12.17% in mid-1985. No matter how one looks at it, the proportion of black people in prison is not in line with their proportion in the total population of about 5%.

The higher proportion of black women compared with white women suggests that black women faced significantly different problems. It might be argued that the seriousness of the offences committed by blacks and their previous records explain their disproportionate presence in the prisons. However, this is not an entirely convincing argument because when compared in offences of similar seriousness, white people appear to have more previous convictions. The Home

Office[35] reported that when the seriousness of the offence was controlled for, whites had more previous convictions than blacks. In the offence of burglary, for example, 74 per cent of whites and 59 per cent of blacks had six or more previous convictions. For drug offences, 42 per cent of whites and 24 per cent of blacks had six or more previous convictions. This is further evidenced by the significantly larger proportions of black people who were in prison on remand and those being detained for non-criminal matters (Table, 6.2). According to Vivian Stern (1987: 18) non-criminal populations of prison establishments, or those she called 'civil prisoners', are those who have defaulted on maintenance payments, are in contempt of court or those held under the Immigration Act. Again, the percentages were the proportions of black people in the 'Total'.

Table 6.2 was a Written Parliamentary Answer to Mr Birmingham, MP, by the Secretary of State in the Home Department, Mrs Rumbold, on 4 February 1991 (holding answer to question asked on 25 January 1991). The table does not require much commentary. The central point is the now familiar higher proportions of black people who are in prison for non-criminal offences despite the small number of black people in the population. It is interesting that it is only in this category and in the convicted but unsentenced group that black men and women have nearly equal proportions. More than thirty-three per cent (33.33%) of non-criminal women were black and 32.19% of the non-criminal men were black. Also 8.73%

35 H.O.S.B., 8/88, 'The prison population in 1987', 30 March 1988.

and 8.98% of convicted but unsentenced men and women, respectively, were black. This might be further evidence of the higher use of remand in custody for black defendants and the higher use of immediate custodial sentences for convicted black people. This was especially the case with foreign prisoners who were not referred for social enquiry reports and who were rarely given bail or non-custodial sentences.

TABLE 6.2: PROVISIONAL POPULATION OF PRISON SERVICE ESTABLISHMENTS IN ENGLAND AND WALES ON 30 SEPTEMBER, 1990: BY TYPE OF PRISONER, SEX AND ETHNIC ORIGIN[36]

MALES

Status	White	Black	%Bla	Asian	Mix.	Other	Total
Untrie	5,633	923	12.86	192	176	251	7,174
Convic	1,532	158	8.73	36	33	49	1,808
Senten	27,915	3,485	10.34	973	616	702	33,691
Non-C	92	66	32.19	19	13	15	205
All	35,171	4,632	10.80	1,220	838	1,017	42,878

FEMALES

Untrie	208	53	17.32	7	21	17	306
Convic	73	8	8.98	2	4	2	89
Senten	777	303	25.31	26	40	51	1,197
Non-C	5	3	33.33	-	1	-	9
All	1,063	367	22.92	35	66	70	1,601

Note that Untrie = remand prisoners who were awaiting trial; Convic = convicted prisoners who were awaiting sentence; Senten = Sentenced inmates of prisons; Non-C = non-criminal populations in prisons.

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[36] SOURCE: HOUSE OF COMMONS, 1991, HANSARD, 185, 4-15 FEB, PP33-36W.

The high proportion of black people among the non-criminals in prison (32.19% of non-criminal men compared to 10.80 of all men and 33.33% of non-criminal women compared to 22.92% of all women; however, the original figures were too small to make this percentage difference statistically significant) also reinforces the view that there is disproportionate criminalization and victimisation of black people. The vulnerability of black people who were relatively poor or more recent immigrants might contribute to the high proportions of black people yet untried[37]) and those convicted or sentenced for other offences. This must be so because of the police discrimination against the black community that was discussed in chapter four and because of the disparities found in the problems facing black women in courts (chapter five) all of which reflect the increasing marginalization of the poor in general under Thatcherite policies of 'authoritarian populism' (Hall, 1988). Note that the proportion of all black people in table 6.2 (10.80%) is similar to the one in table 6.1 for mid-1989 (10.53%) while that of black women rose by 3.61% from 19.31% in mid-1989 to 22.92% in mid 1990. This may be indicative of the greater likelihood for black women to be collectively victimised along with the black men in their lives, as we saw in chapter four.

37 Because the poor and the recent immigrant might not be able to afford the amounts demanded by courts for bail or might not have people in England who are ready to stand surety for bail. Although many black people were born in Britain or have lived here long enough not to be called recent immigrants, the racialised immigration policies have continued to keep the families of most of those who are already here away. The result is that the recent migrant and the first generation migrant may be similarly isolated from family support in times of need. Besides, all black people are often assumed to be foreigners in Britain even when they are citizens of the United Kingdom (see Cook and Hudson, 1993).

A striking difference between these figures and those of the U.S.A. is that black women made up more than 50 per cent of the prison populations of women in some states (French, 1981: 380). This proportion is only approximated in England at some institutions like Cookham Wood Prison where 40% of the inmates were black women (Mama, 1989). French (1981) compared prison populations in North Carolina by race and sex and found that there were proportionately more blacks in the female population than in the male population, that the females tended to be lowly educated and that this was even lower for black women, and that a greater proportion of black women was imprisoned for drugs offences. 'Given this profile,' she concluded, 'it is not difficult to ascertain that the Black female offender surely suffers from social double jeopardy in North Carolina, a state which is usually overprotective of their 'acceptable' female population' (French, 1981: 380). It seems that the jeopardy is more than double because it includes the jeopardy of class in the sense that it was not every black woman that stood high chances of ending up in prison but mainly poor black women.

6.2 Racist Relations in Prison

Inside the prisons, according to one black woman who served thirty months, 'There is a lot of racism from prison officers, teachers, the lot, but mainly from prison officers .... If you're black you get more pressure, because you are not only fighting for your prisoner's rights, you're fighting for your black rights' (Mars, 1985). This issue can be illustrated with specimens of complaints against racist abuse

by a black woman in prison and the characteristic responses that she received.[38])

The official complaint form advised prisoners to try to resolve their request/complaint informally if they could. Failing that, they should make a written request/complaint on the form provided within three months of the facts coming to their notice. Request or complaint should be limited to one issue at a time and separate forms should be used to raise separate issues. The complaint should be clearly written without insulting language and it should be written in English or Welsh because other languages may lead to delays. The language requirement has been noted by voluntary organisations and probation officers as one of the problems facing black women in prison. Many of them are not proficient in English and some are not literate in their mother tongues. They also claim that some of the complaints of the prisoners could not be followed up because the prisoners were scared that a formal complaint would expose them to further discrimination from the officials.

The complaint to be considered here came from a black female prisoner, aged 20. She was officially classified as having a young status in one form and as being an adult in the next, a probable indication of doubts about where to place a 20 year old woman who may have attained her 21st birthday by the time of the second classification. In the first form, the complainant wrote on 27 March 1991: 'I was spoken to by an officer ... in a totally racist way. When

38 The specimens were received by the present researcher from NACRO's Women Prisoners' Resource Centre, during the fieldwork.

locking me in my cell she said to me 'Don't turn up that 'wog box' too loud.' This is only the beginning of my complaint.' The space for writing on this particular form was very small.

Two weeks later, the reply came on the reverse side of the same form saying, 'I have caused an investigation to be conducted with regard to your complaint.... I can find no evidence to corroborate your allegations and so conclude that your complaint is not substantiated. I do not propose to take any further action.' Notice the suggestion of absolute truth in 'I can find no evidence' which is not exactly the same as 'I did not find any evidence.' Notice also the dismissiveness of the proposal not to take any further action and the present tense of the conclusion that the complaint <u>was</u> not substantiated.

The difference between 'I can find no evidence' and 'I did not find any evidence' is that the former is finalist, absolute and dismissive in tone while the latter, phrased in the past tense, is more particularistic and more accommodating of the possibility that another investigation could yield something that was initially not found. It is true that the absolute-dismissive tone is common in bureaucratic and authoritarian discourse but the argument here is that allegations of racism are serious enough to demand greater sensitivity on the part of authoritarian bureaucrats.

It is not surprising that the complainant was not satisfied and so she appealed to the headquarters in April, detailing more abuses;

'To whom this may concern. In January 1991 I was in the educational block at Bullwood. Where I heard an Officer .... Saying to my roommate at the time (... aged 15) that 'she's going to make sure she comes to Kerstal which is her wing and make sure she goes down the block everyday. That's when I said 'You shouldn't say that to her.' She said to me 'I wasn't talking to you.' I said 'when you talk to one your talking to the both of us. When we both turned around to approach Room 3 (the officer) said loud and clear 'You black Fools.' Which is a racist remark. And I feel she has no right using that comment at me. I know for a fact that if it had been the other way around I would of been in serious trouble. So I decided to make a complaint to the Gov. I saw (an officer) first and she told me that was not a racist remark. I went higher up and said that I wanted to make a complaint to the area manager. Before that went through I had to see ... Gov of custody. She too told me that it was not a racist remark I said 'How could (she) sit the(re) and tell me that. Her reply was 'You are black and you are a fool.' I went ahead and wrote to the Area Manager. To my disappointment his reply was 'It had to be dealt with (by) the Governor at my Prison. I saw (her) again and she said what she said the first time still goes. I got my complaint sheet saying 'there is no evidence of substantiate that an officer made any remark. But can I put (it to) you there is no evidence saying she did not say that because the fact is she did. From there after I've been victimised in all different ways and I'm afraid a person can only take so much .... There are so many other things to tell you but I don't have space. Today me + x roommate is on Kerstal the wing (the officer she was complaining against had threatened to take them) is majority of time and is making my sentence Hell.'

The complaint is self-explanatory but it is useful to point out the deliberate limitation of the space within which a complaint has to be made on the first form that appears to be the reason for this woman to withhold some details of her complaint the first time around. The reply to the second complaint is equally characteristic of the dismissiveness already noticed:

> 'This complaint is similar in every respect to the one you sent to me 13 February. You may remember that I wrote to you stating that the matter would be dealt with by your Governor. I understand that as a result of an investigation conducted by ... you were informed that there was no evidence to substantiate your claim that the officer had made a racist comment. There is nothing in your appeal which would persuade me to change my view which is that the conversation did not initially include you and was always lighthearted. I am satisfied that no racially demeaning remark was made.'

That seemed to close the case but the complainant wanted to appeal further to the Home Office and the reply was:

> 'I have discussed this matter at length with the Head of Custody. There are <u>definitely no channels</u> for your complaint to be forwarded to the Home Office. Some complaints of a particular nature can be but yours does not fit into this category. You are quite free to write to your M.P. if you are so inclined.'

Perhaps this particular prisoner was a 'serial complainant' but the way the 'investigations' were conducted, without inviting her to testify or to call witnesses, indicates that prison authorities do not take such complaints seriously. It is not being suggested here that

there should be a full hearing every time there is a complaint of any sort in prison. However, as the Race Relations Manual for prison officers suggests, racist behaviour or abuse is a serious disciplinary offence. While announcing the launch of the Manual on 17 April 1991, Angela Rumbold, the Home Office Minister for Prisons, said:

> 'We all know that discrimination does still occur in our prisons, against both prisoners and staff. Some is overt, perhaps racial abuse of prisoners or harassment of ethnic minority officers. While some is unintentional, like stereotyping which leads to false assumptions about a person's behaviour ... I ... firmly believe that prisoners ... regardless of colour, race or religion, should be treated with equality, humanity and respect' (NACRO, 1992: 8).

Note that Mrs Rumbold emphasised race and colour without mentioning gender as if racial discrimination is not often articulated with gender discrimination. Moreover, note that she recognised that religion is articulated with race whereas the Home Office has consistently refused to recognise Rastafarianism as a religion, thereby exposing those black women that profess to be Rastas to institutionalised discrimination. In spite of the concern shown by the minister about racial discrimination or harassment in prisons, the offence is not listed under Rule 45 that is phrased one-sidedly as if only prisoners are capable of committing disciplinary offences in prisons. According to NACRO (1992: 20) the proportion of offences punished per head of average prison population in 1990 was 1.8 for men and 2.7 for women. Similarly, punishments per 100 prisoners stood at 293 for men and 409 for women. There are no figures for disciplinary actions taken against officials.

