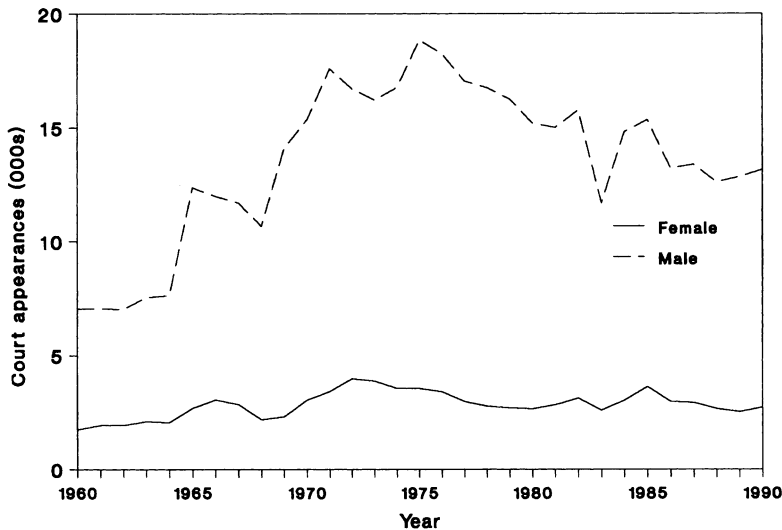
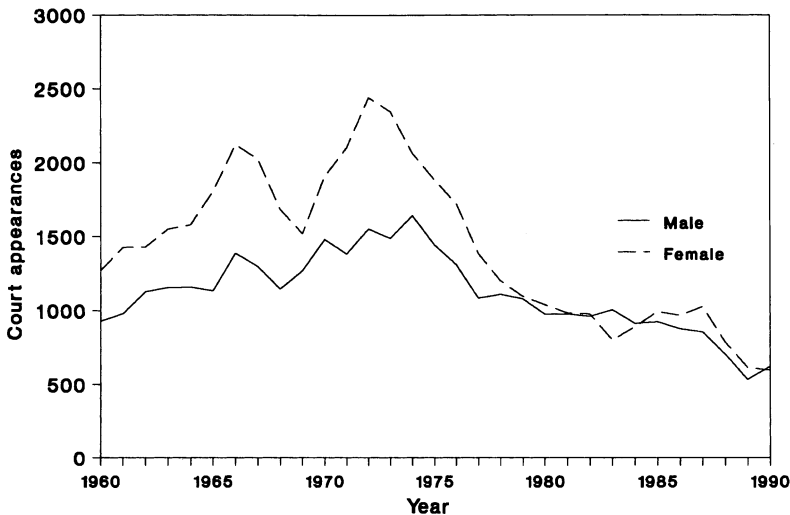


Figure 2.4 Welfare matters by sex, NSW Childrens Courts 1960–90



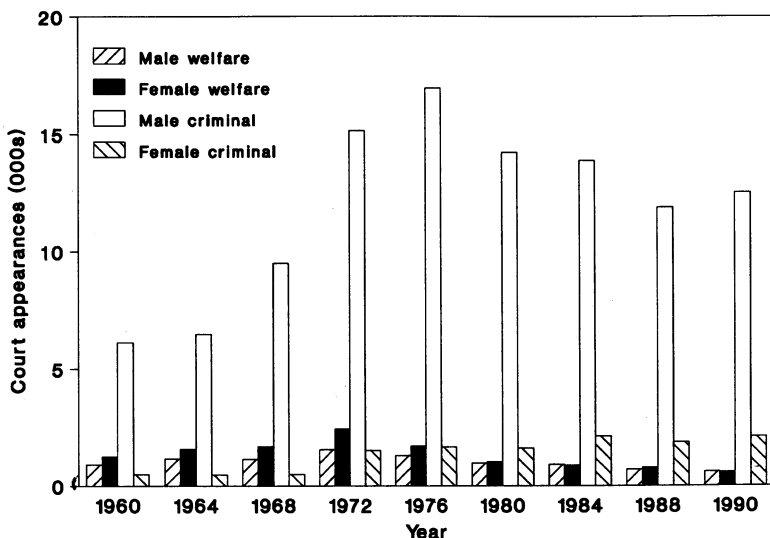
Source: YACS Annual Reports 1960–83, NSW Bureau Crime Statistics and Research 1984–90.

