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Toward a Critical Theory
Of Female Criminality

ANN CURRY THOMPSON

Twentieth-century theories about female criminality are the weakest link in conventional criminology, representing the most conservative and unscientific thinking about human nature and social organization. Traditional thinking about female criminality reflects the general inability of conventional theorists to examine categories of sex, race, and class oppression as determined by the basic social structure of a particular society and as they relate to deviance and crime. The result has been that female deviance has been analyzed solely in light of assumptions about women's biological nature. Whether there is indeed something distinctive about female crime which can be explained apart from a more general theory is problematic. Nevertheless, the recent resurgence of a radical materialist criminology, which roots the problem of crime in the underlying conditions of social production, suggests a methodology for analyzing the relationship between female crime and the rate of female participation in the labor force in advanced capitalist society.

THEORIES OF CRIMINOLOGY

The beginning of any new theory lies in exposing the fallacies of the old theories. The purpose of that endeavor is twofold. First, in order to develop an informed praxis which breaks with the assumptions of the past, it is necessary to understand those assumptions. Second, the theories perform a role in legitimating and giving conscious expression to pre-existing conditions of human existence. Dominant theories become part of the popular consciousness, which in turn produces behavior conforming to the theories. A critical theory, therefore, examines not only the conditions which give rise to the phenomenon but also the contradictions that give rise to the theory about the phenomenon and the uses to which that theory is put. It is therefore necessary to develop in some detail various theories of criminology. Although neat classifications are sometimes difficult to make, three rough divisions — classical-conservative, liberal, and radical — can be made by grouping theories according to their dominant assumptions and ideologies.
Classical-Conservative

The conservative or classic theory views crime as a freely chosen individual act of aggression against civilized society for which the perpetrator is fully responsible. This orientation reflects the conservative's pessimistic view of human nature. Human beings are in need of care, protection or control. Law and order is an expression of a natural order or of the social contract which is freely entered into by consensus of the governed. To discover these laws is a "value-free" endeavor. Conservative criminology rests on the fundamental belief in the hierarchy and dominance of the defining group as the basis for existing social relations, and favors any system of law that ensures order.

More modern conservative "realists" define criminal behavior as that which is represented in the statistics, which in turn are indices of the acts which the community finds unacceptable. As a consequence of the primacy of preserving social harmony, the focus is on the violator of the law, not the law itself. "Rehabilitation" for the conservative is the deviant's adjustment to the prevailing social norms which are taken as given.

Liberal

Liberal criminologist vary widely among themselves, falling roughly into categories of positivists and social constructionists (including conflict theories and labeling theories). For all its variety, liberal criminology, particularly the positivist tradition, is often hard to distinguish from conservative thought on the theoretical level, since both accept fundamental existing social and economic relationships, and both accept the legal definition of crime as the starting point for their analyses. The liberal school, however, is more critical of existing society and is not blind to the fact that inequitable distribution of social wealth is a "cause" of crime. Moreover, the chief identifying characteristic of the many variants of liberal criminology is its reformism, with political consequences vastly different from an inevitablist conservative approach.

The end product of most liberal analyses is a prescription for social reform — reform of the criminal, the criminal justice system, and society itself. Liberal reforms are often accomplished by reliance on technocratic solutions to social problems which reflects the belief that progress comes through enlightening managers of institutions of social control and policy makers. Reformism has created probation and parole, the juvenile court system, the indeterminate sentence, diagnostic centers, public defenders, and more recently, pretrial diversion and "decriminalization". Implicit in a reformist approach is a fundamental belief that it is possible to create a humane and stable criminal justice system without radical changes in basic existing social institutions.

Radical

The foundations of the "new" criminology are in fact not novel at all, but hark back to earlier struggles against the criminal justice system and an intense debate about the definition and meaning of crime by Gramsci, Debs, O'Hare, and other Marxist scholars and writers. It is
only new to the contemporary scene in this country because the nationalism of the '40's and the repression of the '50's has cut off vigorous materialist scholarship.

A Marxist analysis is grounded in the relations of production in a given society. Human labor is the beginning point of any social progress. All societies must engage in production to create and re-create their means of existence. The manner in which those social and productive forces are organized and how those forces evolve depends on material conditions. Material constraints place constraints on social development, and historical materialism is a method for analyzing relationships between material conditions, relations of production and social change.17

The primary social relationship in a capitalist society is the division between owners and workers.18 The result is a class society based on an inequitable division of wealth and power, where 1% of the population owns 40% of the nation's wealth and nearly all power is concentrated in a few large corporations. Less than 2% of the population owns 90% of the privately held corporate stock. This fact represents a class monopoly of the means of production. Monopoly of the means of production is not benign or self-contained. It must of necessity be translated into broader social control via the creation of the state by the dominant class. The dominant class has the power to maintain the state because of its material means, and the law, the coercive instrument of the state, in turn protects the material basis of the dominant class. Radical scholarship of the last decade shows that business and government are inseparable.19

Radical criminologists20 examine the interconnectedness between legal norm creation, criminal activity, and the labor process. Questions of criminology are ultimately questions of political structure since the "causes" of crime are rooted in the contradictions of class society. Radical criminology is unique in the questions it asks: Who controls and benefits? How are wealth and power distributed? What are the consequences for crime patterns and crime control? It seeks to develop a theory which is historically specific to an advanced capitalist society; no theory of criminology can be true for all societies.

Crime in capitalist society is predominantly crime against property.21 The quest for property is a concomitant function of a society based on property. Only some forms of property accumulation, however, are singled out by the criminal law. Thus the criminal law differentially apprehends members of the laboring class, who by virtue of their class membership are without productive property. The oppressed class will continue to be the object of crime control so long as the dominant class seeks to perpetuate itself.