The present researcher believes that offences by prisoners should be treated as seriously as offences against prisoners. This is probably what the above complainant was referring to when she wrote that 'I know for a fact that if it had been the other way around I would (have) been in serious trouble.' According to the voluntary organisations, the chain of communication for complaints by prisoners starts from wing officers who were often those against whom the complaints were made and so, not all serious complaints reach the governor or the Home Office. Far from taking prisoners' complaints seriously, a Home Office research reveals that

> 'Like governor's applications, the petition system can serve other, less easily defined, purposes. For example, it can act as a 'safety valve': when inmates have had their requests refused, they can sometimes react by demanding to petition and then withdrawing it (or not even bothering to write it out) once they have 'cooled down' or thought the matter through. Similarly, staff sometimes suggest petitioning as a way of bringing a matter to a close or dealing with a particularly persistent complainant' (Ditchfield and Austin, 1986).

However, racism is not only from whites to blacks in prison. A black woman, Martha, tells the story of how she went to prison for her white boy-friend who was a cheque forger. She thought she was in love with him and he paid her regular visits and gave her a radio that made her sentence more bearable. According to her, this relationship exposed her to a lot of 'hassle' from the other black

women who used to call her a 'white man lover' and 'pagan'. Yet she believed that in prison,

> 'Being Black wasn't a problem. Some of the girls were bitchy, some of them were National Front, some of them were Skinheads, but you knew who to mix with and who not to mix with. The black girls tended to stick together, but me, I mix with everyone, I don't care. Colour's got nothing to do with it as far as I'm concerned' (Padel and Stevenson, 1988:14-15).

A common complaint of most black women in prison, according to the agencies that worked with them, was that there were problems which were common to all female prisoners but that black women in prison faced racist problems which were not shared by white women. A South East London probation officer confirmed that although the black women who served long sentences for drug offences were

> '... almost all dignified, respectful and unworldly .... (they) tend to get all the shit jobs in the prison, like working in the kitchens from 6 a.m. to 5 p.m., but they don't complain because it keeps them occupied. They prefer it because they don't have time to think about their families. In the end they have nothing' (Roberts, 1989).

This shows that some black women may even volunteer for 'shit jobs' in prison but it is likely that many of them resent it. For example, a black woman who was an ex-prisoner complained that, 'Most of the work they give you (in Prison) are to make you into a good housewife - cleaning, scrubbing, knitting and sewing. I hear that men get

carpentry jobs, machine jobs, and all those interesting pursuits and studies' (Channel 4, 19 September 1991).

Similar racist relations were experienced by Angela Davis during her encounters with the U.S. criminal justice system. When there was a bomb alert in one of the prisons where she was detained, the matron cuffed Angela's hands behind her back, the right arm of another black woman was chained to the left of a Chicano woman, and the only white woman present was not chained at all before they were evacuated to an underground room (Davis, 1974: 298). This was probably done to victimise the women racially and break their solidarity on the basis of gender but the latter did not succeed. For example, both white women and black women supported one black prisoner who was told that she could not watch Television because she was allowed outside the prison on a 'work furlough program'. She reportedly told the matron that her badge did not give her the power to 'punish' her in that way. No, it was not intended as punishment at all, it was victimisation and the matron made this plain by informing her that she had 'overstepped her color'. In the battle of words that ensued, all the black women supported the sister and some white women also supported her (Davis, 1974: 310).

The 'fractured' solidarity[39] of most (but not all) female prisoners in spite of racial discrimination was probably based on their consciousness that they were all oppressed on the basis of gender.

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[39]Solidarity of women is being qualified here by pointing out that it is not universal, given the rivalries and quarrels that could be amplified by the austerity of prison resources. Solidarity among female prisoners is seen here to be similar to the 'fractured unity' among segments of the working class that Hall et al (1978) identified.

For example, in the recreational room for women in one of the prisons where Angela was detained, the only furnishing provided were backless stools, washing machines, clothes drier, and ironing equipment. This was probably because the officials thought that women could not relax if they were separated from domestic chores. Thus the clothes and linens of men in the same prison were externally laundered while the women were expected to do their own laundering. If no woman volunteered to do the washing, some work would be imposed on them and black women would be the ones ordered to do the washing, articulating racism with sexism. However, when, out of boredom, many white women volunteered to do the washing, black women 'were consistently rejected' (Davis, 1974: 309).

Angela Davis was high profile but her politics was working class. The reference to her case was possible because it is well-known and it is well-known because she was high-profile. There could be many more Angelas out there that are not heard of who could suffer even greater victimisation as poor black women. The reference to her case is used here to demystify rather than to de-specify such incidents as the shooting and maiming of Cheryl Groce by a police inspector in Brixton or the events that sparked off the Handsworth and Broadwater Farm Estates uprisings of the 1980s.

The extent to which the insensitivity in handling complaints against racism could be generalised for all complaints procedure is reflected in the reference to the Home Office research that found that the procedure is actually regarded as a safety-valve through which

prisoners have their say and officials have their way. However, the fact remains that to treat complaints against racism in the same way as every other complaint is contrary to the Race Relations Manual that singles out racism as a serious problem in prisons. This might support the assertion of Mama (1989) that, 'While prison governors express the official view that all prisoners should be treated equally, prison staff often harbour particular resentment: they are notorious for being amongst the most racist sections of the British population ....'

6.3 Gendered Racist Relations in Prisons

In December 1989, an observational visit to Holloway women's prison was paid by the present researcher in the company of some other students. Compared with many high schools, the prison was better in infrastructure and facilities. Some of the prisoners were playing volley ball on a beautiful indoors court. The black women playing outnumbered the white women by three to one but the female prison officer who was conducting the visit explained that the population was about 'fifty-fifty' of blacks and whites. She added that the black women 'have a lot of energy' and so prefer to be in the gym more often than others.

Just then, one of the black women in the gym turned in the direction of the present researcher, the only black person in the group of observing visitors, and mouthed something like 'Help! Help!' Having seen their huge swimming pool, flowering gardens, big library,

colour televisions with video recorders, and single cells, the researcher wondered what kind of help she needed and so he tried to mouth back a silent question, 'How? How?' The researcher was not sure whether his interpretation of the gesture or his response to it was correct. The encounter called to mind the observation that Angela Davis made about seeing and hearing women prisoners from the street:

> 'I never knew what to do when I saw the outlines of women's heads through the almost opaque windows of the jail. I could never understand what they were saying - whether they were crying out for help, whether they were calling for someone in particular, or whether they simply wanted to talk to anyone who was 'free'(Davis, 1974: 18).

At the next turn of the guided tour the present researcher was reminded that the good facilities in the prison could result in 'women's imprisonment (becoming) ... women's imprisonment denied' (Carlen, 1983: 17). A white prisoner who apparently wanted to go to the toilet was observed as she rushed out from the library and started banging on the iron curtain that caged her in. 'Let me out!' She cried. The female prison officer took her time in strolling out of the library with a bunch of keys in her hand. She laughed over the distress of the prisoner while casually searching for the right key in her bunch.

The prisoner must have been on the brink of wetting herself for she ran in the opposite direction and bolted into an office with the prison officer in hot pursuit. Then there was a brief test of strength as she

tried to close the office door while the officer tried to force it open. If a white female prisoner could be treated so harshly by a white female officer in the presence of visitors, the problem of the black woman 'with a lot of energy' can be imagined, especially if she is dealt with by a male officer who may not understand her language.

Although we were not allowed to discuss with the prisoners, a male officer who discussed with the group of students including the present researcher at the end of their Holloway visit explained that male officers in female prisons tend to be given educational and administrative tasks rather than disciplinary ones. This is contradicted by the voluntary organisations that maintain that male officers are involved in the control and restraint of aggressive women. The myth that black women were inherently more aggressive may be unfounded since the voluntary agencies stated that most black women were subdued because of the shock of a first-time contact with the criminal justice system and also due to the relative strangeness of the British culture to the recent immigrant and the relative marginalization of poor black women who are British citizens. The reference here is to 'most black women' in prison and not just to Nigerian or West African women because most black women in prison are not British nationals and even those who are citizens of the United Kingdom are under constant pressure to prove that they are not otherwise (see Cook and Hudson, 1993). Some were referred to as model prisoners but others were resentful and got lots of punishment in the form of loss of privileges, fines, solitary confinement, etc.

The special predicament of the black female prisoner has been reported by Wilson (1985) who linked it with the negative stereotypes held by many prison officers about the black woman;

> We (black women) are '...mad and we commit crime and we sponge off the system...' etc. etc. Black women are not even allowed the patronising treatment of being seen as 'fragile little creatures who must be protected.' We are supposed to be able to cope in whatever situations arise. In prison, for example, black women are often viewed as so violent that they have to be dealt with by male officers and it is not unusual for these officers to physically rough-up our sisters in order to prove that we are not like the normal white woman.'

There was no voluntary agency that catered exclusively for black men in prison. To compare the problems facing black men and black women within prisons, discussions were held with some black men who had done time in prisons. They shared some of the problems that concern black women but they emphasise the racism within the prisoner community itself rather than among staff. Tarzi and Hedges (1990:23) found that foreign male prisoners had no complaints against prison staff, unlike the female prisoners. As they put it '... male prisoners found the prison staff's attitude very positive and felt that, bearing in mind the facilities available, the prison staff tried very hard and deserved praise.' This is not universally true because some of the opinions they quoted from male prisoners were very critical of the prison staff. However, it is quite likely that the prison staff conduct business in different ways in male prisons compared with female prisons. One of the female

prisoners was indeed quoted as asking, 'Why can't it be like men's prisons where I understand the officers have very positive attitude?' (Ibid).

This is confirmed by Padel and Stevenson (1988:10) who state that,

> 'Women prisoners are disciplined more than twice as often as men. In 1986, 3.6 offences were punished per head of the female prison population as against 1.6 per head of the male prison population. A much higher proportion of prison rule offences committed by women fall into the 'mutiny or violence' category than by men, which is surprising given that all the major prison riots have occurred in men's prisons.'

Probably, prison staff in male prisons may claim that they operated no differently compared to their counterparts in female prisons. It could be the human inclination to believe that the grass is always greener on the neighbour's lawn. It is possible that male prisoners also believe that female prisons were feathered nests compared to their own experiences. However, it is more likely that men could take a lot of prison control practises for granted because they were designed to suit them in the first place. Behaviours that might be acceptable or tolerable from macho men could be interpreted to be undisciplined or violent if they come from 'tender' women. If officers in female prisons operate exactly like the ones in male prisons, the result would be more repression for female prisoners rather than better services. For example, a practice like strip-searching is likely to be more humiliating for a female prisoner especially if male officers are present. This was highlighted in a drama documentary

by the 'Clean Break' theatre company (Channel 4, 19 September 1991). Hillyard (1993) analysed the humiliating impacts of strip-searching on Irish women.

Black men may emphasise the conflicts within the prisoner community because many of them frequently get into fights with fellow inmates who try to harass them racially. This exposes them to greater risks of punishment and frequent transfers from prison to prison or 'ghosting'. This was the experience of a black man who said that even though he was punished for the fights, the prison officers were grateful to him for taking on the bullies and cutting them down to size. It can be inferred that black male prisoners may share certain manifestations of racist discrimination within prisons with black women while the latter bear the gender discrimination in addition. Certain gender discrimination against black women might be shared by white women and also by black men who were too poor, too weak, or too non-conformist to be what Naffine (1990) called the 'reasonable man of law.'

6.4 Foreign Black Women In Prison

Foreign black women were in a peculiar predicament especially because of the drugs-related offences for which they were most frequently arrested. Racial prejudice against the 'bad' black woman may make her more vulnerable and more suspect to anti-drugs squads and immigration officials than white women. However, this does not explain why a disproportionate number of black women are

lured into being used by drug barons. This may be due to their poverty in comparison with white women and with black men or due to their inadequate understanding of the penal implications of the offence. The present thesis will not go into the discussion of what causes drugs offences.