Figure 2.5 Criminal offences by sex, NSW Children's Courts 1960–90



Source: YACS Annual Reports 1960–83, NSW Bureau Crime Statistics and Research 1984–90.

Figure 2.6 Offence profiles by sex, NSW Children's Courts 1960–90



Source: YACS Annual Reports 1960–83, NSW Bureau Crime Statistics and Research 1984–90.

thesis concerns the certainty with which legal categories have been interpreted to suggest that girls are being dragged before the courts for sexual misbehaviour. It is too confidently assumed that girls brought before the courts for welfare matters are actually before the courts for sexual misconduct (see, for example, Fielding, 1977, p. 176; Hancock, 1980, p. 7). But even where this is the case, as it was in Judy's, reasons for court action are not easily reducible to a singular relationship between sex and justice. Children's Court statistics are the products of a complex criminalisation process. Like other official statistics they are not neutral records but social products mediated by work practices, organisational factors, and the conceptual and technical instruments of classification (Miles and Irvine, 1979, p.124). The content of female delinquency cannot be read off from statistical aggregates of Children's Court statistics. To do so entails the reification of legal categories as vague and indiscriminate as 'being uncontrollable', 'neglected' or 'exposed to moral danger' under which a diverse range of behaviours can be brought before the court. It is simply far too problematic to assume with any confidence, as the sexualisation thesis does, that welfare complaints arise from allegations about sexual misconduct.⁷ Subsequent chapters in this book explore the many factors and

contexts in which welfare complaints have been laid against particular girls. Sexual conduct is certainly one of these factors, but it is not necessarily the only or deciding one.

The third empirical claim generally invoked as proof of a sexualisation process is that girls are punished by the courts more severely than boys. This is a claim which appears to have considerable empirical substance (Campbell, 1981, pp. 203-7; Chesney-Lind, 1974, p. 45; Hampton, 1979, p. 29; Hancock and Chesney-Lind, 1982, p. 109 and 1985, p. 236; Hancock, 1980, p. 10; Shacklady Smith, 1978, p. 82; Terry, 1970, p. 86). On the basis of these studies girls are said to be more likely to receive supervisory orders and custodial sentences than boys.

Few of these studies involve a control for offence categories but when court orders are analysed in relation to offence profiles a more complex picture emerges. New South Wales statistics for 1979 have been used for the purposes of illustrating the argument (Table 2.3). They are not atypical, they fall within the period under review and they depict the *same* kinds of patterns identified by most other comparable studies. Of the girls before the courts for welfare matters, 16 per cent were committed to institutions compared with only 5 per cent of those appearing for criminal matters. In the same year, 21 per cent of boys appearing for welfare matters were committed to corrective institutions, whereas only 10 per cent of boys appearing on criminal charges were committed. Proportionally, more of the girls (31 per cent) before the courts on criminal charges were admonished and discharged than those (20 per cent) who appeared in court on welfare complaints. Similarly for the boys (21 per cent and 16 per cent respectively). Hence penalties were severe for *both* cohorts of girls and boys who appeared before the courts on welfare matters. What is significant here is not so much the sex of the child but the *means by which they ended up before the court* as being a welfare case and not a criminal case.

Even when offence profiles are discarded, the result is still ambiguous because girls who appear before the courts are treated more leniently in some ways than in others. When both welfare and criminal matters are taken into consideration almost equal proportions of girls and boys were committed to institutions—at 9 per cent and 10 per cent of their respective populations appearing before the courts. To be admonished and discharged is to receive one of the most lenient penalties available to the Children's Court. In both welfare and criminal categories, as well as in terms of total matters, more girls than boys received this order. Fines and probation orders are notable exceptions to this pattern. Higher percentages of girls were released on probation and considerably more boys than girls were fined.