Marxist criminology is not the only theory which locates the etiology of crime in social inequities. Most liberals and even some conservatives recognize the fact. It is distinguishable from both, however, in that it hypothesizes that the social inequities are inherent in class society which it does not view as inevitable or immutable but as a result of one set among many possible modes of production.
Radical theory examines not only the relationship between crime and the labor process but also the prevailing theories about the phenomenon. It finds that liberal theory with all its tinkering and fine-tuning merely reinforces and rationalizes the relationship. The predominance of liberal theories is not fortuitous, but flows from the fact that current research is monopolized and controlled by persons intimately concerned with the regulation of crime. "Agency-determined" research must be politically acceptable to the agency; thus, the emphasis on pragmatism, behaviorism, and social engineering, resulting in narrowly conceived studies which fail to raise moral and political questions about the nature of society, is inevitable.

As a result of the fact that liberal theory is basically tied to a legal definition of crime and to the person legally defined as "criminal", liberal research does not analyze behavior which is either not defined as a crime (e.g., imperialism, exploitation, racism, and sexism) or is typically unprosecuted (e.g., police homicides) but which in fact brings the greatest harm to the greatest numbers. For the radical, on the other hand, crime might be defined as the violation of the basic human rights to decent food and shelter, to human dignity, and to self-determination rather than the right to compete for an unequal share of wealth and power.

Liberal theory, which is addressed to academics and "progressive" politicians, lacks an analysis of the larger political economy and its historical foundations and evolution. It is consequently paternalistic and elitist; ordinary people are not a motive force in history. Because radical change is not on the agenda, and ameliorative reforms are ineffective, liberal criminology often ends in cynicism and unwittingly lends itself to a policy of using the penal system to reconcile the "disadvantaged" class to lower expectations. Radical theory is self-consciously addressed to a movement for fundamental change which only occurs when the oppressed class itself organizes for its own emancipation. Crime will only be eliminated by a society producing for human needs, not profit.

Traditional Theories of Female Criminality

The dominant theory of female criminality of this century is most notable for its overwhelmingly conservative orientation. Klein, in The Etiology of Female Crime, examines the small group of writings on female criminality and finds that, although they differ widely in approach and solutions, they all view female deviancy as an outgrowth of woman's universal sexual nature.

Lombroso, a turn-of-the-century phrenologist with enormous impact on later thinkers, hypothesized a "criminal type". Criminality is produced by biological atavisms or survival of primitive traits in women and nonwhites. These atavisms are observable in facial and cranial features. W. I. Thomas sees women as passive, infinitely adaptive and amoral creatures who manipulate the male sex urge for ulterior purposes. Freud's psychological theory of women is based on physiological characteristics — their reproductive function and anatomically inferior sex.
organs produce psychological reactions of emotionalism, narcissism, and passivity. For Freud, female crime is perversion of or rebellion against the natural "feminine" role. Kingsley Davis, the most well-known writer on prostitution, views prostitution as a structural necessity — an outlet for sexuality, the repression of which is essential to society's functioning. Prostitutes are neurotic, maladjusted, and promiscuous. According to Pollack, a contemporary and influential theorist of female criminality, women extend their service roles into criminal activity due to an inherent tendency toward deceitfulness.

Klein summarized her analysis:

The specific characteristics ascribed to women's nature and those critical to theories of female criminality are uniformly sexual in their nature. Sexuality is seen as the root of female behavior and the problem of crime. Women are defined as sexual beings, as sexual capital in many cases, physiologically, psychologically and socially. This definition reflects and reinforces the economic position of women as reproductive and domestic workers. It is mirrored in the laws themselves and in their enforcement, which penalizes sexual deviations for women and may be more lenient with economic offenses committed by them, in contrast to the treatment given men. The theorists accept the sexual double standard inherent in the law, often nothing that "chivalry" protects women, and many of them build notions of the universality of sex repression into their explanations of women's position.

The question which Klein's article raises is, why has biological/psychological determinism been the dominant theoretical orientation of writings on female criminology? What type of socioeconomic structure does it reflect, and how has it been translated into social policy?

DEVELOPING AN ALTERNATIVE THEORY OF FEMALE CRIMINALITY

The question of female crime and alternative theories to explain it has been a long-neglected area of criminology. The rebirth of the women's movement and the rapid increase in female crime relative to men has generated a new interest in the endeavor. Although there has been much written on developing a radical criminology, no one has yet attempted to apply that perspective to an analysis of female crime. There may be no uniquely separate theory apart from one which analyzes crime in its historically specific form in a classist, racist, sexist society. Nonetheless, the rapid increase of female crime, its peculiar distribution among index crimes and its low incidence relative to men do require explanation within the framework of a more general theory. It is necessary to develop a model for a critical theory of female criminology and a proposed methodology for testing the hypothesis.
The Model and Methodology

The "model" is relatively simple to state. For Marx, human activity is both determined and determining. The most important determinant of social behavior is the position people occupy in the productive process (the "base") relative to others. The types of activity people engage in are determined by the mode of production in any given society. The activity they engage in determines what they are. Whether a woman's primary activity is privatized and economically nonproductive, or whether she plays a role in productive labor and if so, her relative position within that sphere, will have vastly different consequences for her social behavior.

The attached appendices provide statistical evidence supportive of the claim that there is a clear prima facie causal connection between the developing transformation of the relations of women in the process of social production and the growing pattern of female criminality. Unfortunately, the evidence provided can be little more than suggestive. The standard government data are ill-adapted to the kind of analysis needed, e.g., the occupational status of the arrestees is not available. Moreover, a sophisticated correlation analysis would require very extensive technical resources. Nevertheless, it is relatively easy to demonstrate changes in the material status of women which an historical materialist would expect to be positively correlated with increasing criminality, and to show that this correlation holds.

The Role of Ideology

There are, of course, other variables that must be considered in developing a theory of female criminology—most importantly, the role of sexist ideology which forms and influences behavior. Ideology, however, originates in the superstructure and its primary function is to rationalize and legitimate the base. Understanding the complex interplay between relations of production, sexist ideology and crime is vital to any theory of female criminology.

