



Women and the Criminal Justice System: Gender Matters

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Throughout most of our nation's history, women offenders have been largely invisible or “forgotten” in a system designed to control and rehabilitate men. According to Maureen Cain, in both criminology and more broadly in the criminal justice system, women and girls “exist as Other: that is to say, they exist only in their difference from the male, the normal” (Cain, 1990:2). This has meant that female victimization was ignored, minimized, and trivialized and that women's crime was overlooked almost completely. For criminal justice professionals, the time-honored defense of this posture was that there were so few women in the system that accounting for gender was not necessary.

In the waning decades of the 20th century, this logic was abruptly undercut as women's involvement in all aspects of the criminal justice system increased dramatically. As an example, in just the last decade (between 1990 and 1998), the number of women on probation increased by 40 percent, the number of women in jail increased by 60 percent, the number of women in prison increased by 88 percent, and the number of women under parole supervision increased by 80 percent. And, in many of these systems, the increases seen in female rates outstrip those seen for males; for example, since 1990, the number of female defendants convicted of felonies in state courts has grown at more than twice the rate of increase for male defendants.

The criminal justice system, long used to forgetting about women, was taken by almost complete surprise when this change started. The starkest examples of this can be found in corrections, where the number of women in prison has increased sixfold since the 1980s. Caught by this unexpected increase, corrections officials in the early '80s were forced to house women prisoners virtually anywhere—including remodeled hospitals, abandoned training schools, and converted motels. Increasingly, though, states have turned to opening new units and facilities to respond to the soaring numbers of women inmates. By 1990, the nation had 71 female-only facilities; 5 years later in 1995, the number of female facilities had jumped to 104—an increase of 46.5 percent. Similar, though less easily quantified, changes have occurred elsewhere in the criminal justice system as officials struggle with the dramatic increase in women offenders.

Changes in Women's Crime?

Is the dramatic increase in women's involvement with the criminal justice system a response to a women's crime problem spiraling out of control? Other indicators give little evidence of this. For example, the total number of arrests of adult women, which might be seen as a measure of women's criminal activity, increased by only

38.2 percent between 1989-1998, while the number of women under correctional supervision increased by 71.8 percent.

What does explain the increase? A recent study by the Bureau of Justice Statistics indicates that growth in the number of violent offenders was the major factor for male prison growth, but for the female prison population “drug offenders were the largest source of growth.” One explanation, then, is that the “war on drugs” has become a largely unannounced war on women. Two decades ago, in 1979, one in ten women in U.S. prisons (10 percent) was doing time for drugs. Now, the proportion is over one in three (38 percent).

What about media images of hyper-violent women offenders? Arrest data show a rather sharp increase in the number of women arrested for simple and aggravated assault in recent years, though not for other crimes of violence like murder, which show decreases. Here again, many suspect that policy changes could be a major explanation of these patterns. In California, girls and women accounted for 6 percent of domestic violence arrests in 1988 but 16.5 percent in 1998; essentially, the female share of domestic violence arrests tripled in a decade. In Concord, New Hampshire, 35 percent of those arrested for domestic violence were women, and in Boulder, Colorado, women constituted 25 percent of those arrested. Essentially, mandatory arrest policies in the area of domestic violence have swept up large numbers of women. Figures like these may also explain why so many “violent” women offenders were on probation caseloads rather than in prison.

Women's Pathways

How should the criminal justice system respond to women offenders? Should they be treated as if they were male? Certainly, that has been the response of many in criminal justice—who have often justified such treatment as a form of equality. Setting aside the justice aspects of this dispute, will treating women offenders as if they were men result in effective responses to their behavior? Research on women's pathways into crime clearly disputes this notion and suggests that gender matters in the forces that propel women into criminal behavior. For this reason, gender must be taken into account in crafting effective responses to their problems.

Hints about women's criminal behavior are apparent in a national survey of imprisoned women, which found that women in prisons have experienced far higher rates of physical and sexual abuse than their male counterparts. Forty-three (43) percent of the women surveyed reported they had been abused at least once before their current admission to prison; the comparable figure for men was 12.2 percent.

For about a third of all women in prison (31.7 percent), the abuse started when they were girls, but it continued as they became adults. A key gender difference emerges here. A number of young men who are in prison (10.7 percent) also report being abused as boys, but this abuse did not continue to adulthood. One in four women reported that their abuse started as adults, compared to only 3 percent of male offenders. One-third (33.5 percent) of the women surveyed reported physical abuse, and a slightly higher number (33.9 percent) had been sexually abused either as girls or young women, compared to relatively small percentages of men (10 percent of boys and 5.3 percent of adult men in prison) who had been sexually abused.