Table 2.3 Penalty by sex for welfare and criminal matters, NSW Children's Courts, 1979

Penalty	Girls		Boys	
	no.	(%)	no	(%)
<i>Committed to wardship^b</i>				
welfare matters	288	26	335	31
criminal offences	4	0 ^a	58	0 ^a
sub-total	292	11	393	3
<i>Committed to institution^c</i>				
welfare matters	172	16	229	21
criminal offences	79	5	1463	10
sub-total	251	9	1692	10
<i>Released on probation</i>				
welfare matters	405	37	320	30
criminal offences	467	29	3183	21
sub-total	872	32	3503	22
<i>Admonished & discharged</i>				
welfare matters	217	20	174	16
criminal offences	492	31	3112	21
sub-total	709	26	3286	20
<i>Fined</i>				
welfare matters	1	0 ^a	1	0 ^a
criminal offences	543	34	7176	47
sub-total	544	20	7177	44
<i>Other court orders</i>				
welfare matters	14	1	21	2
criminal offences	14	1	182	1
sub-total	28	1	203	1
Total welfare	1097	100	1080	100
Total criminal	1599	100	15174	100
Total court orders	2696	100	16254	100

Notes: ^a Rounding error^b Includes committal to care of approved person^c Includes suspended committals

Source: YACS Annual Report 1979, p. 147

The argument that girls are treated more harshly than their male counterparts who appear before the Children's Courts has to confront a number of complexities. On the one hand, girls before the courts could be said to be treated more leniently than boys because they are more often admonished and less often committed to institutions. On the other hand, girls before the courts could be said to be treated more severely than boys because they are more often released on probation and less often fined. Some of the studies

quoted above do acknowledge this ambiguity. Hancock's study, for example, does recognise that girls presented on 'protection applications' are dealt with more severely than girls whose behaviour is interpreted in legalistic terms (Hancock, 1980, p. 10). This study also recognises that girls appearing before the courts on criminal charges are, in some respects, dealt with more leniently than boys (Hancock, 1980, p. 9) and also that recommendations for institutionalisation are roughly equal for both sexes (Hancock, 1980, p. 10).

To ask the question, why is it that welfare cases are treated more harshly than criminal cases whilst important, seems to have been overlooked in feminist readings of sex and statistics. One particular finding from my own statistical analysis of the offending profile of the 1046 girls is relevant here. Before reaching eighteen years of age the 1046 girls in the sample had 2046 court appearances among them recorded against their names in the JCI. Although their offence profiles were almost equally divided between criminal matters and welfare complaints, when these *same* girls appeared before the courts for welfare matters they were much more likely to be committed to an institution (see Table 7.1, Chapter 7). There is little support here for the argument that working-class girls tend to be processed more frequently as welfare cases while middle-class girls are classified as criminal offenders. It is the same girls, most of whom are from socially disadvantaged backgrounds (Table 2.1), who are being punished by the courts more severely when they present as welfare cases rather than criminal cases. As stated above, the issue here is not so much the sex of the child, although it can be important, but rather the nexus that exists between welfare and punishment. Chapter 7 deals specifically with this important issue, and each of the following chapters contribute in some way to the development of this argument.

One possible explanation for the nexus between welfare and punishment which is explored in subsequent chapters is that the disposition of both girls and boys before the courts for welfare matters is guided by the expertise of social work and psychological discourses. This means that the penalties imposed by the Children's Court in relation to welfare matters are not shaped by the judicial logic of the penalty tariff but by the logic of social work and psychology. Because these discourses advocate earlier intervention and longer periods of supervision and institutionalisation, such as taking 'children at risk' into custody or placing them under supervision *before* they commit criminal offences, the disposition of welfare cases (for both males and females) comes under a grid of calculations which are more interventionist, and experienced as

more punitive, than the disposition of criminal cases by the Children's Courts.