The common fallacy of the theorists discussed by Klein is their confusion of femaleness with femininity. "Femaleness" is a physical category; "femininity" is a social category. The relationship between the two is dependent on the larger social structure. The writings on female criminality lack that understanding and adopt an ahistorical view of women—that the feminine ideal is universal and women's inferior role in the nuclear family is an inevitable function of their biological function. A radical critique explores the relationship between the feminine ideal and the role it plays in maintaining the subservient position of women in a society where they are the primary instruments of socialization of the next generation and thus the core of stability of the existing social structure. That this traditionally conservative socialization might affect rates of female crime is to be expected. Moreover, when women's role in the economic sphere is altered, a contradiction between the feminine ideal and women's actual status arises which will further affect the rate of female crime.

Radical theorists to date unfortunately have not dealt extensively with ideologies of crime causation which underlie the growth and maintenance
of the crime control apparatus. For Quinney, the legal order is mainly a
system of coercion, the state being the instrument for the violent
repression of challenges to capitalism.\footnote{51} While it is certainly true that the
state does resort to violent oppression, that is not the normal or preferred
response. Naked force must be translated into authority which is obeyed
unquestionably. Ideology provides the bridge between the two. For
ideology to accomplish its purpose, it must be believed by those groups
whose inferior position the ideology is to maintain. The poverty-stricken
must internalize the belief that they are the poor because of their liability
to defer gratification and accumulate in good capitalist tradition; blacks
that their lower social-economic position is a function of being “color-
coded” or bred from inferior gene pools; women that they are subjugated
because they are biologically and intellectually inferior to men.

The balance between force of material circumstances and ideology is
difficult to determine at any one point, but any theory must attempt to
integrate the two. Taylor is dedicated to rooting out all theories of
biological and psychological determinism whose obvious appeal rests on
removing “any suggestion that crime may be the result of social
inequities”.\footnote{52} While this is no doubt true, it only partially reflects the
nature of ideology. As one reviewer remarked, Taylor often treats theories
of crime causation as isolated mental constructs rather than as ideologies
rooted in material conditions of life in advanced capitalist societies.\footnote{53}
Repressive ideologies are propagated because of the basic incapacity of a
production system based on profit to provide a decent life for all. Sexism
is a particularly deep form of inegalitarian ideology which predates the
capitalist mode of production. It is both possible and necessary from the
point of view of the capitalist class to use and transform sexist ideas and
institutions into supports for the status quo.

The purpose is not just to expose and eliminate biological and
psychological explanations of crime, but to avoid arbitrarily isolating them
from their social and political expression. Divorcing psychological aspects
of crime leads Taylor to romanticize the rationality of the deviant by
standing bourgeois theory on its head. Instead of being innately
pathological, deviance is now seen as innately healthy, a rational rebellion
against an oppressive society. The deviant herself, however, does not
always view her actions as purposive or rational.\footnote{54} In any case, crime is a
real phenomenon which deeply and adversely affects people's lives. It is
largely dysfunctional from the point of view of the working class since
the victims are often those suffering similar oppression. Moreover, it is
often perceived by the deviant as exploitative and destructive. A Marxist
analysis focuses not only on directly economic causes of crime but also
on crime as an indicium of demoralization within society, an expression
of and an expedient response to a competitive, manipulative order. To
view crime in any less comprehensive manner as innately rational and
healthy leaves no room for explanation of the deviance of the powerful.

Determining the conditions under which repressive ideology breaks
down and a new politically progressive consciousness emerges is an
extraordinarily complex problem, and it is no help to explain the one in
terms of the other and ignore the underlying conditions which both
reflect.
The Rapid Rise of Female Crime

The confusion of ideology with the phenomenon to be explained is evident in the current debate surrounding the recent rapid rise in female crime rates. There has been informal speculation in the newspapers and popular media that the rebirth of the feminist movement is itself the "cause" of the increase. As a result of the movement, women have undergone a change of consciousness about their capacities and there has been a corresponding decrease in the chivalrous attitude of police, prosecutors, and judges. Thus women are becoming more involved in crime and are caught and imprisoned in greater numbers.

This hypothesis reflects an idealistic view of social change typical of liberalism: "ideas" move history, not people's reactions to real situations. Moreover, its implications are extremely repressive. If awakened consciousness of equality causes women to commit more crimes, an even better "idea" is to keep them pregnant in the summer and barefoot in the winter.

An analogue to the above argument would be to locate the source of the demand for formal (legal) equality, of which the Equal Rights Amendment is the highest expression, in the growth of the women's movement. Why did it arise in the '60's rather than at some previous time? It is no answer to say that it was because women experienced a "change in consciousness" during that period. A more plausible explanation is that it was during that time that women were brought into the labor force in the greatest numbers since World War II. It was then that millions of women began experiencing inequalities in wage scales and barriers to advancement in a time of relative prosperity. It is axiomatic that many of the current rash of EEOC suits could not formerly have been brought because there were no women in those male-dominated fields to sue.

It is not that women in the home do not perceive the need for legal equality but rather, because of their privatized existence, they are less likely to organize for it. A similar movement could not have occurred during World War II because of the peculiar character of the war effort which subjected workers to a daily barrage of propaganda asking them to sublimate individual goals for the good of God and Country. There is in any case a time lag between conditions which lay the base for a movement and its genesis; time needed to experience inequality, to realize it is not an individual but a collective problem, and to consolidate forces. War employment of women did not last long enough for that process to mature.

Although the beginning of a movement may be heavily dependent on consciousness, its roots lie elsewhere. The primacy of the base becomes evident when capitalism's inability to maintain itself forces women out of the work force, at which time changes in the law are irrelevant and changes in consciousness are frustrated. Formal equality, at least for working-class women, only results in material changes insofar as it is consistent with the basic institutions of private property and capitalist production.
Similarly, an analysis of the rise in female crime has more to do with increasing involvement in the labor force, with the vicissitudes and alienation\textsuperscript{55} that that entails than with the fact that more and more women are reading \textit{Ms}. As women's socioeconomic situation becomes more equal to men's, both the magnitude of female crime and the manner in which it is committed will begin to parallel that of male crime.\textsuperscript{56} When sex differences are narrowed, equality of job exploitation begins—a point only dimly perceived by many middle-class feminists.\textsuperscript{57} Yet statistics support this theory.