The exploitation of black women as drug couriers and their consequent criminalization deserve a detailed study, but it should be pointed out here that the severity of the problems facing them is more related to the seriousness superficially, selectively and partially attached to the offence by the criminal justice system than to their sex or race.[40] However, it is likely that the race and gender of black women have come to be so closely associated with this kind of crime that they are watched more closely and therefore arrested more frequently.

Mr Mellor, the Secretary of State in the Home Department (England and Wales), in a Written Parliamentary Answer to Mr Clarke MP (9 November 1989), gave the following figures of women in prison for drug offences. He indicated that out of a total of 323 such cases, 150 involved U.K. citizens. The second largest was Nigeria with 76 women in prison. The rest were 35 'Others' and those of unknown nationalities, 16 Jamaicans, 15 Ghanaians, 14 Colombians, 6 Indians, 6 from the USA, and 5 from Guyana. Yet the emphasis of the Home Department continues to be stiff penalties to discourage

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[40] As Penny Green, 1991: 43, concluded, 'In the ideological war over who is to blame for drug abuse and other social ills the courier provides a cheap and expendable scapegoat .... Like the baron, the judiciary also exploits the courier. The drug courier has become an expressive target in the authorities' offensive against illegal drugs'.

foreigners as if the drugs problem is entirely or even mainly foreign. Mrs Rumbold made this clear in a Written Parliamentary Answer to Mr David Porter, MP (19 March, 1991). Mrs Rumbold said; 'We are planning to publicise abroad the long prison sentences which drug smugglers can expect on conviction in this country in the hope that this may dissuade foreign nationals from bringing drugs into the United Kingdom' (Hansard, 187, 1990-91, p.72).

Roberts (1989) and Green (1991) report that most of the couriers from Africa are poor and needy, though a few of them are well-educated. They tend to be in need of quick cash to meet some legitimate interests like raising children, paying for medical treatment, or meeting other family requirements. Unfortunately, such due processes as social enquiry reports, examination of circumstances, and examination of degree of culpability are ignored by the courts and what matter are the quantity and purity of the drugs. Roberts (1989) reports a probation officer as saying, 'they are given very long sentences on a first offence.'

Analysing this phenomenon, Wilmot (1989) argues that the use of black women as drug couriers is based on the 'tortured dialectic of sexual politics' by which the exploited can also become an exploiter through the manipulation of powerful men's softness for femininity. The drug barons call the courier a 'mule' or beast of burden and she is preferred because she has more cavities for concealing drugs than her male counterpart. She is also preferred because she is supposed to be less tense than her male counterpart and she can carry a new-born baby or dress seductively to distract officials most of who were

men. However, the exploitation of powerful men's 'softness' for femininity is a questionable claim to attribute to exploited drug couriers and their alleged possession of more cavities for concealing drugs sounds very essentialist. Moreover, the alleged preference for female couriers by drugs barons is not supported by the following table (Table 6:3) which shows that the majority of the convicts happen to be men. However, it may be the case that more men than women were attempting to import their own drugs rather than merely being used as 'mules'.

The Written Parliamentary Answer to Mr Birmingham by Mrs Rumbold on 14 May 1991, shows that the majority of foreign prisoners were black people. This should have suggested to the prison services that they make allowance for the cultural and social needs of black people in prisons. However, this does not appear to be the case. The following table will show that a significant number of the foreign prisoners were convicted of drugs-related offences, which often carry very long terms of imprisonment.

Discussions of what the (Independent, 11 November 1990, called 'Rough justice (being) 'meted out to foreign offenders in Britain", often focus on the problems of foreign women, especially on those of Nigerian women and of women with children. This is justified by the large number of Nigerian women who were in prison mainly for drugs-related offences as table 6.3 shows. However, even more attention should be paid to Jamaican women because although their national population was about two million compared with that of Nigeria (88 million) they were the second largest group of women

after Nigerians. The wide difference in the population sizes of the two countries indicates that the number of their men and women in prison did not have to do with national population size as such. The more important factor was the number of their citizens who were residing in Britain.

TABLE 6.3: SENTENCED PRISONERS ON 30 JUNE 1990 WHO WERE KNOWN TO BE FOREIGN NATIONALS, BY SEX NATIONALITY AND WHETHER SENTENCED FOR DRUGS[41]

	All Offences			Drugs Offences		
Nationality	Men	Wom	Total	Men	Wo m	Total
India	245	14	259	79	7	86
Pakistan	252	2	254	125	-	125
C'Wealth Asia	64	1	65	14	-	14
Nigeria	428	99	527	339	55	396
Ghana	42	18	60	25	13	38
C'Wealth Afric	91	9	100	33	4	37
Jamaica	432	40	472	116	18	134
C'Wealth Cari	121	15	136	29	9	38
Cyprus	54	2	56	18	2	20
Old C'Wealth	38	3	41	9	1	10
Ireland	412	10	422	24	1	25
Other EC	196	14	210	87	10	97
U.S.A.	37	16	53	13	10	23
South America	110	29	139	90	20	110
Other Countri.	347	31	378	85	12	97
Total Known	2,869	303	3,172	1,086	162	1,248

[41] SOURCE: HOUSE OF COMMONS, 1991, HANSARD, 191, 13-23 MAY.

Note that C'Wealth Asia, C'Wealth Afri and C'Wealth Car = those commonwealth countries in Asia, Africa and the Caribbean not individually listed; Old C'Wealth = Australia, Canada and New Zealand; Other EC = those European Community countries not listed; Other Countri = those countries not listed; and Total Known = all prisoners known to be foreign.

The 1991 census of Great Britain was the first to include questions on racial origin and this proved controversial because the question asked if respondents were White (implying British) White Other or Black Caribbean, Black African or Black Other (as if being black is inconsistent with being British). The census recorded that the 49,890,277 population of England and Wales was made up of 94.1% White, 1.0% Black Caribbean, 0.4% Black African and 0.4% Black Other. The highest concentration of black people was in Inner London with 74.4% White, 7.1% Black Caribbean, 4.4% Black African and 2.0% Black Other.[42]

However, the large number of Nigerians and Jamaicans who were in prison for drugs-related offences suggests that most of them may have been arrested at the port of entry into Britain. The sizes of the population of Jamaica and Nigeria within their respective regions make them relatively attractive to drugs barons who need couriers. The economic crises and high levels of official corruption in these countries (Green, 1991) equally make it easy for the barons and their agents to continue recruiting `mules' with relative ease. However, the nationals of these countries do not happen to be the only ones who traffic in drugs, they happen to be the ones who were, rightly or wrongly, the targets of close surveillance by security

42 Office of Population Census and Surveys, National Monitor, CEN 91 CM 56, December, 1992, Table J, p.21

agents. For example, there was a special measure to screen all visitors from Nigeria at the Ports of entry. Immigration officials claimed that this was to check the large number of Nigerians allegedly travelling with forged papers. However, the Nigerian High Commissioner, George Dove-Edwin, said that this was unfair because Nigerians were not the only ones who forged travel documents and yet they were the only ones who got special screening (The Independent, 11 April 1992). A similar practice outraged the British public when a plane-load of holiday-makers from Jamaica was detained just before Christmas in 1993.

The conviction for possession does not necessarily prove guilt.[43] This is especially so because many of the women go down still protesting their innocence. The concept of Victimisation-As-Mere-Punishment is prepared to give such women the benefit of doubt while the philosophy, theory and practice of Punishment-Of-Offenders is intolerant of their protestation until the tortuous processes of judicial and appellate reviews confirm their faulty convictions. The benefit of the doubt given by the concept of VAMP is reflected by the fact that its usage persuades the present writer to cautiously talk about convicts while the discourse of POO tends to jump easily to the conclusion that all convicts are necessarily offenders. Furthermore, actual possession and conviction may reflect Victimisation-In-Punishment if the convict was not allowed such due processes as Social Inquiry Reports and parole and if the

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[43] Guilt is required to be proven in criminal cases only beyond all reasonable doubt but 'reasonableness' is gendered, classed and racialised rather than a given (see Naffine, 1990))

provision of prison services is discriminatory against those most marginalised along the trajectory of race-gender-class relations.

The problem of foreign black women who are in prison for drugs trafficking includes that of isolation even from other black women prisoners who do not take drugs. Adaku was one such black woman who hates drugs and hates drugs couriers especially because many of them do not take the drugs with which they were going to ruin other people's lives. She thinks that their problem is that of greed and not poverty. According to her, 'If I see a person is charged and sentenced because of drugs, I don't really like them because I think that's why there is more crime in this country' (Padel and Stevenson, 1988:66). If a black woman could express such strong nationalist sentiments against foreign black women convicted of drugs (as the emphasis on 'this country' suggests), it can be imagined how racist prisoners and racist prison officials would regard them in prison.[44]

However, there was no evidence of such hostility by fellow prisoners against the drugs couriers in prison. The sentiments of Adaku might be isolated because the voluntary organisations have not noticed such problems. They claimed that prisoners who were better off tended to avoid poorer ones and that only child abusers were unpopular as an offence group among female prisoners.

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44 As Green, 1991: 21, put this, 'The constructed drugs 'crisis' is seen as a principally imported crisis - imported by West African, Asians or South Americans, fuelled by Third World supplies rather than domestic demand' and supply

All the voluntary organisations that provided information for the present research confirmed that the reason why many black women, especially foreign ones, prefer to work in the kitchen in prison was because they got longer hours and therefore earned more money with which to buy personal needs; they did not have relatives in England who could send them presents. They also pointed out that it was not entirely by choice because it was almost impossible to find a 'deportee' working on a garden party due to the fear that they would abscond. For the same reason, they were not allowed day releases towards the end of their sentences as was the case with British nationals.

Furthermore, foreigners did not get field probation officers and they were not sent to open prisons for fear that they would abscond. This was supported by a white woman on day release who told the present researcher that foreign offenders did not get into job clubs that could enable them to go outside and work to earn money that would be paid to them at the end of their sentences. She said that although there were foreigners in all prison education classes, most of the foreign black women opted for kitchen work while British women opted for education more frequently.

However, Chigwada (1989) found that many black women, especially foreign ones, remained on the waiting lists for education classes until their sentences were over. When they complained, they were usually reminded about where they came from and how much worse services they could have been receiving back there. This was corroborated by a black female education officer who told Chigwada

that when she wanted to know why there was never any black woman in her classes even though she was aware that many of them had applied to join, she was reportedly told that there were not enough officers to escort the black women to classes. According to Chigwada, 'This could mean either that black women were perceived as aggressive and needed more officers or that sheer racism was involved, since education was considered easy, involving no work.'

The discrimination in the allocation of jobs also affected black men, as a black man who had been to prison three times told the present researcher:

> 'You never see a black guy in the officer's mess or (working) as the governor's tea boy who gets tips and favours. It is changing now because some black guys get into outside garden parties whereas they never got that in the past. They were mostly on cleaning parties.'

Language is a difficult barrier against the support of foreign prisoners by probation officers. This is further complicated by the lack of suitable referral options, information, and of resources. The result was that 'A number of foreign prisoners, particularly recent admissions, were unaware of the existence of a probation team in the prison' (Tarzi and Hedges, 1990: 43). Those who were aware of the existence of the team were confused as to what kinds of help they could get. Moreover, the probation officers were not given any training on the special needs of foreign prisoners. This problem is made more acute by the fact that while black people were over-

represented in the prisons, only one per cent of probation officers, out of a total of 6,651 were black.[45]

The voluntary agencies emphasised the distress that the fostering of black children to white families could cause to mothers. This was highlighted by Voice (10 September 1991) which stated that an increasing number of black women were leaving their children to be privately fostered under the mistaken assumption that they would get better opportunities in white families. The paper did not indicate that this affects mainly children of mothers who needed time to work or study and were therefore forced to foster their children privately and pay the costs personally. The black women who were arrested with babies and those who have babies while still in prison had their children publicly fostered with white families, probably, because there were few black families ready to act as fosters for the Councils. The advantage in Council fostering was that the fitness of the prospective family was usually investigated before hand whereas private fosters took as many children as possible to maximise profits.

