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**FEMINISM AND JUSTICE****ABSTRACT**

*Beyond its origins in Women's Studies, feminist scholarship has influenced more typically restricted academic subjects. These forays into criminology have happened before. This paper provides an overview of feminist theory and methodologies, as well as their applications in crime and justice studies. There are several points of intra-theoretical disagreement as well as some suggestions for future feminist contributions. The goal of this article is to expose the uninitiated reader to feminist criminology and its ideological parent, feminism and its role in the area of justice and crime.*

**KEYWORDS**

*Feminism, Liberal Feminism, Radical Feminism, Socialist Feminism, Police, Courts, Deterrence, Race and Crime, Elite Crime.*

**INTRODUCTION**

Several feminist critics<sup>1</sup> argue that criminology, like other social sciences, is androcentric, meaning that it is formed by masculine experiences and understandings of the social world. Without taking into account female experience as a crime participant or victim, such studied facts constitute the heart of “general” theories of crime/ disorder. Not all criminological research has disregarded women, but research on female offenders and victims of crime prior to the 1970s was frequently

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<sup>1</sup> Daly and Chesney-Lind, 1988

marred by unreflecting sexism and, in its most extreme form, misogyny. Females who departed from traditional roles were considered as hysterical, diseased, manipulative, and devious (Glueck and Glueck, 1934). Law-breaking and law-abiding behavior were thought to have the same etiological source of female nature.<sup>2</sup>

## **FEMINISM: PERSPECTIVE AND METHODS**

Feminism is best described as a worldview and a social movement that includes assumptions and views about the origins and effects of gendered social organization, as well as strategic orientations and actions for social change. Feminism, as a result, is both analytical and empirical. Feminist research, in its early stages, almost solely focused on women as a strategy of putting women at the center of inquiry and establishing a knowledge base. Feminism has evolved to become more inclusive, taking into account the gendered understanding of all areas of human culture and relationships as it has progressed.

However, thinking about feminism as a single idea is a mistake. Feminism has evolved into a wide range of ideas and goals, each based on distinct definitions of the "problem," opposing theories about the origins and causes of gender inequality/oppression, and disparate strategies for ending it. These viewpoints are united in their concern for identifying and representing women's concerns, which they believe are underrepresented and accommodated in the mainstream (Oakley, 1981:335).

### **1. LIBERAL FEMINISM**

Gender inequality, according to liberal feminism, arises from the formation of separate and distinct spheres of power, as well as traditional ideas about the proper role of men and women in society (Pateman, 1987). Discrimination against women in education, the workplace, politics, and other public venues reinforces such ideas. Liberals do not feel that the system is intrinsically unfair; they believe that discrimination is not a structural problem. Instead, men and women might work together to "androgenize" gender norms and eradicate discriminatory policies and practices against women.

### **2. SOCIALIST FEMINISM**

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<sup>2</sup> Edwards, 1985; Klein, 1973

Gender oppression is an evident aspect of capitalist systems, according to Marxists. The weight that one attributes to capitalism as a necessary and/or sufficient cause of oppression varies depending on whether one is a socialist woman (Marxist-feminist) or a socialist-feminist (Eisenstein, 1979). Gender (and race) oppression is considered as secondary to and indicative of class oppression if one is the former. Socialist-feminists strive to reconcile two dominance systems: class and patriarchy (male supremacy). Capitalist patriarchy structures both production and reproduction relations.<sup>3</sup>

### **3. RADICAL FEMINISM**

Radical feminists believe that male aggressiveness and control of women's sexuality are at the root of patriarchy and women's subjugation within it. Men are fundamentally more aggressive than women, who are easy to dominate and control due to their relative size disadvantages and reliance on men throughout child-bearing years. Radical feminist ideas (e.g., Atkinson, 1974; Barry, 1979; Firestone, 1970; Rich, 1980) put sexuality to the foreground of analysis. The "personal" has become "political" (Millett, 1971). The important analytical category is sex, not gender; male dominance, not class, is the basic source of female subordination.

### **GENDER AND JUSTICE**

Gender can have an impact on decision-making at several stages in the criminal justice system. The results of numerous well-known studies on several strategic moments in the decision-making process are presented below.

#### **1. POLICE**

The discussion of whether and how justice is gendered must start with police conduct. It has been demonstrated that extralegal elements such as the offender's demeanor can influence police arrest judgments (Black, 1980). It's less obvious how gender, alone or in combination with other traits, may impact police actions, either knowingly or unwittingly.

Moyer and White (1981), following the liberal "equal treatment" tradition, assess police bias in response judgments using "probable" replies to hypothetical situations. Once crime type, especially as it interacts with the offender's manner, was controlled, neither gender nor race had

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<sup>3</sup> Beauvoir, 1960; Hartmann, 1979; Mitchell, 1971

an effect on police behavior. Males, on the other hand, are more likely than females to have police interaction and arrest, according to Freyerhern (1981). However, both of these investigations have methodological flaws. Freyerhern (1981:90) does not quantify transition probabilities among particular offender categories, nor does he include status offences, therefore Moyer and White's findings cannot be applied to genuine police contacts. Visher (1983) finds the combination of race and gender to be a crucial element influencing arrest decisions, avoiding some of these analytical traps while still working within a liberal tradition.

## 2. COURTS

Discrimination can occur at any step during the legal process, not just when dealing with the police. Early in the judicial process (i.e., bail, release on own recognizance, and/or monetary alternatives to bond; I. Nagel, 1983) and later in the process (e.g., conviction and punishment), women have been observed to be treated more leniently<sup>4</sup>. Other studies reveal no gender bias when criminal severity and prior records are controlled (Farrington and Morris, 1983) or no effect from extralegal elements when legal factors and bench bias are controlled (Farrington and Morris, 1983). Sentencing disparities may be linked to so-called countertype offences, in which women are sentenced harsher when charged with unconventional female crimes such as assault<sup>5</sup> or when they break female sexual standards (Chesney-Lind, 1973; Schlossman and Wallach, 1978). Some of these conclusions, however, may be suspect due to variable-specification issues.