A look at the offenses for which women are incarcerated quickly puts to rest the notion of hyper-violent, non-traditional women criminals. “Nearly half of all women

in prison are currently serving a sentence for a non-violent offense and have been convicted in the past of only nonviolent offenses.” (Snell and Morton, 1994:1). By 1998, over half of all women in the nation's prisons were serving time either for drug or property offenses.

Even when women commit violent offenses, gender plays an important role in their crimes. Research indicates, for example, that of women convicted of murder or manslaughter, many had killed husbands or boyfriends who repeatedly and violently abused them. In New York, for example, of the women committed to the state's prisons for homicide in 1986, 49 percent had been the victims of abuse at some point in their lives, and 59 percent of the women who killed someone close to them were being abused at the time of the offense. For half of the women committed for homicide, it was their first and only offense.

But what of less dramatic and far more common offenses among women? Kim English approached the issue of women's crime by analyzing detailed self-report surveys she administered to a sample of 128 female and 872 male inmates in Colorado. Her research provides clear information on the way in which women's place in male society colors and shapes their crimes.

She found, for example, that women were far more likely than men to be involved in “forgery.” (It was the most common crime for women and fifth out of eight for men.) Follow-up research on a subsample of “high crime” rate female respondents revealed that many had worked in retail establishments and therefore “knew how much time they had” between stealing the checks or credit cards and having them reported. The women said that they would target strip malls, where credit cards and bank checks could be stolen easily and used in nearby retail establishments. The women reported that their high frequency theft was motivated by a “big haul,” which meant a purse containing several hundred dollars as well as cards and checks. English concludes that “women's over representation in low-paying, low status jobs” increases their involvement in these property crimes.

English's findings with reference to two other offenses, where gender differences did not appear in participation rates, are worth exploring here. She found no difference in the participation rates of women and men in drug sales and assault. When examining the frequency data, however, English found that women in prison reported significantly more drug sales than men—but this was not because they were engaged in big-time drug selling. Instead, the high number of drug sales was a product of the fact that women's drug sales were “concentrated in the small trades (i.e., transactions of less than \$10).” Because they made so little money, 20 percent of the active women dealers reported 20 or more drug deals per day.

A reverse of the same pattern was found when she examined women's participation in assault. Here, slightly more (27.8 percent) women than men (23.4 percent) reported committing an assault in the last year. However, most of these women reported committing only one assault during the study period (65.4 percent), compared to only about a third of the men (37.5 percent).

In sum, English found that both women's and men's crime reflected the role played by “economic disadvantage” in their criminal careers. Beyond this, though, gender played an important role in shaping women's and men's response to poverty. Specifically, women's criminal careers reflect “gender differences in legitimate and

illegitimate opportunity structures, in personal networks, and in family obligations.” (English, 1993: 374)

Implications for Programming

Women offenders, then, have different personal histories than their male counterparts and less serious offense backgrounds. In particular, women's long histories of repeated victimization have to be considered in crafting any response to their criminal conduct. As an example, it is understood that women might use drugs for reasons quite different from those of her male counterparts (often self-medication). She may also have been coerced into drug offenses or other criminal behavior because of an abusive spouse or boyfriend (called “gender entrapment” by Beth Richie) (Richie, 1996). Women's property offenses are often directly linked to economic marginalization they have suffered both as women and, not infrequently, as women of color. The desire to protect and support their children—women under correctional supervision were the mothers of an estimated 1.3 million children—means that women offenders must have safe, affordable housing for themselves and their children, ready access to reliable transportation, and realistic employment opportunities. They also must not be over-burdened by onerous probation and parole conditions that, even when crafted with the best of intentions, often result in their commitment (or re-commitment) to prison.

The good news is that while there is a great deal to accomplish, the work we are about will make for a safer society in this new century and could well be a model for all criminal justice practitioners—not simply those who work with women. The non-violent backgrounds of women offenders allow us to look past punitive and masculinist crime policies that stress punishment/imprisonment to forms of restorative justice that can be best achieved in the community. Such approaches heal rather than harm the social fabric, as they are far less likely to fuel racial tensions or exacerbate poverty. They are also far more affordable than costly imprisonment. Our work for women on the economic and racial margins can, in fact, be a model for more humane ways to reduce both crime and victimization for both female and male offenders. ■

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