There are between six and nine thousand African children in private care in England (Ibid). The 1989 Children's Act is expected to regulate private carers by limiting the number of children per family to three. However, even then, the problem of cultural differences would remain a cause of concern even for imprisoned mothers of children who are not in care. For example, there was a woman who

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[45] H.O.S.B., 24/88, 'Ethnic Origins of Probation Service Staff 1987' August, 1988. p.2.

lost her child in Nigeria and was uncontrollable with grief. The prison officials simply locked her away when her condition culturally required a communal sharing of grief. Akina Mama Wa Africa said that they were ready to provide such a communal support but the prison officials did not even bother to inform them.

Although most of the problems identified here, including that of isolation from family and children affect foreign black men as well, the situation of black women is compounded by the finding that the foreign black women keep themselves to themselves more than the foreign black men in prison (Green, 1991). Green did not offer an explanation for this finding but it is likely to be related to another finding of hers regarding clothing:

> Women prisoners do not wear prison uniforms. They are therefore immediately disadvantaged if they have no friends or family to provide clothes for them. The vast majority of foreign national couriers arrive in Britain with an expectation of staying only 5 or so days - they bring enough clothes only for those few days. If they arrive in summer they have no clothing adequate for the British winters ahead. Those they have with them are then all they have when they find themselves imprisoned for 6-10 years. One Nigerian woman interviewed burst into tears and lifted her blouse to show she had no underwear at all - her plastic sandals were broken and her lightweight African cottons totally inadequate for the British climate' (Green, 1991:31).

It is understandable that such a level of deprivation could contribute to the sense of isolation which foreign black women faced unlike

foreign black men who were provided with uniforms like all male prisoners and unlike foreign white women who could mix more easily because of their appearance and the relative ease for their friends and family to send them supplies. The voluntary organisations that work with women in prison were campaigning that adequate clothing should be provided especially for foreign black women as a matter of right and not as a charitable offer from religious organisations whose faith the women might not share. The voluntary organisations were very critical of the present system of privilege - by which the prison governor uses his/her discretion to award clothing grants to successful applicants - especially because it could take a very long time before the clothing needed is purchased and supplied to the lucky applicant. This does not mean that the voluntary organisations want the individuality of personal clothing in women's prison to be replaced with the impersonal uniforms in male prisons. What the organisations demand is that adequate clothing should be provided, if necessary with the equivalent cost of the uniforms that women are not given, but with arrangement for the clothing to be chosen and thereby personalised by the women themselves.

Conclusion

The tentative conclusion that can be cautiously drawn here is that the problems of black women in prison are more complex than the problems of black men and those of white women. This was evident especially in the difficulties of the foreign nationals who were cut off from language, young babies, diet, skin care materials, clothing,

religion, and family. Some of these difficulties were shared by black male prisoners but they were likely to be better educated, to have less need for hair care creams, to be better clothed and more independent of babies than the foreign black women in prison.

This conclusion is tentative in the sense that more detailed studies focusing on some of the issues raised by an exploratory study like this one would be able to confirm or modify some of the observations above. The findings presented here in Section II do not prove that the criminal justice system in England was racist, sexist, or oppressive to the poor. That was not what this research was designed to accomplish. The purpose of the research was to explore the nature of the problems that faced black women in the criminal justice system.

The problems identified include that of VAMP which was usually initiated by the police and which most likely affected the numbers and proportions of black women in courts and in prisons. The problem of commercialisation of criminal justice also runs through the system and culminates in the deprivation of black women, especially the foreign ones, in prisons. There were also problems of the hierarchicization of defendants, isolation from children and inadequate support from family, attitudes, cultural differences, language difficulties, personal hygiene, and inadequate legal representation. Most of these problems were probably shared by most defendants and most prisoners but they combined in peculiar ways (unequal race-class-gender relations) to make the situation of black women qualitatively different.

Throughout this presentation, efforts were made to avoid digressing from the criminal justice system too much. However, digressions are both necessary and desirable in a dissertation of this length. The next session will indulge in such a necessary digression by returning to the theory and methods of this research to see to what extent they were reflected or refuted by the evidence provided above. There will also be a broader look at the problems identified above so that no one could get the false impression that they were isolated from other political-economic problems facing poor black women in particular and the poor in general.

Section III

Introduction

The present research set out to see to what extent the problems that face black women differ from those that face white women and black men in the criminal justice system. This resulting thesis attempted to demonstrate the uniqueness of the problems that face black women along with the problems that they share with those who experience the race, class, and or gender relations that affect black women. The uniqueness of how the problem of Victimisation-As-Mere-Punishment, for example, affects black women suggests that attempts to look at black people through studies that focus on black men alone or to talk about women with what is known about only white women are myopic, misleading and inadequate for understanding even black men and white women.

For example, this thesis found that many black women were victimised by actions that were originally aimed at suspected black men. This finding has not been previously highlighted by researchers probably because they have not focused attention on the articulation of race, class and gender as the present research has done. It is likely that black men and white women could also be victimised by actions that are aimed at people to whom they are proximate. However, it seems less likely that black men could be victimised as frequently when the black women in their lives are being proceeded against. This is because there are many more black male suspects than female ones and also because the women are

seen to be more dependent on the men than otherwise even when the reverse is true such as when the woman provides accommodation to the suspected man.

Similarly, it is likely that white women would be victimised in actions originally aimed at white men (see Hillyard, 1993 for the peculiar case of the Irish). However, the VAMP that affects white women could not be exactly the same as those of black women (through actions that were originally intended for black men) because white women who are associated with black men are historically perceived to be more privileged and independent compared to the more dependent and subordinate relationship assumed to exist between black women and hegemonic masculinity (see Fanon, 1967). The similarities among all forms of victimisation suggest that the decolonisation of victimisation from the empire of punishment will have implications not only for poor black women but also for poor black men and poor white women but the uniqueness of the situation of black women (or any group) demands independent studies of such as part of the decolonisation process.

Decolonisation is being used here to refer to the relative autonomy of victimisation as an institutional practice that is linked to classical colonialism, neo-colonialism and internal colonialism and, consequently, to emphasise the need to resist recolonisation, as well as to demarginalise and empower the poor who inhabit the neo-colonies and the internal colonies of today. This is why the present thesis emphasises the importance of VAMP in its conclusion even though this was not the original focus of the research. What follows

now is a general summary of the dissertation, a discussion of the theoretical, methodological and practical implications of the findings, and suggestions for further research in the light of the limitations of the present one.

Chapter Seven

Summary, Implications and Limitations

7.1 General Summary

Section I of this thesis outlined the methodological, theoretical and historical background to the present research. Methodologically, the present researcher attempted to receive rather than to collect data because of ethical and technical reasons. Ethically, it was pointed out that data collection tends to assume the powerlessness of the source while data reception recognises the autonomy of the subjects. Furthermore, technically, it was argued that data collection is almost impossible because of the autonomous agency of the source and so, the present thesis assumes that the only thing social scientists should and can aspire to is the role of data reception. This means that the methods employed in this research are not new but by looking at the processes from a new perspective, the present researcher was able to understand them better and to avoid possible distortions that the assumption of data collection could introduce into the comprehension of data.

The practical difference between data reception and data collection has more to do with the politics and practicalities of access to data rather than with belief or disbelief of the researcher concerning the information received or the interpretation of tables. However, data reception may have a remote significance for belief or disbelief in a

researcher's data by the reading public. If researchers, like the police, use the so-called 'dirty tricks' to 'gather evidence', they could be challenged on two grounds. Firstly, evidence is not out there waiting to be collected with combine harvesters or any 'instrument' like that (as Durkheim's notion of social facts suggests), given that evidence or data is socially constructed by both the researcher and the researched (see McConville, Sanders and Leng, 1991, on police investigations). Secondly, if any researcher actually collects rather than receive what is willingly given or offered and recorded, then just as the administration of justice frowns at the admissibility of such 'evidence', the researcher should examine the validity of the data so-collected.

Theoretically, the historical materialist perspective of the articulation of social relations was adopted for the present research. That was because of the closeness of this perspective to the theoretical and practical struggles against VAMP to which people with different class, race and gender relations are variously vulnerable. The present research maintains the traditional Marxist emphasis on class relations while showing how they articulate with gender and race relations to make poor black women uniquely vulnerable to problems in the criminal justice system in particular and society in general.

This perspective is innocent of the outdated charges of economic determinism because articulation presupposes the relative autonomy of race and gender from class relations while underlining their inextricable interconnectedness in theory and practice. The

perspective of articulation proved very useful because it provided a framework for the discussion of both how race, gender and class relations operate together in different ways for different categories of people and how the social practices of welfare, punishment and victimisation work together to affect different categories of people in variable ways. In short, this thesis suggests ways of understanding the articulation, disarticulation and rearticulation of both social relations and social practice, in both social theory and social policy.

The history of how enslavement, colonialism, and neo-colonialism affect the victimisation of black women in particular and black people or women in general was used to demonstrate the forms that VAMP took in different historically specific contexts. The focus on black women allowed this dissertation to see that victimisation which is based on gender also affects poor black men and that similar practices based on race also affect white women but in different ways compared to how they affect black women. The latter encountered victimisation mainly because they happened to be mothers, sisters, wives, or lovers of suspected or convicted black men. The reverse was not the case for black men but it was noted that black men who supported the struggles of black women against victimisation were themselves exposed to victimisation and that black men also experienced the victimisation of black women especially when such acts of victimisation were aimed at the men in the first place.

White women were also victimised when they were closely related to suspected or criminalised black men. It could be that white women

who were closely related to suspected white men would also be victimised like the Irish women who were often assumed to be accomplices in the alleged offences of fathers, sons, lovers, or husbands (Hillyard, 1993). However, the present thesis did not investigate this directly and so the only thing to note here is that the Irish case is a special one given the virtual state of war existing in Northern Ireland. What happens to Irish women cannot be accepted as an example of what happens to white women because the Irish were at the receiving end of a racialised and militarised policing that is closer to the colonial experiences of black people.

The limited claim being made in this thesis is that any victimisation that is based on gender could also affect black men just as those that are based on race could affect white women especially when they share the class relations of the affected black women. Whether based on gender or on race, such victimisation is inevitably articulated, disarticulated and rearticulated with class relations that largely limit the resources available for struggles against victimisation and also maximise the vulnerability of different categories of people to such victimisation. Irrespective of the racial and gender differences between black women, black men and white women, the majority of the victimised happen to be poor. The extent to which this result can be extended to the poor of all races and gender should be left to future research.

Section II took off from where Section I ended. Following directly from the history of victimisation under enslavement, colonialism, neo-colonialism, and internal colonialism, section II opened with an

attempt to understand similar (though by no means identical) practices and reactions that were still found in the policing, courts and prisons of the internal colonies of England. This made the contemporary cases appear less freaky and references to similar cases in the U.S. and South Africa helped to make sense of what is found in England. The discussion pointed to the fact that just as black women and their allies struggled heroically against the manifestations of victimisation in the earlier epochs, the struggle is continuing and becoming more organised and less spontaneous against the sources and manifestations of various forms of victimisation.

Section II also showed that victimisation was more obvious at the level of police intervention and it was suggested that once initiated at that level, it tended to accumulate and compound the problems that faced black women at other levels of the criminal justice process. Accordingly, the discussions of problems facing black women in the courts and in prisons touch more on what we have called VIP than on VAMP. The former is more subtle than the latter and is suggested by the disparities and irregularities that were noted in the construction of the image of black women by officials and the responses of black women to such imagery.

However, Junger (1990) and has argued that arrest statistics are less biased against ethnic minorities than court records, implying that there is more discrimination at subsequent stages of the criminal justice process. The present research is more interested in the form that discrimination takes than in the amount of

discrimination at any given stage of the criminal justice system. Junger implicitly agrees with Bowling (1990) that there is discrimination at all levels but tried to defend her use of self-reported criminality to validate police arrest statistics. Bowling questions the validity of the self-report method for measuring "race" and delinquency.