That an increasing proportion of women have become part of the labor force is a journalistic cliche, but one which is supported by both data and social analysis. (See Table I.) In 1890, only 18.2\% of the female population was in the labor force, employed or unemployed.\textsuperscript{58} In 1973, 44.7\% of women sixteen years old and older were in the labor force, and 61.2\% of twenty- to twenty-four-year-old women were either working or looking for work.\textsuperscript{59} And this trend has been accelerating. It took sixty years to increase the proportion of women employed from two-tenths to three-tenths. It took less than twenty years to make the same proportional increase to the 1973 figure. (See Charts A, B, C, and D.)

Social analysis is necessary if such evidence is to be of use. For home-bound women, the opportunity and inclination for crime, particularly crime against property, which in property-based society is categorized as "serious crime", is much diminished. In contrast, women in the labor force are exposed to all the opportunities and temptations, however much muted by residual ideological constraints, which face the bulk of much more "crime-prone" men. Almost all people are in the labor force in order to gain means of consumption from the consumables which they and other workers produce. Insofar as means needed exceed legally afforded, crime is an expectable phenomenon.

In the labor force, the contradiction between needs and means is most severely felt by the underpaid, and even more so, by the unemployed. The differential in wages between men and women in various occupational categories is notorious. Working women are commonly paid little more than half the wage of men. (See Table II.) Nor does it seem accidental that the "shocking" increases in female crimes against property in the post World War II period and especially in the last three years (see Charts E and F) has coincided with an historically new tendency for the female unemployment rate to exceed that for males, and that moreover by an ever-increasing gap. (See Chart G.) A declining proportion of women are employed in the governmental and financial sectors, areas relatively insensitive to business-cyclical employment rate variations, in "traditional" female jobs. To an ever-increasing extent they occupy positions in the productive sector where, suffering from the "last-hired, first-fired" institutional sexist canon, they are more often unemployed, and that at very substantially higher rates than men.

A difficulty in testing the thesis that the increasing female labor force participation rate and the increasing female-male unemployment rate differential are implicated in the increasing level of female criminality is
that, with insignificant exceptions, both have grown steadily since 1947, the first year for which a full range of generally reliable statistics are available. The joint increase in these economic and criminal indices does not per se indicate causal relations. Although no one would argue that the increase in female crime has caused the increase in female participation in the work force or the increasing excess in female over male unemployment, some might question the existence of a converse causal relation.

Such questions can be answered, at least in part, by examining the available statistics for the 1940-47 period in which, given the exigencies of World War II, female labor force participation both dramatically increased and then declined. (See Chart H.) [Unemployment statistics for this period are unfortunately not useful, given the extremely low rates.]

Although both female and male labor force participation rates sharply increased in World War II and declined thereafter, the absolute change, and even more so the proportional change, was much greater for women. Between 1940 and 1944, five million women were added to the civilian labor force, a 35% increase. [The male civilian labor force decreased by five million persons in the same period.] But by 1947, two and a half million (50%) of these newly industrialized women had been removed from the labor force and returned to the home.

The criminal results are suggestive. Professor Mueller, Chief of the United Nations Crime Prevention and Criminal Justice Section, has been examining records in western industrialized societies. He notes that the statistics show an increase in female crime after World War II, when women had been taken fully into the labor force for the first time. The condition lasted for a few years and then, for reasons which still bewitch criminologists, returned to pre-war levels. We still do not know why.

Professor Mueller’s comment on the return of crime rates to pre-war levels does not appear to hold, at least in the case of rates for robbery and larceny in the United States. It is true that the rate of increase trailed off (see Charts I and J) immediately after the war, only to accelerate again in the late '60's (see Charts E and F). The answer to the question he poses, however, is contained in the puzzle itself, i.e., that women were taken into the labor force. What he fails to mention is that following World War II women were marched out of the labor force back to the home with strains of intense ideological manipulation ringing in their ears.

The effect on crime of wartime employment, followed quickly by peacetime unemployment, is revealed by the statistics. For robbery, a violent crime, the female rate was largely steady in the early war years, while the male rate decreased slightly. Women of course had gained little experience with weapons during the war. Toward the end of the war and in the immediate post-war period, the female robbery rate increased, but less dramatically than the rate for men. (See Chart I.)
The figures for larceny and theft, nonviolent property crimes, are far more interesting. While the male rate declined steeply during the war, only to return thereafter to pre-war levels, the female rate rose sharply during the war and continued to rise, if erratically, thereafter. (See Chart J.)

This movement fits an historical materialist hypothesis. The war moved millions of women from economic dependency into the labor market. Female responsibility for the support of others mushroomed in the context of a wartime wage freeze. The temptation and individual need to commit larceny was thrust on five million women who had likely never worked before in their lives. And of course their exclusion from the factories in the short peace to follow worsened instead of improved conditions for many. Women newly accustomed to material independence preserved it illegally. Likewise the growing female employment/unemployment patterns of this decade are producing an upward effect on female crime rates. (Compare Chart G with Charts E and F for the 1969-73 period.)

The Peculiar Distribution of Female Index Crimes

Crime statistics watching has been a favorite of criminologists since the FBI began publishing its Uniform Crime Reports in 1933. The most frequently noted characteristic of female crime is its peculiar distribution among index crimes. The statistics are of course revealing; what they reveal is more problematic.

Statistically, women are arrested for certain crimes in numbers far above their arrest average for all crimes. There are in fact sex differences in arrest rates. Moreover, women commit crimes using certain methods, and where their criminal activity is collective, their role is usually secondary. The 1970 Uniform Crime Reports indicate that women averaged 14.4% of all arrestees. (See Table III.) The only categories in which women's arrest rates constituted more than 15% were murder/manslaughter (15.4%), larceny (27.9%), forgery and counterfeiting (23.7%), fraud (27.1%), embezzlement (24.6%), narcotics (15.6%), prostitution and commercialized vice (79.3%), vagrancy (19.7%), curfew violation (21.2%), and runaway (51.6%).