Feminist readings of female delinquency

Feminist readings of female delinquency have tended not only to overstate the centrality of discourses authorised around sex but in so doing have also actually *misread* their effects. By positing the effectivity of discourses about sex in some sovereign form of patriarchal power which operates from the outside upon the field of juvenile justice and its specific mechanisms for processing delinquent girls, the opportunity to analyse their production within this particular site of government is foregone. In order to illustrate this, what follows is a juxtaposition of two possible readings of Judy's notes. Her case was chosen from other available possibilities⁸ precisely because it fitted, more neatly than others, the basic propositions of the sexualisation thesis. In other words, Judy's case is nowhere near as ambiguous as others in the sample. Ostensibly her sexual conduct seemed to be the most important reason for the court action taken against her.

Reading one

Judy's case notes describe her as a sexually active girl. On every occasion she appeared before the courts she was punished by the Children's Courts for sexual conduct which transgressed double standards of morality. Her case notes documented many examples where this occurred. After questioning Judy at length about her sexual conduct, the district officer, for example, then used this information to charge her with breaching the terms of her probation. During the court proceedings a great deal of information about Judy's sexuality was presented to the court as evidence in the case against her. The court was informed that Judy was promiscuous and deliberately amoral, boasting freely about her sexual relations with boys (Court Report, 10 August 1979). She was accused of seeking sexual relations with boys for instrumental rather than romantic reasons. She was also accused of 'using sex as a means for boosting her self-esteem' (Psychological Assessment, 14 January 1981) and not as a path to marriage, monogamy or motherhood. She was regarded as selfish and unnatural because she sought pleasure through sex. Judy's institutionalisation seemed motivated by a desire to control and punish her promiscuous behaviour (Home Report, 24 April 1980). In one Court Report it was even suggested that she be locked up for her own protection (Court Report, 20 October 1979).

Discourses about sexuality which make women the moral

guardians of a naturally uncontrollable male sexuality, shaped the official response to Judy in two main ways. First, in relation to the incident on the school bus where Judy was pressed into undoing her blouse, it was her sexuality and not that of the boys which was considered central to the incident. By being represented as an evil seductress and a temptation to naturally playful young boys, Judy was made responsible for the sexist behaviour of the boys on that bus. Second, in relation to Judy's experience of incest, it was her sexuality and not that of the three men in two different foster families who sexually abused her over a period of about eight years which was scrutinised, moralised and subject to court action. She was the one held responsible for the intrafamilial sexuality in which she was a relatively defenceless party. In this context, the argument that the justice authorities turn a blind eye to the transgressions of male sexuality while preoccupying themselves with the normative transgressions of female sexuality appears to be a forceful account of what happened to Judy. It could then be inferred that court action against girls like Judy is no more than a patriarchal form of social control which seeks to police double standards of sexuality, exempting boys from any such repression.

Reading two

Certainly Judy's sexuality was the object of a great deal of punitive and moralistic juvenile justice intervention. But the discourses which sought to punish and normalise her conduct, including her sexuality, cannot be reduced to the solitary effect of one underlying form of masculinist power. A multitude of discourses entered into the disciplining of her body and her formation as a delinquent girl. Departmental personnel vested with the responsibility for supervising Judy thought that she 'lacked constructive leisure and social activities' (Psychological Assessment, 17 January 1981), needed to establish 'organised social and leisure activities' (Psychological Assessment, 17 January 1981) and be 'introduced to a more socially acceptable peer group' (Social Work Report on Institution Inmate, 26 March 1981) in order to 'lessen the extent of her undesirable peer dependence' (Social Work Report on Institution Inmate, 26 March 1981). Her sexuality was represented in these documents as an integral part of an undesirable cultural context and peer group set, for example:

She is only fifteen and a half years old, associates with the least desirable local youth and I do not feel that she has progressed greatly in learning to control her impulsive promiscuous behaviour. I fear that it will not be long before she is again before the Court. (Home Report, 24 April 1980)