The three major assumptions of this thesis were not upheld showing that those researchers who implicitly make such assumptions should explicitly examine whether they are reasonable. The present research found that right from enslavement, through the colonial period to the present, black women have not faced exactly the same problems as black men and white women. This finding is consistent with the historical materialist theory of articulation which suggests that punishment, welfare and victimisation are applied to real people with variable interests and dispositions, not exclusively to protect vested interests or through the application of force alone, but also through a selective, superficial and partial manipulation of conventional morality or ideology. What is important is not whether the contention over conventional morality (especially in the colonial context) supports or condemns the victimisation of black women, but that black women are affected differently mainly because they share the uniquely subtle (and sometimes, blatant), selective and partial manipulation of race, class and gender relations in society.

The rest of this chapter will try to map out the conclusions and practical implications of the results summarised above and also try to point out the limitations of the present research. There are two

major conclusions and implications to be discussed below; one relates to the issue of the articulation of social relations and social practice and the decolonisation of victimisation, the other refers to the issue of equality, marginalization and empowerment. It can be readily seen that different issues are grouped together under these broad conclusions and so, efforts will be made to distinguish among the related issues involved.

7.2 Articulation and Decolonisation of Victimisation

Let us return to our theoretical framework and assess its effectiveness. Our thesis statement is that victimisation is not punishment. This sounds simplistic enough but it is necessary to state the difference given the historical tendency for punishment to colonise relatively autonomous processes and reconstruct them as elements of penalty. This conceptual colonisation is most evident in the sociology of law and in criminology where efforts to understand the criminal justice system often focus on what Garland (1990) called, "The punishment of offenders..." This process is called different things that include correction, cure, censure, discipline, just deserts, label, response, repression, rehabilitation, treatment, etc.

Of course, these multiple concepts are not readily interchangeable because they are not synonymous. However, in spite of the ideological, methodological, and practical concerns that divide the various conceptions into rival or conflicting camps, they all seem to

be united to the extent that they are all predicts of the subject variously named the offender, criminal, deviant, or delinquent. This dissertation demonstrates that the preoccupation with penalty is both partial and misleading in the study of the criminal justice system. Punishment does not presuppose offence and offence does not guarantee punishment. It is not all those who offend that are punished and it is not all those who are 'punished' that did offend.

Furthermore, those who are punished do not receive only punishment and nothing else. The criminal justice system also has welfare policies that may be effective or ineffective, misguided or inadequate. A similar point was made by Bottoms (1983) according to whom the non-disciplinary part of penal policy is often neglected following the obsession with power and repression in the analysis of the criminal justice system. He suggested that penal policies should be understood as "bifurcating" into disciplinary and non-disciplinary measures for minor and serious offences, respectively. However, penal policy cannot fork into itself or into disciplinary and non-disciplinary penalty. It seems that what is forking is criminal justice policy as a whole rather than the specifically disciplinary penal policy of the system. Garland (1985: 236) recognised that penalty works through a 'penal-welfare strategy' by which 'the range of knowledge available to the authorities is extended to encompass not only the offender, but also his family and his home.' However, Garland failed to note that it is more like an articulation of penal-welfare-victimisation strategies and not simply a penal-welfare one. The point, then, is that it appears that what is going on is more than

a bifurcation. It is, at least, a 'trifurcation' of criminal justice policy into punishment, welfare, and victimisation.

This is not a new discovery. The victimisation of the innocent has always been present in popular consciousness and the notion is implicit in most radical criminology. The problem here is that when victimisation is recognised as one of the impacts of the criminal justice system, it tends to be over-generalised to the extent that the other aspects of criminal justice would be neglected. However, the concept of VAMP does not assume that all those who are punished are innocent. Rather, it presupposes that victimisation is not always something one individual or group does to another individual or group but also, something that the state does to categories of people in civil society.

If the state can and does commit crimes against the society as in the extreme cases of Apartheid and Nazism but also in cases of State terrorism, oppressive dictatorship and authoritarianism, how can the concerned civil society respond to the criminality of the state? Certainly, it is not enough to demand that the head of state should exercise his or her prerogative of mercy by pardoning those who are detained without trial or who are framed and unjustly convicted. It is not sufficient to say that state 'pardon' for the innocent is not enough, such a pardon should be seen as an insult added to the injury of victimisation that demands nothing less than punishment. The payment of compensations would not be regarded as adequate recompense especially because the value is arbitrarily fixed by the offending state and also because the damage done to human rights

and democracy through what the Nigerian activist lawyer, Gani Fawehinmi (1993) called "executive lawlessness" cannot be measured in monetary terms. What is needed above all else is the democratic empowerment of the oppressed to prevent further exercise of VAMP, victimisation-as-care or that of VIP by which the guilty poor receive disproportionate punishment.

By the victimisation of black women (or of any category of people) is meant the 'punishment' inflicted on innocent people sometimes because they were wrongly suspected, stopped, arrested, prosecuted or convicted and sometimes maliciously because of their proximity to suspects and convicts. In the latter case, it may be a deliberate attempt to get at the suspect or the offender through a loved one or it may be a consequence of the operational principle of collective responsibility that apparently continues to inform criminal justice practices.

This is a departure from conventional and 'realist' studies of victimisation in criminology (see Matthew and Young, 1992, for example). These are concerned with how little the police know about "real crimes" and how frightened people are about "violent crimes." The left realists particularly wish to understand victimisation from the point of view of the 'victim' as a way of taking on board some feminist contributions to methodology. However, the survey method used by conventional and realist victimologists is very unpopular with feminists who argue that it does not capture the depth and complexity of personal experiences well enough.

Moreover, the local crime survey has not been applied by left realists with equal emphasis to all forms of victimisation - particularly victimisation by the state, by corporations and by the powerful. Victimology therefore carries on as if these forms of victimisation are not problematic enough to be taken seriously. This 'culture of silence' on crimes of the state, as Cohen (1993) puts it, does not mean that there is complete silence on the matter among victimologists, many of who are beginning to address such issues more critically. However, the almost exclusive focus on crimes of the underclass and the working class by self-professed left realists may seem to have nothing to do with the victimisation of people by the criminal justice system but by repeatedly showing that the majority of crimes are unknown to the police, they indirectly apply the heat to the police for higher clearance rates that could result in the use of dirty tricks on poor 'victims' of criminal justice.

The belief that there are dark figures in official statistics of crime, true as it may be, tends to conceal the fact that there are 'dazzling' (or fictitious) figures as well in those same statistics. The problem with official statistics is not just that they are incomplete but also that they are superfluous. It is not all the crimes known to the police that turn out to be crimes in the end, some innocent people are convicted and later cleared and there are non-criminal populations in prisons beside the large number of inmates who are just awaiting trial and those who continue to protest their innocence. It is true that crimes would still be crimes even if they remain unsolved and even if the innocent suspect is released or acquitted and so what the present research is emphasising is not that some crimes are

fictitious but that it is not all those who are suspected, convicted or imprisoned that are criminals. Those who talk only about 'the punishment of offenders' (POO) give the false impression that only criminals get 'punished'.

Official statistics have therefore been used in the present dissertation for the purpose for which they were provided in the first place. According to McClintock (1974), these figures are provided, often following questions in the parliament for the purpose of political accountability (inadequate as statistics may be for this purpose) rather than because of the positivistic quest for the causes of criminality nor for the secrets of its predictability. Smith (1994) argued similarly that the criminal justice system should always be analysed as if it is subject to the 1976 Race Relations Act even though it is not. Such statistical records are often discussed under the 'monitoring' of ethnicity or sex in the criminal justice system (see NACRO, 1989, for instance). Such reports are then used in electoral campaigns to present one or the other of the political parties as the party that is soft on crime or the law-and-order party. Left realists believe that the ability of Thatcherism to cling to power drew partially from the claim that the Labour Party was soft on crime and soft on criminals. It is partly for this reason that the left realists attempt to take crime seriously and to go beyond the impossibilism that nothing works and make recommendations for the next Labour government (Young, 1986). Tony Blair adopted left-realism in this sense by claiming that only Labour takes crime and the causes of crime seriously.

However, while the left realists campaign against the ideology of impossibilism in social policy, they try to sustain their own impossibilist belief - namely, that it is impossible to study and understand crime control without studying and understanding what causes crime. The present researcher has attempted to study the politics of crime control without also searching for what causes crime and though difficult, it has not proved to be impossible. The concern of the left realists with recommendations for the next labour government also reflects another impossibilism, that is, the belief that the victimised cannot do much about their victimisation. As Garland (1985: 126) argued, this is a widespread practice in criminal justice research where researchers interested in reforms direct their recommendations to the state because, 'Offenders only exist as such in and through the institution of the state, with the consequence that private proposals to alter or extend or mitigate the treatment of offenders must be addressed to the state.'

This is misleading in two ways. First, it is not only offenders who are caught up in the criminal justice system and so research into the system is not only about offenders but also about the victimised. Secondly, there is no reason why every recommendation 'must be addressed to the state' since the realm of the state is recognisably a contested realm where the practical struggles of the people can and do produce significant changes. The present research will therefore make its recommendations to the people who are active in the struggles against these problems not just because such people can do something about the problematic institutions and situations but

also because the State has a large pool of recommendations from previous researchers to act upon.

The theoretical approach of victimology is not unprecedented. Crime is conventionally defined in criminology as the action or omission of an individual against the state. The courts dramatise the conflict as Crown vs. X. But the crimes of the state against the society are merely misrepresented as human rights violations that are addressed more like civil wrongs than like criminal acts. Such violations are often not listed in official crime statistics and therefore tend not to be seen as crimes. The concept of VAMP suggests that the state commits crimes against the society just as individuals commit crimes against the state. However, while the individual may plead guilty to crimes against the state,

> The state will never look for the causes of social imperfection in the state and social institutions themselves .... In so far as the state admits the existence of social evils it attributes them to natural laws against which no human power can prevail, or to private life which is independent of the state or to the inadequacies of the administration which is subordinate to it (Marx, 1961; 221-22).

The state can afford to play this game of self-righteousness not only because the state traditionally commands consent and allegiance by appearing to care for all as an authoritarian populist (see Hall, 1979, 1988) but also because the modern state insists on exercising a monopoly of coercion or institutional violence against dissenters, subversives, non-conformists, and the relatively powerless.

This is accomplished, not through force alone and not without force at all, but also through what Gramsci (1971: 57) analysed as the mechanism of class hegemony - the "intellectual and moral leadership" of a class or the "entire complex of practical and theoretical activities with which the ruling class not only justifies and maintains its dominance, but manages to win the consent of those over whom it rules" (Gramsci, 1971: 244). The approach of the present research required a trans-legal conceptualisation of crime to include the crimes of the state, of the criminal to include the criminal state, and of 'victims' to include the 'victims' of criminal justice much along the lines advocated by Schwendinger and Schwendinger (1970) and more powerfully by Cohen (1993).

Paul Tappan (1977; 266-67) implicitly rejected the approach of the Schwedingers and Cohen in his critique of the elasticity of the concept of white collar crime. According to him, criminology is a science and therefore it needs 'reasonably accurate descriptive information, it cannot tolerate a nomenclature of such loose and variable usage' as white collar crime. Crime must remain what the criminal law says it is. Tappan believes that, 'The rebel may enjoy a veritable orgy of delight in damning as criminal most anyone he pleases; .... The result may be fine indoctrination or catharsis achieved through blustering broadsides against the "existing system". It is not criminology. It is not social science.' So it is not only what is crime that is determined by the limits of the existing law; social science must also not go beyond the criminal code.

If it is accepted that oppressive social systems like slavery, Nazism and Apartheid, though well-grounded in law, organise crimes against the oppressed, then criminologists would be blindfolding themselves if they study only police records and criminal codes without also exploring how the people perceive crimes of the state and how they judge and punish these crimes through popular action. The contribution of Julia and Herman Schwendinger and that of Stan Cohen in this direction is that they argued convincingly that violations of human rights, though not listed as such under the criminal code, satisfy the legal, moral and scientific criteria for criminality and should therefore be treated as such. Similarly, the concept of VAMP suggests that even without going beyond the criminal code, criminologists should be able to go beyond the conventional picture of the offender and the 'victim' to recognise the offences of the state and the 'victims' of punishment. The rebel label which Tappan applied to theories of white collar criminality does not detract from the social scientific quality of the variable ways in which people understand the reality of oppression as crime.