The high rate for prostitution is, of course, the easiest to explain. The laws against prostitution are not equal even on the formal level. As a general matter only women commit it. If the statutes also prohibit "visiting" prostitutes, the male partners are less likely to be prosecuted, or if they are, their punishment is usually lighter. Laws against prostitution produce a spin-off effect that swells other categories as well. Arrest rates for vagrancy and disorderly conduct, for example, often hide the arrests of known or suspected prostitutes. Drug addiction and consequently narcotics violations, are also connected with the pursuit of prostitution.

Prostitution as a social problem has existed for centuries. Industrialization and urbanization, however, caused a great boom in "women's oldest occupation". Although widespread criminalization did not occur in this country until sometime in the '20's, the impact has been
enormous. Prostitution may be a "petty" offense, but there are women "who are virtually serving life sentences in small bits for prostitution arrests".65

The current move toward legalization or decriminalization is usually justified on the ground that prostitution is a victimless crime. It is assumed that after decriminalization, prostitution will not be an important problem. It will, after all, significantly reduce the female crime rate. This reform, however, will change nothing in the underlying structure that gives rise to prostitution in the first place. Prostitution is a form of sexual barter, the sale of a commodity.66 Prostitution is also an extreme form of sex oppression, and far from "victimless". The prostitute suffers physical and moral degradation whether or not her activities are illegal.67 Nor will it alter the fact that other crimes, such as drug offenses and crimes against property and person, are frequently committed in connection with prostitution.

The differential statistics for the remaining categories, for which the law presumably applies equally to men and women, have generated a great amount of speculation. Yet these differential statistics should surprise no one. If women play a peculiar, defined role in the economic structure, then crime patterns will reflect that role. If women are socialized into "feminine" behavior patterns, then their criminal activity will mirror those patterns. Dale Hoffman-Bustamante, in The Nature of Female Criminality,68 is the first to begin studying this relationship. She finds that the statistics are the outcome of five major factors: differential role expectations; differences in socialization and applications of social control; structurally determined differences in opportunities to commit particular offenses; differential access to criminally oriented subcultures; and sex differences built into the crime categories themselves.

The high arrest rate for curfew violations and runaways is the most easily explained since it reflects the fact, often noted in the literature, that female juveniles are more likely than male to be stopped and taken into custody for their own good.69 Parents are more likely to hunt for runaway girls. In addition, girls are less likely to be able to support themselves except by prostitution or shoplifting, and thus are more likely to be apprehended for other offenses.

Murder and larceny are the only two serious crimes which women commit in percentages higher than their average for all crime. Their roles in both categories can be tied to the female sex role. For all female murderers, roughly 51.9% have a family relationship to the victim, compared with 16.4% for male offenders, and 20.9% are paramours;70 67% are nonviolent;71 and 61% of the victims are incapacitated or unable to defend themselves.72

Roughly 80% of larcenies committed by women are for shoplifting.73 The concentration of women in the arrest figures for this category is a direct reflection of the everyday pattern of life for women. Since most grocery and department store shopping is done by women, they are most likely to have the opportunity to commit the offense. Their low rate for burglary and robbery, on the other hand, reflects sex role socialization. Burglary usually involves forcible entry (77%), and half of all burglaries
Women are less likely to be out at night and when they are, they are more likely to be escorted. Burglary is also the type of offense for which girls are less likely to acquire the necessary skills in the process of growing up. Robbery usually takes place in the presence of the victim, and is an attempt to take property by force or threat. Women are not generally skilled in the use of firearms or in the use of bodily force. Most female robbers (80%) are accessories, and in 40% of the cases the partner is a husband or lover.

The anomalous rates for forgery, fraud, and embezzlement again reflect the sex role link—in these cases a differential in both skills and economic opportunity. Although no studies have been done, these high rates may be due to the fact that the types of these offenses committed by women may be those, such as welfare frauds and con games, which are more easily detected and more likely to be investigated. Female embezzlers frequently steal from charities or "shingle" small amounts from large bank accounts. Women have little experience in financial manipulation and generally hold lower positions, where they are more closely supervised, in banks and businesses.

The statistics therefore do indicate that women are more likely to commit certain crimes than others. As Hoffman-Bustamante demonstrates, however, these differences are perfectly explainable in terms of sex role expectations and sex differentials in the application of social control. The distribution of female index crimes is thus a direct function of women's oppression. Not surprisingly, arrest rates for women are lowest in societies where they are the most closely supervised, and highest in societies where they have the greatest equality with men.

As women gain more formal equality with men, and as their socialization patterns change, their distribution among index crimes will also begin to change. This process is only just beginning and has not yet begun to significantly alter the statistics. That sexist socialization which deters women from violent crimes in weakening in its effect, however, is suggested by comparing the 1960 with the 1973 statistics on violent crimes. Violent crimes are increasing faster among women under eighteen years of age than property crimes for the same age group and crime in either category for women generally. (See Table IV). In addition, Professor Mueller has concluded that when women move into male-dominated fields and finally make it to the top as bank presidents, they are just as prone as men to grab the chance for embezzlement: "The women still rank far lower in numbers as offenders than men, but the ladies are beginning to catch us." Moreover, they are beginning to pursue men's modes of committing crimes: "Girls are no longer satisfied being gun-molls. They want to carry weapons and do things themselves." Presumably his statistics to back up these assertions will be forthcoming.

The Relatively Low Incidence of Female Crime

The variability in the statistics noted above may not be as interesting as it first appears, since the large female percentages for certain categories stem in part from the manner in which crimes are indexed. Criminal
negligence, for example, is indexed separately from murder/manslaughter. The rate for women in this category is only 10.7% (see Table IV), and reflects the differences in opportunities available to women to be owners of businesses, supervisors of workers, or professional drivers who are most likely to be blamed for negligent deaths. If this category is added to that of murder/manslaughter, the overall arrest rate resulting from deaths drops to 14.5%, only .1% above women’s average for the whole. In addition, if the serious crimes of robbery, burglary, larceny, and auto thefts are combined, the average is 10.9%—well below the average for the whole. If these crimes are combined with forgery and embezzlement into a broader category of “taking other people’s property”, the female arrest rates drops to 18.5%, a rate not significantly higher than their average for the whole. Viewed from this perspective, the single most anomalous characteristic of female crime is, with the exception of prostitution, its low incidence compared with male crime. The data collected in charts A-J only suggest material factors to account for the dramatic proportional increase in female crime in the last thirty-five years. Its low incidence requires additional explanation.