Judy's sexual promiscuity did not singularly provide the motivation for court action against her. Rather it was the way in which she negotiated her sexuality so visibly within a particular cultural context and then defied attempts to restrict and normalise her conduct which signalled so much danger to the juvenile justice authorities. Her body invaded and sought sexual pleasure in the public arena with youths (both male and female) regarded as 'undesirable' others by the authorities. Her body also emitted signs of danger in physical maturity, sexual vulnerability and 'cheap' appearance. She sported tattoos, wore jeans and thongs and pink mid-drift tops (Description of New Admission, 31 January 1980). Her body was described as 'physically mature—looking much older than her years would suggest' (Note on File, undated). Her behaviour disrupted not only norms about female sexuality, femininity and romance but norms about adolescence as an extended period of childhood. Because her body looked much older than her years suggest it was seen by the authorities as a trap to the unwary male unable to control the solicitations of such a 'brazen young hussy'.⁹ Similar comments were made in many of the cases I examined. Anny Johns, for example, was described as 'a mature pleasant lass who responded cautiously when seen' and whose 'current trouble seemed to result from her impulsiveness and failure to control herself around boys' (Psychological Report, 3 November 1977). The medical officer who examined Anny in the remand shelter wrote in his report that the 'girl has had considerable sexual experience and easily admits three fingers'. This information was then forwarded on with other court documents to be considered by the magistrate in sentencing Anny.

There is no doubt as to the justice authorities' intense and moralistic concern with the sexual conduct of both these girls. However to see this concern simply as a form of social control which only seeks to repress adolescent *female* sexuality is to miss the crucial point that the regulation of socially injurious forms of *male* sexuality, such as incest, rape and carnal knowledge, also operate through technologies of government centred on the corporeality of young women. Let me explain how. Because male sexuality is understood in masculinist discourses as being instinctive, male sexual urges are regarded as being biologically driven. Hence it is incumbent on females to govern their bodies and conduct in such a way as to not arouse the instinctive sex-striving of the male sex (Tyler, 1986, pp. 55–58). This means that the only strategic mechanisms of governance conceivable for dealing with undesirable forms of male sexuality actually operate through the bodies of the female sex. While the effect of these technologies of government may limit and order the corporeal positions legitimately

available to girls, they are primarily intended to control male sexual deviance through the prevention of arousal. Of course, this is all dreadfully misguided and repressive for girls but, it also has repressive effects on undesirable forms of *male* sexuality, such as incest and rape, which, in vital respects, disrupt discourses about family life, manhood and nationhood. The problem is that girls are made responsible for ensuring that they do not fall prey to undesirable forms of male sexuality. In other words, it is their social duty to be sexually coy and it is incumbent on mothers to instruct their daughters on how to discipline their bodies in such techniques of the self (Tyler, 1986).

Here is where Judy went 'wrong'. By failing to discipline the sexual imagery of her body in the habit of sexual coyness she refused to take responsibility for controlling male sexuality. In other words, she refused to fulfil her civic duty to police male sexuality and in so doing was seen as having set herself up as the victim of deviant male sexual impulses commonly understood as 'uncontrollable'. The fact that she was sexually harassed on the school bus, continually taken advantage of by adolescent boys, and raped by three men in her foster family was taken by the authorities as evidence of Judy's unwillingness to police the undesirable solicitations of sexually devious men. The juvenile justice authorities could then rationalise Judy's punishment as a form of benevolence. They say her periods of incarceration were not intended to punish her but, rather, to protect her from the designing men from whom she could not protect herself! Here we see most clearly the overlapping of discourses about sexuality and benevolence which have the effect of enmeshing welfare with punishment and care with control. The discourses of blame are inverted. Judy is no longer the victim of sexual molestation. Her 'innocence' is lost through being sexually abused and so, through no fault of her own, she becomes subsumed into the discourses about 'uncontrollable girls' and subject to their concomitant forms of discipline.

The hysterical fears about Judy's body and behaviour were not just confined to fears about her loss of 'sexual innocence'. Judy is not atypical of the youth who are routinely processed through the juvenile justice system. She comes from humble origins; had rebelled against the requirements of the school system at an early age; participated in a youth culture centred around visible street activities which defied the dominant norms of family life and leisure consumption; and, when confronted with attempts to correct her ways by welfare officials, school counsellors and the courts, she rejected these as well. She was defiant, she took little notice of court orders refusing to accept the supervision of the district officer,

she resented 'limits on her freedom' imposed by Orders of the Court and she had a 'bad attitude' to figures of authority (particularly the district officer and the school counsellor). One supervising district officer described Judy's attitude in the following terms.