This approach is not new, it is implicit in classical Marxism and in most critical legal studies. Naffine (1990: 150), for example, specifically talks about the gender and class based 'victims of the machineries of law' and Rodney (1975) listed 'the extension of political repression and victimisation' as one of the seven key elements that combine in various ways to reproduce petty bourgeois rule in the English-speaking Caribbean countries - an observation that could be generalised for African countries as well. By applying this formulation to the study of black women, we have effectively

extended the views of Turk (1976) beyond his narrow conflict perspective on the 'haves' and the 'have nots' and emphasised that the approach which denies the saintly innocence of the state assumes that the creation, operation, and the alteration of legal institutions that affect black women reflect the mobilisation of resources by the state, black women and their allies. This does not mean that the state is invincible nor does it mean that the state is diametrically opposed to black women without any common interest.

Moreover, this approach does not mean that a majority of the black women convicted by the criminal justice system are innocent, nor that the state commits as many crimes against black women as the latter commit against the former. We are not even saying that criminal justice officials need to violate the rules and conventions of fairness in order to victimise black women. What is implied here is that the criminal justice system is loaded in favour of the state and so playing by its discretionary rules alone would ensure that the state will continue to victimise black women with impunity.

This lends itself to easy misinterpretation by anarchists who regard absolute individualism as the essence of freedom and believe that every form of authority or force is potentially oppressive. It is not the case that every instance of punishment is victimisation and what are constructed here as VAMP, VIP, victimisation-as-welfare and the struggles against these, do not necessarily result in anarchistic political tendencies whereby everyone regards everyone else as a criminal or reconstructs every aspect of punishment to be victimisation.

This dissertation demonstrates that the social relations of class, race, and gender are articulated, disarticulated, and rearticulated in the targeting of people for victimisation by the criminal justice system as Hall (1988: 10) implied. This means that a black woman who is very rich could have her gender and race relations relatively disarticulated by her class relations in the sense that she would be less likely to be victimised by the criminal justice system since she would not be found in the symbolic locations and colonial ghettos where black people are more often targeted. Similarly, a poor woman who is not black could have her class relations relatively disarticulated by her race relations in a racist society because she would be less likely to be victimised than a black woman. Moreover, a black man who is poor would have his race relations relatively disarticulated by his gender relations in the sense that he would be less likely to be the victim of attacks initially aimed at black women.

In the rearticulation of these social relations, class relations tend to occupy a central position, contrary to the assumption of Hall (1988) that race, class, gender, ideology, and culture all occupy central positions. The centrality of class relations in the process of victimisation will become clearer once we remember that in spite of gender, racial, and circumstantial differences that separate people in the criminal justice system, what unites the majority of the 'victims' and the convicts is their abject poverty or their unflinching commitment to the poor (in the cases of middle class people who are victimised for speaking out or campaigning against the oppression of the poor under dictatorial or populist authoritarian regimes). This

explains why poor white men join popular protests initiated by black people, if only for the opportunity to loot some of the good things they see but cannot buy from shops. The rich white people who support the struggles of black people are most likely to be those who support the struggles of the working class. Furthermore, the black people who oppose the political struggles of black people are likely to be rich and out of touch with the conditions under which black people live. This means that class relations should be given a central position in the organisation of the defence and empowerment of the victimised in modern society.

This is in line with the choice of the Marxist frame of reference for the present research. This approach has been applied to the study of black women without assuming that all black women belong to the working class but for the purpose of emphasising the exploitative and conflictual nature of sexism and racism. As Campbell (1985: 1) observes, "Race consciousness remains an integral part of the class consciousness of African peoples as long as Euro-American culture seeks to harmonise the economic and political domination of black peoples with attempts at destroying their cultural personality." Similarly, bell hooks (1984), Angela Davis(1981) and others have demonstrated that class consciousness is articulated with the race and gender consciousness of black women.

Campbell, Hook and Davis do not imply that all Europeans identify with the ruling class or that all black women identify with the working class. In other words, the impacts of racist domination on black people also vary with the impact of racist ideologies on the

consciousness of people who share different classes, races, sexes and nationalities. Such consciousness is not just a matter of individual or group attitudes but also a manifestation of the concrete conditions of existence and institutionalised ways of doing things.

What is offered here in the analysis of race, gender and class in the problems that face people in the criminal justice system is an extension of the focus beyond race or gender (as separate relations) and the integration of the analysis of the three relations at once. By so doing, we have been able to understand that the relative victimisation of black women in the criminal justice system is based on their vulnerability due to their marginalised positions in these social relations. Although all women share a specific gender relation, rich women share a different class relation, and black women share a different racial relation. All these relations are articulated to weaken the ability of poor black women to defend themselves socially as individuals, hence they more readily form groups for self-defence or for mutual support.

This thesis recognises that as a result of patriarchy or the almost universal dominance of men over women, even poor men can oppress poor women under the ideology of masculinity. The same cannot be said for rich women who may be insulted by rich men but who may be relatively immune to oppression due to their power resources and who may oppress poor men and poor women. What this means is that this thesis emphasises concrete economic and political equality of opportunities between men and women while also considering problems of class, racial and gender oppression and how the

decolonisation of victimisation could help to end all forms of oppression.

7.3 Equality, Marginalization and Empowerment

Equality usually conjures up the opposite concept of discrimination. The former is often dismissed as an illusion that conceals subjugation of different forms and degrees. The latter is sometimes welcomed as something that could be of benefit, when it is said to be "positive discrimination." The approach in this dissertation is to regard all forms of discrimination as negative, so long as they contribute to the further marginalization of the marginalised. Those practices that are known as positive discrimination are now better known as "affirmative action." They are policies and 'programmes that take positive steps to redress the balance where minority groups are disfavoured' (Giddens, 1989: 262) by making a clear distinction (not discrimination) between their chances and those of the privileged.

This clarification of discrimination to mean unfair or arbitrary treatment of the disadvantaged throws a little light on the conception of equality that informs this research. Unlike those who regard equality as "sameness" (Edwards, 1989; Mackinnon, 1987), we take the view that equality does not preclude (but in fact, presumes) heterogeneity. Of course, one thing is not equal or unequal to itself but to another thing. Equality as sameness mistakenly suspects those who agitate for equality for women,

workers and black people of wanting to treat them in the same way as men, employers, and white people, respectively. Equality that is not related to the need to end oppression, marginalization and exploitation is both abstract and metaphysical in the sense that it assumes that there is a single essence called equality that is forever elusive (hooks, 1984).

However, by relating the politics of equality to the need to end racism, sexism and class exploitation, it is clear that when one person asks for a cup of tea, another for a cup of coffee, and another for a glass of water or nothing, and each one gets what he or she needs, each has been served equally even though they were not served the same thing. It would be discriminatory for anyone to say that no one should drink coffee because his or her father died of a related addiction. It would be discriminatory to sell the limited available cups of tea to the highest bidder when clearly some of the people who need it are almost broke. It is possible to treat individuals differently but still equally on the basis of their subjective and objective needs for freedom from exploitation, deprivation, marginalization and oppression.

Both the subjective and the objective requirements of needs to end oppression and exploitation are emphasised here (following hooks, 1984) to distinguish genuine needs from selfish desire for domination and also to underscore the politicality of its pursuit. Who determines what is an objective need and whose desire is labelled selfish or universalised? These are questions which suggest that equality is not an event that occurs at any specific point in time

or an object that is given out as a gift, but a contested principle of political and legal practices forever formed and transformed.

Earlier researchers have made a lot of recommendations to governments and state agencies on how to solve the problems of marginalization in society. It can therefore be presumed that policy makers have enough recommendations to implement and so, as we have already noted, the present dissertation directs its recommendations to the marginalised.

It can be inferred from the discussions in this thesis that a major reason why black women face peculiar problems in the criminal justice system is that they are the underdogs of the underdogs. On the gender hierarchy, they belong to the underdog group of women. Moreover, within this group, they are the underdogs of the underdogs on the basis of race. This race-gender hierarchy is not absolute for, as Higginbotham (1978) shows, black women were once ranked above black men but still below white women. Moreover, James (1980) has used the Race Registration Act of South Africa to ridicule the conflicting and contradictory ranking of black people according to the lightness of their blackness.

What these hierarchies suggest is that all those who are marginalised, not only black women, must be empowered through a continuous struggle for social justice, an end to racism, sexism and class exploitation and an equal guarantee of human rights. The theoretical perspective of articulation implies that there should be no absolute specificity and it requires that the struggle in one

country or class-race-gender sector should be sensitive or aligned to struggles in other sectors because the sectoral problems of race, gender, class, and nationality are closely linked.

However, the decolonisation of victimisation[46] must come to terms with the fact of internal colonialism at the institutional level of punishment and also at the levels of political space. The former is like the internal colonialism of Habermas (1987) who used it to describe the juridification or colonisation of economic power in particular and the life world in general by juridical power that is in turn colonised by economic power through the monetization of criminal justice administration. At the level of political space, we have gone beyond the internal colonialism of Hecter (1983) which emphasise intra-national exploitation of culturally distinct categories.

To decolonise victimisation, we need to go beyond the conceptual liberation of victimisation from the constructed clutches of care and punishment. Also, we need to go beyond the Hecterian intra-national dynamics of exploitation as Campbell (1991) has demonstrated with the 'globalisation of apartheid'. To decolonise victimisation, we also need to follow Fanon (1963) and address the international, if not global, perpetuation and extension of socio-economic exploitation and domination in spite of the gaining of formal independence. Wilmot (1986) did exactly this when he analysed 'the universality of repressed self-consciousness' and

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46 Meaning an end to the marginalization, exploitation, and oppression in the criminal justice system and in society on which victimisation is based.

linked this to 'the schizophrenic state ... of the being of the colonized' which Fanon identified. The limitation here is that Wilmot retained the masculinist language of Fanon whereas, following Freire (1972) who now regrets the androcentric language of this earlier work, hooks (1993b: 147) insists that an international perspective on decolonisation is essential

> 'Because the colonising forces are so powerful in this white supremacist capitalist patriarchy it seems that black people are always having to renew a commitment to a decolonizing political process that should be fundamental to our lives and is not. And so Freire's work, in its global understanding of liberation struggles, always emphasizes that this is the important initial stage of transformation - that historical moment when one begins to think critically about the self and identity in relation to one's political circumstances.'

However, when internationalised and even at its institutional and intra-national levels, the struggle for decolonisation is no longer simply the 'black struggle' if it has ever been so. The struggle involves and has always involved people who are black and people who are not. The important thing to note is the need to relate the struggle for decolonisation and against recolonisation to the concrete political and economic circumstances of the people engaged in the struggle as well as to the cultural politics of the people. This means that the decolonisation process cannot afford to turn a blind eye to a cultural, political and economic problem like narcotic drugs because this is the single offence for which black women are more frequently imprisoned.

In an address to a criminology conference in London, Gilroy (1991) called for the black community to embark on serious campaigns against drug abuse and drug trafficking but he did not suggest how this could be done without further criminalising the marginalised, impoverishing the impoverished and disempowering the relatively powerless, thereby perpetuating what he had earlier called 'The Myth of Black Criminality'. Though a very outspoken critic of left realism, his call for the black community to take the drug 'crisis' seriously could be said to be a very good influence on critical criminology by left realism but it is more likely to be evidence of the claim by Scraton (1990) that the self-professed left realists exaggerate their differences with critical criminologists whose positions cannot be realistically dismissed as idealism. However, a critical response to this problem would not focus exclusively on the poor black youth as the left realists tend to do in an ahistorical manner that ignores the dialectics of imperialism (Sim, et al, 1987).