Criminologists have exhibited a disinclination to acknowledge that the low official rate reflects a difference in fact. Pollack,82 followed by Reckless and Kay,83 developed a theory of “hidden crime” to explain the anomaly. First, women are instigators rather than perpetrators. Second, their roles as domestics, nurses, teachers, and housewives enable them to commit undetectable crimes, and thus the “petty” crimes they are most likely to commit are underreported. Third, law enforcement officials are unwilling to hold women accountable for their misconduct. The first point is refuted by Ward which tends to confirm the fact that, at least for violent crimes, when women act with others their role is decidedly secondary.84 The second point is not supported by any evidence, and in any event, as Sutherland demonstrates, petty crimes are by no means the most underreported.85 The notion of a “chivalry” factor is equally assailable. Women are less likely to be convicted and are generally given lighter sentences,86 but there is no evidence to support the belief that the arrest rate operates differentially by sex. “Chivalry” is a code of conduct that is likely to be extended to “ladies”, not to poor or black women, or female rebels and politicos who overstep the boundaries of “femininity”.

In the absence of concrete evidence to the contrary, there is no reason to suppose that the low female crime rate is less than real. The fact that female crime should be low relative to male crime is perfectly explainable in terms of sexist socialization. Comparing the crime statistics for women placed in circumstances similar to men, however, might indicate that the female rate is not greatly disproportional to the male rate. If the thesis thus far—that female criminality, particularly crimes against property, is strongly influenced by the rate of female participation in the labor force and by the rate, absolutely and relative to men, of female unemployment—is correct, then a substantial part of an explanation of the low rate of female criminality is already suggested. Insofar as criminality is tied to labor force participation, the relevant denominator for comparing arrest rates is not the whole female population but rather only the female work force.87
Consider the case of larceny and theft, nonviolent crimes against property perpetrated by those whose material means fail to match perceived material needs. For 1973, the male rate is 117% above the female rate, per million population—a very substantial gap. But, when the rates are compared per million in the work force, the gap shrinks to 22%. [Calculated from Uniform Crime Reports 1973 and Handbook of Labor Statistics 1974.] A similar comparison for earlier years shows the same effect. The male larceny and theft rates are no longer magnitudes higher than the female rates. There are of course still differences to be explained by other factors, but they are no longer enormous.

Similar recalculations for robbery, a violent crime in pursuit of material gain, show far less dramatic shifts. The 1973 robbery rate per million men was 1,279% higher than the rate per million women. The same rate per million men in the labor force was 671% higher than the rate per million women in the labor force. Once again, as in the case of the quite different shape of curves for larceny and for robbery in 1940-47 (see Charts I and J), the element of violence in robbery deters women far more than men. Most men are trained to use firearms, very few women are. At the very least, lack of relevant technical training turns women prone to acquire property illegally from robbery to larceny or theft.

Another explanation for the low absolute arrest rates in other categories may be the fact that prostitution is a displacement factor; women have an option to make money illegally that men do not. In this sense, prostitutes are part of the “hidden labor force” providing commodities on the market. Furthermore, prostitution as a criminal pursuit is an underreported crime—there are probably fewer prostitution arrests per incident of crime than for any other category.

Simple lack of technical means and the displacement effect of prostitution are no doubt only a part of the differential rates, however. Women do commit fewer crimes and particularly fewer violent crimes. This difference must still be accounted for by the residual effects of sexist socialization.

CONCLUSION

The process of developing a critical theory of female criminality has only begun. The fact that the social sciences have devoted so little attention to female crime, and that most of what has been done is so unsatisfactory, is a function of the sexist and moralistic assumptions with which researchers approach the problem. It is either considered unimportant, or if important, then easily explained. Women do conform to conservative sex role stereotypes which have a powerful impact on the magnitude and nature of female criminal activity. Sexist ideology plays a critical role in explanations of female criminality. Exposing those assumptions and showing how they both reflect and affect behavior is only the first step.

The deeper problem is understanding the evolution and change in female crime and sexism in relation to the social and economic structure out of which both arise. Why, if sex socialization has kept the female
crime rate low for so long, is female criminality rising so fast? The answer must lie in the changing nature of women's role in the economy. Sexist ideology begins to crack when women enter the labor force, perform men's jobs, and become increasingly important for the economic support of the family.

The quantitative analysis outlined above is merely a sketchy attempt to prove the hypothesis that the most deeply important factor in any social phenomenon is the underlying relations of production in a given society. Female crime is positively correlated with female participation in the labor force and particularly with female unemployment. This correlation offers the rudiments of an explanation not only of the fact that female crime is increasing faster than male crime but also of its low absolute level. More importantly, it provides a framework for a more sophisticated analysis which compares criminal activity with occupational status and for a comparative analysis over societies as a whole, in particular with the rates of female activity in the so-called socialist countries.

The rise in female criminality with the increase in female labor force participation is an apparent paradox. This is partially explained by the fact that being “in” the labor force frequently includes being unemployed. The newly unemployed woman may be no worse off economically than had she never worked. Impoverishment, however, is a relative term. The woman who leaves home and enters the job market, whether or not she is returned home due to the vicissitudes of the market system, is not the same woman. She has new expectations and different perceptions, as well as actual needs which are not met by the system. The case of the new woman worker who turns to crime is a graphic illustration that true equality means more than the right to be exploited equally with men.
APPENDIX A

Table I

Labor Force Participation Over a Working Life of Cohorts of Women Born in Selected Time Intervals, 1886-1955

<table>
<thead>
<tr>
<th>YEARS OF AGE</th>
<th>PARTICIPATION RATE (PERCENT)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>16-24</td>
<td>BORN 1886-95</td>
</tr>
<tr>
<td>25-34</td>
<td>BORN 1896-1905</td>
</tr>
<tr>
<td>35-44</td>
<td>BORN 1906-17</td>
</tr>
<tr>
<td>45-54</td>
<td>BORN 1916-17</td>
</tr>
<tr>
<td>55-64</td>
<td>BORN 1926-17</td>
</tr>
</tbody>
</table>


SOURCE: DEPARTMENT OF COMMERCE.
APPENDIX A

Table II

Annual Income by Age, for Male and Female High School and College Graduates

![Graph showing annual income by age for male and female high school and college graduates.]