Court processing research isn't totally dominated by leftist viewpoints. Social power and patriarchal control are the primary methods through which justice is gendered, according to more critical viewpoints. Women's sentencing differs depending on how much formal versus informal social control they are subjected to in their daily lives. Once prior record and criminal seriousness are controlled, Daly (1987a, 1989b) and Eaton (1986, 1987) provide solid evidence that married and/or familial status is the most important factor predicting sentence outcome.<sup>6</sup> Women's marital status has been found to matter (married women receive lighter punishments), but men's marital status has not been proven to influence.

Both “familied” and “gendered” pre-trial release and punishment are seen. They are familiar with the fact that court decisions involving the removal of men and women from their families “elicit

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<sup>4</sup> Bernstein et al., 1977; S. Nagel and Weitzman, 1972; Simon, 1975

<sup>5</sup> Bernstein et al., 1977; S. Nagel and Weitzman, 1972

different concerns from the court". They are gendered in the sense that women's care for others and men's financial assistance for families constitute "different forms of family life dependencies." Men and women who do not have family duties are treated similarly, but more harshly, than men and women who do have family responsibilities. Women with families, on the other hand, are given the most leeway because of "differing social costs deriving from removing them from their families."

## **CORRECTIONS**

Liberal feminist viewpoints came to dominate research issues and policy considerations when it became obvious that female inmates were treated differently than male convicts (in some cases more leniently, in others more brutally). Radical feminists have identified links between female incarceration and masculine control of female sexuality<sup>6</sup>. Prostitutes with venereal illness, for example, were prosecuted and institutionalized, with the "cure" as a condition of release, according to Rasche (1974). Prostitutes who were not sick were less likely to end up in jail or prison.

When comparing the incarceration rates and in-prison treatment of black and white women, it is clear that white women were treated more favorably. They were filtered out of the jail system by chivalry, contributing to even bigger racial disparities between female and male prison populations. And prejudice towards whites contributed to the formation of a two-track system, with one track being custodial and primarily serving black people, and the other being reformatory and primarily serving white people.

## **RACE AND CRIME**

Poorly designed offender self-report surveys gave criminologists the empirical excuse to dismiss the race-crime association, and the current political context only added to our blindness. However, ignoring that relationship carries a significant danger. First, it is obvious that the race-crime relationship is critical, based on more sophisticated crime metrics. Second, similar to the gender-crime relationship, such apprehension opens the interpretive door to less critical viewpoints.

In this field, feminist criminologists have a lot of potential, but the data is scarce and difficult, and the analytic contributions are few. We rely on quantitative research that divide race into two

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<sup>6</sup> Chesney-Lind, 1973; Smart, 1976

categories: white and black, or the nonwhite category is expanded to include those who aren't black (see, e.g., Tracy et al., in press). Other ethnicacial groups are neglected in the first case, while such inclusive categorizations imply etiological and historical/cultural invariance between groups in the second.

### **ELITE CRIME**

In 1977, Harris chastised criminologists for failing to employ "the sex variable" as the empirical foundation for all criminal deviance theories. This was apparently believed to mean solely street criminality. The entire field of white-collar, corporate, and organizational crime has never been investigated from a feminist standpoint. Officially, women are underrepresented in white-collar crime statistics, but recent Bureau of Justice Statistics (1987) data suggest that women are making inroads into what was once a predominantly male sector. Similar assertions are made about female penetration of organized crime's higher echelons. However, neither the crime types nor the offenders themselves are found by Daly (1988).

### **DETERRENCE**

Given that female sanction risks are low, women should have greater rates of law breaking, however gender confounds the expected relationship between objective sanction risks and criminal conduct. However, as almost all crime statistics show, the exact reverse is true. The contradiction in this empirical relationship has left deterrence theorists scratching their heads. According to Richards and Tittle, there are at least five lines of reasoning that would indicate that women perceive risk at a higher degree than men. They found two factors, stakes in conformity and perceptions of visibility, to be highly linked with gender differences using measures generated from these assumptions. As women are more prone than males to believe that they are subject to surveillance and general social punishments, they may believe that legal sanction is a foregone conclusion. Their higher stakes in conformity may make noncompliance seem more dangerous to them, resulting in elevated punishment risk assessments.

### **CONCLUSION**

Since Klein (1973) and Smart (1976) first raised the issue, feminist criminology has evolved tremendously. Feminist contributions to the study of crime and justice began with more liberal perspectives and have recently given way to more radical critiques, mirroring the political and

analytical development of the broader feminist movement. The ideological coherence of liberal feminist approaches corresponds closely to the concepts and beliefs embodied in most capitalist democracies, which helps to explain their dominance. As a result, any type of liberalism is less frightening and more acceptable than feminism that challenges white, male, and/or capitalist privilege. Liberal feminists also speak in the same tone as the vast majority of social scientists, i.e., they are rational, objective, and (usually) quantitative. As a result, their findings and interpretations are given more credence by the scientific community and their colleagues.

There are several areas of criminology where feminists have only dabbled or made insignificant contributions. Daly and Chesney-Lind (1988:512-513) examine the difficulties that feminists have encountered in constructing and building theories of female crime in their survey of feminist criminology. It's no coincidence that this paper's research topics all revolve around this troubling topic. It will be far too easy for our detractors to dismiss feminist contributions to the study of crime as superficial and rhetorical unless we can better deal with the empirical difficulties of criminal offending.

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