Gilroy knew that his call was controversial and so he requested that his audience should question him on the matter but no one did. The comment the present researcher had wanted to make on the matter is that Gilroy failed to mention that popular black artists had already gone beyond I-Roy's satirical and consumerist spelling of New York with 'a knife, a fork, a bottle and a cork' refrained with 'I got cocaine running around my brain' - implying that the cocaine culture of New York was so damaging that the addicts no longer knew how to spell their own city. The revolutionary poet,

Mutabaruka (1989) avoided the ambiguity of satire and chanted directly:

> johnny used to satisfy with just smokin
> till some foreigner come and say
> man you're jokin
> a know smoking will get u high
> but that still wont make u reach the sky
> i'm gonna give u a thing
> that will make u sing
> and everywhere you go people will swing
>
> suh johnny stop smoke
> im start sniff coke
> im teck it for a joke
>
> drug kulcha takin ova de place
> yuh know dis is a damn disgrace
> drug kulcha takin over de place
> youth your life is gonna go to waste

With this story of how the drug culture is taking over the place, Mutabaruka provides an example of a principled pedagogy of the oppressed in which support for the campaign against drug abuse is politically selective and challenging. The selective approach prevents what Campbell (1985: 107-109) called the dilemma of 'outlawing a popular custom.' Campbell analysed the history of the initial regular importation of ganja by British plantation owners from India for sale to indentured Indian labourers in the Caribbean. This was gradually adopted among the African people who saw the parallel between it and the kola nuts that their ancestors brought from West Africa. However, because a majority of the people who adopted ganja as a popular culture were poor Rasta and working class people who were understandably rebellious, it was easy to

criminalise the drug even though scientists have since proved that 'alcohol is 1000 times more lethal than marijuana' (Goode, 1973). The example of the politicisation of marijuana is given here in some detail to illustrate the point that the struggle for decolonisation could tackle problems of common interest to the people as well as to the state and still retain an independent agenda, success for which depends mainly on the organisational ability of the people.

Mutabaruka's poem continues the tradition of artists like the self-styled 'Bush Doctor', Peter Tosh, who called for Marijuana to be legalised because 'Judges smoke it' and because it is a safer alternative to cigarette-smoking which is a hazard to health. It is paradoxical that Rasta people who are stereotyped as drug-crazed people are actually at the front-line of the campaign against addictive drugs. So black people are already campaigning against the drug culture and the call by Gilroy should serve to promote such a campaign rather than to launch it. However, the anti-drugs campaign by black people, as Mutabaruka demonstrates, has its own agenda that is fundamentally subversive of official definitions of dangerousness.

The United States Drug Enforcement Agency (USDEA) defined marijuana as a dangerous threat and launched 'Operation Buccaneer' against ganja planters in Jamaica with the support of the Labour Party government in the 1970s (Campbell, 1985). However, the popularity of ganja all over the world coupled with the scientific evidence that it is still the safest known drug (Goode, 1973) guaranteed a huge income for the drugs barons who employed

poor black women and men as vulnerable couriers who frequently got arrested and thrown into jail. A convicted black man who was on a day release to attend a conference on Drug Couriers, London, 26 March 1992 argued that the campaign against drug trafficking would be more successful if accompanied by a campaign for the legalisation of marijuana because the majority of convictions involve cannabis through which a lot of poor people can make an honest living.

Home Office figures show that between 1979 and 1989, the number of all drugs offenders rose from 16,056 to 52,131. Of these, cannabis offenders were 14,116 in 1979 and rose steadily to 23,592 (compared to a total of 28,560 for all drugs offender) in 1984. The figures for cannabis offenders dramatically shot up to 44,920 in 1989.[47] What is obvious but unstated by the Home Office is that such massive increases are not simply indicative of increased offending but evidence of the law and order policies of Thatcherism that strongly emphasised the 'war on drugs' as a key part of its electoral politics of crime control. The huge increases in the arrests for cannabis could give the misleading impression that this is a very serious crime whereas cannabis is not among category A drugs that the authorities perceive as the greatest threat, hence many of the arrests for possessing cannabis is dealt with by a caution rather than a charge. On the contrary, the arrest figures for cannabis suggest that the drug is part of a popular culture that the authorities wish to repress even though there is no reported case of

47 H.O.S.B., 24/90, 'Statistics of the misuse of drugs: seizures and offenders dealt with, United Kingdom 1989', 6 September 1990.

cannabis users being hospitalised or treated for addiction since cannabis is non addictive. Further evidence of politicisation is the 1994 Crime and Public Order Bill which proposes to increase the fine for the possession of cannabis from £500 to £2,500 (Newstatesman & Society, 24 June 1994).

The relative safety of the drug and relative ease of growing the plant in any climate would provide alternative employment for millions of people who could be forced into drug trafficking for economic reasons. According to Green (1991:43)

> 'Drug couriers do not conform to the ungrounded imagery which vilifies them in the public mind. The research profile suggests a reality of Third World poverty and despair, of men and women generally naive about drugs and the First World's war against them, of men and women whose offence was not motivated by greed but by familial concerns and economic deprivation.'

Drug offenders may be naive about hard drugs but they appear knowledgeable about the even more severe war being waged by the Third World against drugs just as they seem to know that marijuana is relatively safe and very popular. Far from being generally naive, many of the convicts happen to be what Green called 'educated destitutes'.

It is economic deprivation rather than naivete that pushes most poor people into the drugs trade. According to Campbell (1985: 168) 'the ganja traders paid EC$1,000 per pound of the weed while the State

paid only 6 cents per pound for bananas.' Although the traders organise violence to protect their monopoly trade and run cartels that involve highly placed agents of the state, they would not want to see marijuana legalised. This is because legalisation would remove their comfortable monopoly since ganja could be easily planted and grown with two harvests per year unlike most other crops. The end products could be easily patented, colourfully packaged and competitively marketed by big business with enormous value-added tax by the state.

This means that the selling price to the consumer would still be too high for some people and the products could carry health warnings like cigarettes which are more harmful than marijuana. However, it is likely that legalisation would considerably reduce the prices of marijuana and this would make ganja more competitive against more dangerous drugs that are equally more expensive. This suggests that some poor youth who could be driven to crime to finance their fix could turn their backs on the expensive and more dangerous drugs and grow their own marijuana or buy some at more or less the same price as cigarettes and thereby help throw the gun-running drug barons out of business.

At the same time, the price of what the reggae band, Culture, calls 'the international herb' will likely be cheap enough to make the cultivation of food crops equally attractive to farmers who could justifiably abandon bananas to grow cash crops for drug barons. The call by Gilroy for the black community to take the drug problem seriously has already been taken up by popular black artists in a

way radically different from the intimidating approach of Black Muslims in the U.S.A. where drug peddlers could be displaced from one estate to another. Also unsuitable is the individualist example of Tai Solarin, the non-alcoholic Nigerian social critic who confronted the colonial authorities with a bottle of 'illiticised' local gin and demanded to be arrested in open challenge to a law that he saw as a design for the protection of the monopoly of British distillers. Such heroic individualism is inappropriate in the principled campaign against the drug culture because collective action would be more effective.

The cultural activists who campaign for the legalisation of marijuana as part of the campaign against hard drugs could be said to be acting as what Becker (1963) called 'moral entrepreneurs' whose strong interest in the matter makes them take it upon themselves to persuade the public that the legalisation of marijuana is for the general good of those who take it and those who do not. It is up to sufficiently large segments of influential and respected opinion in the black community in particular and the intellectual community at large to support the publicity provided by the popular artists to neutralise the objections of those whose interests are threatened by the legalisation of marijuana. This was exactly the way that USDEA successfully campaigned for the criminalization of marijuana through the Marijuana Tax Law of 1937. Because the campaign for the legalisation of the substance is led by forces outside the state, it is likely to be a tougher campaign than that of the well-funded campaign to criminalise it.

It is important that the hegemonic ideology must be made more responsive to the needs of the underclasses in its structure, purpose and operation. This cannot be achieved without the marginalised groups being given equal access to participation in and, more importantly, control of the apparatuses of hegemony. The struggle against social injustice continues but all marginalised groups must make conscious efforts to acquire the necessary knowledge and contest for the right to control the machinery of justice.

This is not unrealistic, although the essence of hegemony is to prevent the empowerment of the groups of people under domination. It is reasonable to expect more marginalised individuals to struggle and gain access into legal professions, the academia, the legislature and criminal justice and penal services. This will enable them to exert pressure from within for better training on, and monitoring of, gender, race, class, and nationality issues in the criminal justice system.

News reports suggest that more marginalised people are leaving the criminal justice service than are joining it due to frustration and discrimination. However, it is not enough to complain that the system is discriminatory; the marginalised people must see the struggle for participation in the operation and control of the system as a necessary part of the struggle to overcome the material basis of marginalization that is reflected in, and constituted by, the law and other hegemonic institutions.

Hawkins and Thomas (1991) traced the history of 'white policing of black populations' in America and concluded that black political power has significantly impacted on previously white-dominated police departments. Such impacts were criticised as being too limited and being bought at too high a cost by Cashmore (1991: 101) but even Cashmore acknowledged that 'black representation at senior levels has had some practical consequences' such as '...general decline in allegations of police brutality; further increase in ethnic minority recruitment; lower crime all round ...; and either a continuance of "softer" community-oriented policy or a change towards it.'

Black men and women who join the criminal justice services may have to cope with the double jeopardy of being regarded as sell-outs by sections of the black community and being racially abused and discriminated against by colleagues but the alternative of an all-white or non-black criminal justice system in particular and state power structure in general is too frightening to contemplate. However, it is not enough to campaign for more black people to join the criminal justice personnel without also demanding that more opportunities for black parliamentarians, lawyers and judges should be guaranteed. To limit the chances that such officers and professionals would sell out on the black community, they should be unionised and kept in touch with black community organisations without exposing the latter to repressive surveillance from the former.

7.4 Conclusion: Lessons for Future Research

The present researcher hopes to learn from the limitations of the present research in order to improve on future attempts to understand the articulation of race, class and gender in practical or theoretical problems and the struggles to overcome such problems. The major limitation of this research is the deliberate exclusion of white men and men and women of other ethnic minorities from the discussion. This was not an oversight but a convenient strategy to narrow the discussion down within the acceptable limits. While the experiences of those excluded can be inferred from parts of this dissertation, there is the need for a more definitive study that will carry the comparisons to their necessary bounds.

Another limitation is that the fieldwork did not concentrate exclusively on black women who have individually experienced the criminal justice system and, therefore, it was not possible to directly measure the attitudes of black women. Although certain references to existing publication and some information from individuals and organisations indicate the influence of attitudes, an empirical study is required to make this clearer.

The present dissertation could be said to have a misleading title. It is called 'Black Women and the Criminal Justice System' and yet it is epigraphed with the greetings of a black brother to his brothers and sisters. Perhaps a better title would be black people and the criminal justice system. Such a title will seem to reflect the fact that the dissertation is considerably about black men as well. However,

the original title was retained because it reflects the goals and methods of the present research better. It is true that this research is not exclusively on black women, whatever the title may suggest. However, neither is it exclusively on black people as the alternative title would suggest.[48]

The focus on black women more effectively captures the articulation of race, class and gender. The class element is not visible in the title unlike the race and gender elements but the analysis emphasised the importance of class. The emphasis on the struggles by black women also appears misleading because many of the organisations mentioned here were not struggling in the revolutionary sense that Rodney implied. They were more exactly support agencies that were highly vulnerable to co-optation by the state (Kelly and Radford, 1987) but the fact that they were there for the affected women to contact is a very welcome development (Scraton and Chadwick, 1987). The emphasis on struggles of resistance is consistent with Rodney's acknowledgement that the struggle is not the prerogative of any one group. As he put it, 'We feel more confident because of the demonstrated ability and capacity of the people as a whole.'

Another possible critique is that the present dissertation claims to be couched on the historical materialist theoretical perspective of articulation and yet it is not a mode-of-production analysis. The research could even be said to be idealist and not materialist because a lot of the analysis concerns the interpretation of imagery,

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48 The brothers and sisters that Rodney, 1981, was hailing in his last public address were of all racial groups.

symbolism and appearances. However, the interpretations offered can be said to remain within the chosen perspective because appearances are interpreted here in the 'strong sense' in which Marx always used the term (see Hall, et al, 1978:198). In this sense, what is apparent is not necessarily illusory, false, or fantastic. Rather, it refers to the representation of a complex social formation demonstrating that 'there is no necessary identity or correspondence between the effects a relation produces at its different levels' (ibid). This is why the present research tried to point out what the different results appear to be saying rather than overstating the case by making absolute claims.