Judy does not wish any involvement with 'The Welfare'. She perceives us as the enemy. (Annual Report on Ward, 20 February 1982)

In all the court actions taken against Judy, considerations about her guilt or innocence and about the severity or otherwise of the offences she committed were subordinated to a series of assessments about which one of the available sentencing options was, in the view of the experts (the psychologist and the district officer), the most appropriate given Judy's failure to fulfil her social duty to ensure her own protection. The psychologist, for example, prepared the Court Report after Judy's attempted suicide and interpreted the suicide attempt as evidence of an inability to cope in the community. In lieu of this, the psychologist suggested it was therefore appropriate for the court to commit her to a secure institution. This section of the Psychological Assessment for the Children's Court read as follows:

When seen Judy was not depressed, but it was obvious she is unable to cope within the community at this stage. However, her self-esteem is low. She is sexually promiscuous, using sex as a means of boosting her self-esteem . . . It would probably be best for Judy to go to a training school for a couple of months and then perhaps [be] returned to a ward establishment for the last month or so of her committal. Attempts could then be made to find her employment, even if it was voluntary work. *Recommendation:* Committal to an Institution (Court Report, 14 January 1981)

The basis of her incarceration is quite transparent: not the commission of any legal offence, but the repeated and escalated transgression of infra-legal norms of adolescence, schooling, sexuality, leisure and family life. Girls like Judy pass into the hands of district officers, police and the courts and their auxiliary forms of expertise (psychology and social work) through need, vulnerability or dependency on welfare. This is how the justice authorities acquired the means through which Judy's sexuality and conduct at school, on the bus and in the streets could be scrutinised and subjected to court action. Judy was desperate for the kind of housing and emotional and material support young people ordinarily acquire through their attachment to families. Through absolutely no fault of her own she did not have a family and the one to which she was artificially attached sexually and emotionally abused her. Clearly she needed

assistance to escape an abusive foster family, but securing it meant subjecting herself to the disciplinary processes of State 'care' (Carlen, 1987). Once in State care Judy was then driven along the 'fast track' from care to detention, as is the fate of so many State wards.

Comparison of readings one and two

In the first reading of Judy's notes I isolated gender and conceived the primary function of juvenile justice intervention with girls to be the policing of adolescent female sexuality. In the second reading, I attempted to analyse the function of juvenile justice intervention in terms of the discourses of sexuality, benevolence and 'problem children' which have become integral to the administration of present day juvenile justice. In the first reading I sought to essentialise the relation between sex and justice as something pre-existing acting from the outside in. In the second reading I sought to de-essentialise that relation by locating the power effects of masculinist discourses in their conditions of internal production within the forms of government set up to manage 'offending' girls. I am not suggesting that there are only two possible feminist readings. Obviously, Judy's notes are open to multiple readings. But I am suggesting that the second reading is more convincing for the following reasons.

In essentialist feminist readings the patriarchal family, father or judge has been identified as the vehicle through which girls' offences are sexualised. Those who initiated the court action against Judy, and against most of the girls who appear before the Children's Courts in NSW, fit neither of these descriptions. They are the 'experts'—social workers, district officers, school counsellors and psychologists—and most of them are women. So, the sexualising process, to the extent that there is one, has, for the most part of this century, primarily operated among women—including mothers, their daughters, female social workers and police officers. Indeed, women were initially recruited into the NSW Police Force for the sole purpose of dealing with adult and juvenile female offenders (Cunneen in Findlay and Hogg, 1988, p. 193). It has been too confidently assumed in essentialist readings of female delinquency that the vehicle of sexualisation is some patriarchal family or some male magistrate, father or police officer, rather than some female social worker, district officer, school counsellor or departmental psychologist. The second reading of Judy's notes avoids this closure. It does not seek to pin down the locus of power to any one particular sovereign source or patriarchal figure or vehicle. Rather, it seeks to analyse how a multiplicity of discourses overlap in the processing of girls by the juvenile justice system which produces as one of its

effects the punishment of girls considered to have 'lost' their 'sexual innocence'.