1/ Median income of full-time, year-round workers, 1971.
Source: Department of Commerce.
## APPENDIX A

### Table III

### MAJOR CRIMES IN THE U.S.

<table>
<thead>
<tr>
<th>Crime</th>
<th>1958 Total</th>
<th>1964 Total</th>
<th>1970 Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total (all crimes)</td>
<td>2,540,004</td>
<td>4,665,380</td>
<td>6,370,673</td>
</tr>
<tr>
<td>Criminal homicide</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) murder/mansl.</td>
<td>2,305</td>
<td>6,412</td>
<td>12,886</td>
</tr>
<tr>
<td>(b) mansl. by negl.</td>
<td>1,166</td>
<td>2,685</td>
<td>3,020</td>
</tr>
<tr>
<td>Forcible Rape</td>
<td>3,680</td>
<td>9,415</td>
<td>15,411</td>
</tr>
<tr>
<td>Robbery</td>
<td>14,568</td>
<td>39,154</td>
<td>87,687</td>
</tr>
<tr>
<td>Aggravated Assault</td>
<td>25,824</td>
<td>79,395</td>
<td>125,971</td>
</tr>
<tr>
<td>Burglary (B/E)</td>
<td>61,045</td>
<td>187,000</td>
<td>285,418</td>
</tr>
<tr>
<td>Larceny (theft)</td>
<td>118,325</td>
<td>358,569</td>
<td>616,999</td>
</tr>
<tr>
<td>Auto Theft</td>
<td>30,240</td>
<td>97,336</td>
<td>127,341</td>
</tr>
<tr>
<td>SUBTOTAL</td>
<td>257,551</td>
<td>780,501</td>
<td>1,273,783</td>
</tr>
</tbody>
</table>

### OTHER CRIMES IN THE U.S.

<table>
<thead>
<tr>
<th>Crime</th>
<th>1958 Total</th>
<th>1964 Total</th>
<th>1970 Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Assaults</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arson</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forgery &amp; Counterfeit.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fraud</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Embezzlement</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rec. Stolen Property</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vandalism</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Weapons</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prostitution &amp; Com. Vice</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sex Offenses</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Narcotic Drug Laws</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gambling</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offenses ag. Family &amp; Children</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Driving Under Infl.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liquor Laws</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drunkeness</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disorderly Conduct</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vagrancy</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All Others</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Suspicion</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Curfew</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Runaway</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Change from 1964 to 1970 only.


### APPENDIX A

#### Table IV

<table>
<thead>
<tr>
<th>Offense charged</th>
<th>Total</th>
<th>Percent change</th>
<th>Males</th>
<th>Under 18</th>
<th>Percent change</th>
<th>Females</th>
<th>Under 18</th>
<th>Percent change</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Property crime</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Burglary, breaking or entering</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Larceny</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Auto theft</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Murder and nonnegligent manslaughter</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Murder</td>
<td>3,896</td>
<td>+67.3</td>
<td>3,354</td>
<td>+65.8</td>
<td></td>
<td>542</td>
<td>+70.9</td>
<td></td>
</tr>
<tr>
<td>Nonnegligent manslaughter</td>
<td>420</td>
<td>+134.1</td>
<td>170</td>
<td>+109.7</td>
<td></td>
<td>250</td>
<td>+166.7</td>
<td></td>
</tr>
<tr>
<td><strong>Violent crime</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rape</td>
<td>1,102</td>
<td>+254.7</td>
<td>452</td>
<td>+231.9</td>
<td></td>
<td>650</td>
<td>+277.9</td>
<td></td>
</tr>
<tr>
<td>Robbery</td>
<td>4,002</td>
<td>+133.9</td>
<td>3,181</td>
<td>+130.0</td>
<td></td>
<td>821</td>
<td>+134.1</td>
<td></td>
</tr>
<tr>
<td>Aggravated assault</td>
<td>5,241</td>
<td>+277.9</td>
<td>4,002</td>
<td>+264.3</td>
<td></td>
<td>1,239</td>
<td>+264.1</td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal for above offenses</strong></td>
<td>9,139</td>
<td>+123.8</td>
<td>6,536</td>
<td>+116.5</td>
<td></td>
<td>2,603</td>
<td>+117.3</td>
<td></td>
</tr>
<tr>
<td><strong>Total except commercial vice offenses</strong></td>
<td>400,388</td>
<td>+234.7</td>
<td>308,300</td>
<td>+226.7</td>
<td></td>
<td>92,088</td>
<td>+238.4</td>
<td></td>
</tr>
<tr>
<td><strong>Commercial vice offenses</strong></td>
<td>206,951</td>
<td>+256.7</td>
<td>166,202</td>
<td>+245.8</td>
<td></td>
<td>40,749</td>
<td>+270.6</td>
<td></td>
</tr>
<tr>
<td><strong>Other offenses</strong></td>
<td>87,038</td>
<td>+227.2</td>
<td>75,074</td>
<td>+215.2</td>
<td></td>
<td>11,964</td>
<td>+231.8</td>
<td></td>
</tr>
<tr>
<td>Forcible rape</td>
<td>1,308</td>
<td>+66.7</td>
<td>920</td>
<td>+59.4</td>
<td></td>
<td>388</td>
<td>+80.0</td>
<td></td>
</tr>
<tr>
<td>Robbery</td>
<td>330</td>
<td>+204.7</td>
<td>270</td>
<td>+178.8</td>
<td></td>
<td>60</td>
<td>+277.8</td>
<td></td>
</tr>
<tr>
<td>Aggravated assault</td>
<td>3,532</td>
<td>+222.7</td>
<td>2,983</td>
<td>+205.3</td>
<td></td>
<td>549</td>
<td>+271.4</td>
<td></td>
</tr>
</tbody>
</table>
| Violent crime

1. Based on comparable reports from 1854 cities representing 79,400,000 population and 524 counties representing 14,711,000 population.