It is not for the present researcher to judge whether his claim to commitment in this dissertation is objective enough or whether his attempt to be objective is committed enough. He stated his value-position from the beginning and he has tried not to conceal opposing value-positions in an approach that he has called committed objectivity or objective commitment. He is aware that evidence of disparities in the problems facing black women, black men and white women may not be adequate proof of discrimination. This is why he has been cautious to claim that these findings merely suggest that there is discrimination. This is consistent with the conclusions of Hudson (1989), Gordon and Shallice (1990) and Hood (1992).

Finally, the present dissertation was not out to prove anything in particular nor to discover any fundamental truth about black women and the criminal justice system, but simply attempted to

reach a better understanding of the problems constituted for the former by the latter. The present researcher does not claim to have understood the problems completely since understanding is an infinite process that grows or diminishes in line with concrete conditions in the struggle for social transformation and deeper understanding.

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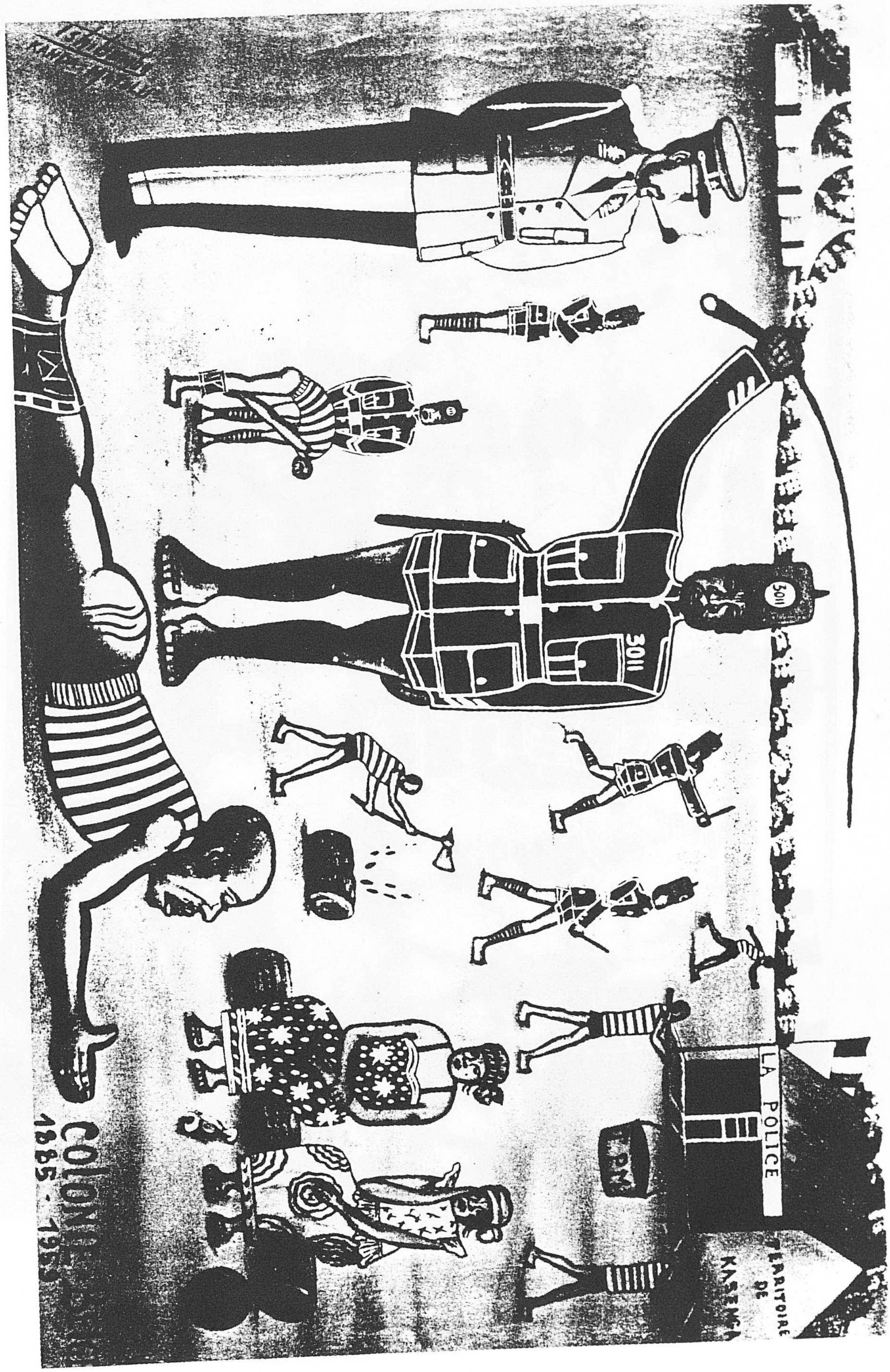
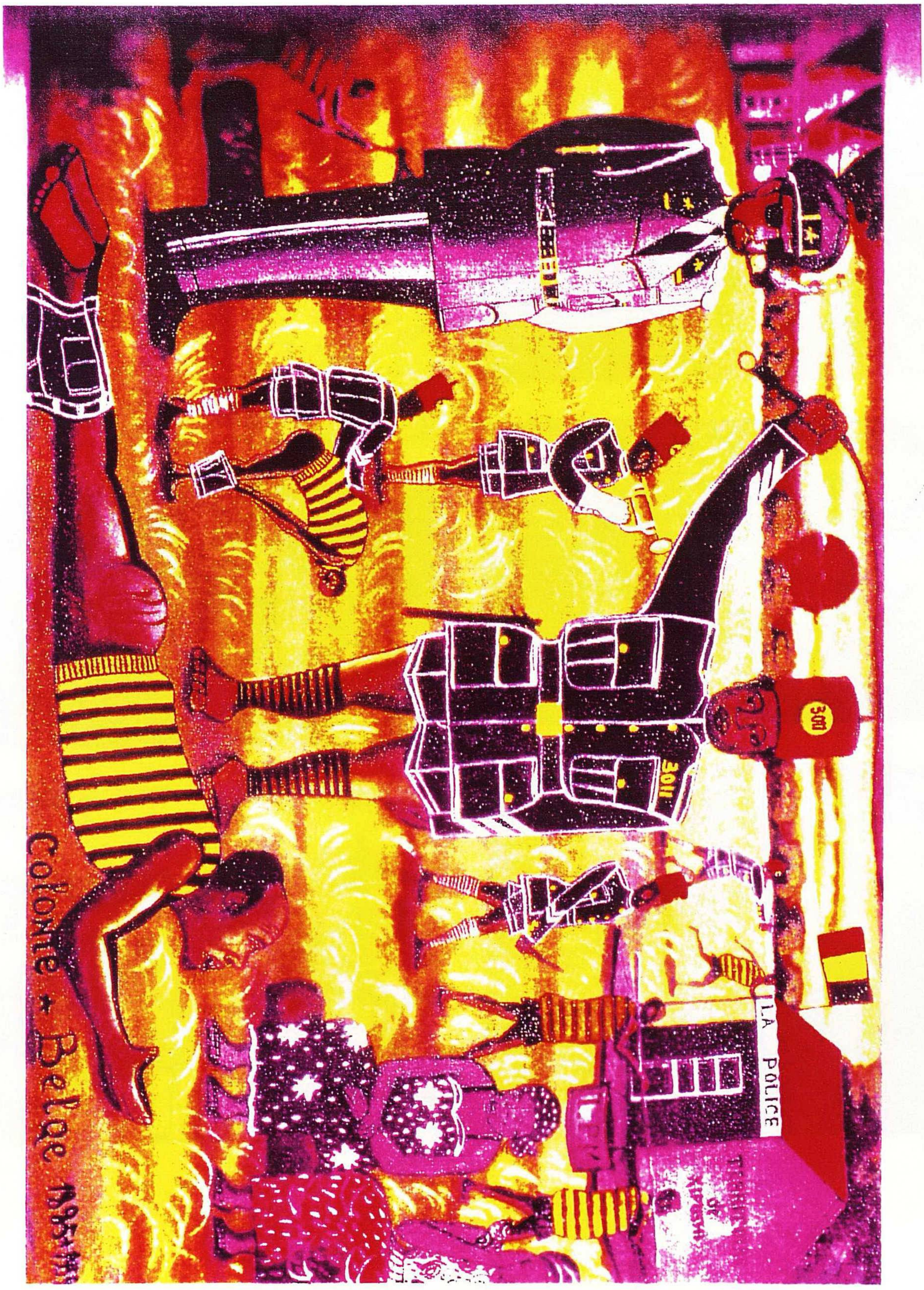
Appendix A: 'Colonie Belge' by T. Kanda-Matulu

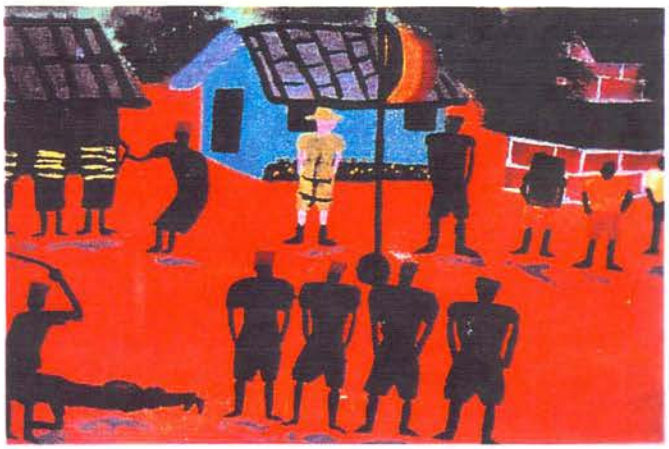
Colonie Belge

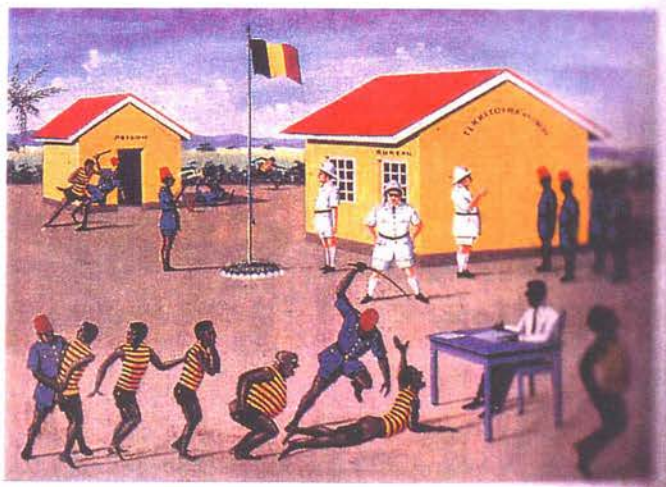


Appendix A: 'Colonie Belge' by T. Kanda-Matulu



Appendix A[3]: 'Colonie Belge' by T. Kanda-Matulu





27 AUG 1991

JACKIE

NEIGHBOURHOOD WATCH

MESSAGE FROM REDLAND POLICE.

URGENT

THE "THREE MINUTE GANG" ARE OPERATING AGAIN ALL OVER THE AREA. THEY ARE A TEAM OF AFRO CARIBBEAN MALES AND ARE VERY WELL ORGANISED. THERE COULD BE SIX OR MORE IN THE TEAM, BUT THEY WORK IN TWOS & THREES, SWOPPING PARTNERS REGULARLY.
IF YOU SEE:-

1 AFRO CARIBBEANS SITTING IN A VEHICLE WATCHING PROPERTY

2 AIMLESSLY WANDERING AROUND LOOKING AT HOUSES

3 KNOCKING ON DOORS

4 SHOULD AN AFRO CARIBBEAN KNOCK ON YOUR DOOR, AND THEN MAKE SOME EXCUSE WHEN YOU ANSWER, THAT HE IS LOOKING FOR SOMEONE.

5 IN FACT IF YOU FEEL UNEASY ABOUT THE WAY EITHER ONE OR A GROUP OF AFRO CARIBBEANS ARE BEHAVING

DIAL 999 IMMEDIATELY.

CRIME TOGETHER WE'LL CRACK IT

Please take the registration number of any vehicle conderned, and equally important as good a description of the people involved paying particular attention to the clothing they are wearing.
Clothing is important because as previously mentioned they regulaly swop partners.