The effects of masculinist discourses are open to greater scrutiny when examined in terms of their internal production within specific sites of governance. This is what the second reading of Judy's notes attempts to do and the first does not. In the second reading I analysed how masculinist discourses about sexuality produce their effects through governmental technologies which operate upon the bodies of girls. In this reading the power of masculinist discourses about female sexuality was located, not so much in a sexualisation process (where an essentialist reading would locate it) but in an alliance between welfare and judicial prescriptions for modern juvenile justice intervention. This alliance has not only made the female body the site of government for undesirable forms of male sexuality, such as incest and carnal knowledge, but it has also created an infra-legal context in which masculinist discourses about the failure of girls to police undesirable forms of male sexuality can authorise punitive measures of juvenile justice intervention. Such an overlap has also generated a mechanism for punishing girls who fail to fulfil their social duty of taking responsibility for the control of male sexuality through coyness and other forms of discipline of the body. Hence we see the criss-crossing of benevolent discourses with masculinist ones and their mutual institution in technologies for governing adolescent girls.

The dispersion of judicial power to the experts that has occurred during this century has multiplied the sites and means for normalising all kinds of conduct including sexual conduct regarded as being inappropriate for adolescents. Essentialist readings about sex and justice by concentrating on establishing the pre-existence of a systematic sexualisation process have not looked at how the internal production of discourses within juvenile justice administration work through and have as their point of application the bodies of adolescent girls.

Summary

In this chapter I have attempted to clear the ground for the development of a different kind of feminist reading of female delinquency. At an empirical level I have taken issue with the statistical foundations supporting the sexualisation thesis and concluded that they ought not to be privileged as representing the only possible feminist reading of sex and statistics. Girls are not necessarily dealt with more harshly than boys and girls are *not* over-represented in statistics for welfare matters in most Australian

States. The fact that boys far outnumber girls brought before the courts is the only indisputable empirical claim of the sexualisation thesis, at least in the Australian context. The most important statistical sex differential, that boys are involved in much higher levels of criminality than girls, has been left untheorised in feminist readings of sex and juvenile court statistics, as it has been in most mainstream criminology (Allen, 1988). The issue here is the masculinity of criminality not the sexualisation of female delinquency. The other really important statistical pattern, that both girls and boys appearing before the courts as welfare cases are more harshly treated than those appearing for criminal offences, has either been inadequately addressed or misconstrued as evidence that girls are more harshly treated by the courts than boys. Again, the issue here is not the sexualisation of female delinquency but the blurring of care with control, of welfare with justice, and the inversion of discourses of blame which make the victim (in this case the abused child) the guilty party.

The crux of my argument in this chapter has taken issue with essentialist concepts, such as patriarchy, and their relevance in understanding the operation of juvenile justice. By assuming that the justice system punishes sexually active girls in its service to maintaining patriarchy, the sexualisation thesis constructs a fictive account of a complex criminalisation process and produces an array of unhelpful and unnecessary closures. Even where sexual misconduct is the primary concern of juvenile justice intervention, as it was in Judy's case, essentialist readings have misunderstood how masculinist discourses operate through such mechanisms. Delinquent girls are not a homogeneous group—they are differentiated in relation to the operation of juvenile justice. Essentialist positions on this issue are fundamentally misdirected (Carlen, 1988).

The concern of the juvenile justice authorities just with the regulation of adolescent female sexuality has been vastly overstated in essentialist readings of female delinquency. Not only is the burden of this regulation spread unevenly throughout the adolescent female population, but the object of this regulation may in fact be undesirable forms of male sexuality. The strategic point for feminist intervention, as I see it, is to suggest how abusive and violent forms of male sexuality, such as incest, can be governed in ways other than through the discipline of the adolescent female body as it was in Judy's case.