2. Violent crime is offenses of murder, forcible rape, robbery, and aggravated assault.

3. Property crime is offenses of burglary, larceny, and auto theft.

CHART A: Labor Force Participation Rate (TOTAL)

CHART B: Labor Force Participation Rate (16 and 17 year olds)

SOURCE: See Chart A
CHART C: Labor Force Participation Rate (20 to 24 year olds)

SOURCE: See Chart A
CHART D: Labor Force Participation Rate (45 to 54 year olds)

SOURCE: See Chart A
CHART E: Robbery Arrests

F.B.I. Uniform Crime Reports. The broken lines indicate severe incomparability in data bases. The trends are nevertheless quite clear.
CHART F: Larceny-Theft Arrests

SOURCE: See Chart E
CHART G: Unemployment Rate

Historical Statistics of the United States: Colonial Times to 1957, Series D
U.S. Dept. Of Commerce (1960)
CHART I: Robbery Arrests

APPENDIX B

MALE (Thousands) 12

FEMALE (Hundreds) 6

F.B.I. Uniform Crime Reports
CHART J: Larceny - Theft Arrests

SOURCE: See Chart I

C. Beccaria, Crimes and Punishments (1880). Explicit social contract theorists are rare today, although J. Douglas, Crime and Justice in American Society (1971), comes close. Nonetheless, the social contract is inherent in most conservative thinking.

The moral standards of the citizenry have more to do with the definition of juvenile deviance than do the standards of policemen on patrol.

Most modern conservative work is basically atheoretical, collecting data and describing existing conditions and passing on the findings to agencies of social control. (Taylor, Critical Criminology at 442). It is concerned with how the system works and how it could work more efficiently, not why. But because it enjoys considerable funding and popularity with conservative politicians, it is a politically powerful tool. This type of orientation is reflected in forensic studies journals and in the voluminous and ever-expanding literature of control techniques and behavior modification prison programs.

The positivist school seeks to find an "objective" or "value-free" criminology that transcends the "subjective value-judgments of the investigator." [Tappan at 97].

Social constructionists question the existence of an objective reality beyond that which is perceived. Observations are based on mental constructs. The criminal law is a construction created by those in positions of power:

The administration of justice is a social activity that is constructed as various legal agents interpret and impose order on those they select for processing. [Cicourel at 31.]


A. Turk, CRIMINOLOGY AND LEGAL ORDER (1969) at 53:

[C]riminality is not something which anyone does, but rather something that happens in the course of interaction among various parties. . . . It is a statement of the conditions under which cultural and social differences between authority and subjects will possibly result in conflict, the conditions under which criminalization will probably occur in the course of conflict and the conditions under which the degree of deprivation associated with becoming a criminal will probably be greater or lesser.

10See, e.g., E. Lemert, HUMAN DEVIANCE, SOCIAL PROBLEMS AND SOCIAL CONTROL (1967).


See also A. Gouldner, The Sociologist as Partisan: Sociology and the Welfare State, 3 AM. SOCIOLOGIST 108 (1968), for a critique of labeling theory.

11See, e.g., Tappan at 97, 101, who declares that the law is the most proper and objective measure of crime, and that "no other province of social control attempts to ascertain the breach of norms with such high rigor and precision."

Sellin at 21, diverges from this approach finding that legal definitions are not "objective" since they reflect the "character and interests of those groups . . . which influence legislation." Rather a study of crime must isolate "conduct norms" which are culturally bound but are found in all societies. Sellin examines immigrant populations who tend to commit violent crimes until they are "acculturated," at which point they shift to predatory crime which is the "conduct norm" of native American culture.

E. Sutherland, in WHITE COLLAR CRIME (1949) at 31, adds a reformist definition of crime which seeks to establish a moral component with "social injury" as a criminal category. Sutherland assumes that a more competitive balancing of interests will result in a "just" state which extends the criminal code to violations which are currently viewed only as civil violations. The decision of what should constitute a crime, however, is left to the state.


12The positivist heritage of liberal thought results in a predominant emphasis on the "abnormal" aspects of criminal behavior and on the construction of methods of social control. See analysis by D. Matza, DELINQUENCY AND DRIFT, Ch. 1 (1964).

13See AMERICAN FRIENDS SERVICE COMMITTEE, STRUGGLE FOR JUSTICE (1971), at 9, which commented, "the legacy of a century of reform effort is an increasingly repressive penal system and overcrowded courts dispensing assembly-line justice."

14A. Gramsci, SELECTIONS FROM PRISON NOTEBOOKS (1971) [hereinafter cited as Gramsci].

15E. Debs, WALLS AND BARS (1927).

16Kate Richards O'Hare, IN PRISON (1923). [hereinafter cited as O'Hare]. O'Hare was imprisoned in 1918 on a trumped-up charge of espionage for her outspoken opposition to the war.
Slavery fell because it was less efficient than feudalism; feudalism fell because it was less efficient than capitalism; and capitalism seems to be crumbling because it is less efficient than industrial democracy.

R. Milliband, The State in Capitalist Society (1969), at 16:

The economic and political life of capitalist society is primarily determined by the relationship between these two classes. Here are still the social forces whose confrontation most powerfully shapes the social climate and political system of advanced capitalism. In fact the political process in these societies is mainly about the confrontation of these forces, and is intended to sanction the terms of the relationship between them.


See Note 2.

R. Clark, Crime in America (1970). (7/8 of reported F.B.I. Index Crimes were crimes against property).

In fact the chief accomplishment of the “new criminology” to date has been to demystify and expose the dominant assumptions of traditional theories — an important beginning, but insufficient for developing an alternative theory and praxis.

Quinney at 2, 4:

Our thinking about law and crime only confirms an official ideology that supports the existing social and economic order.

[It takes for granted the dominant ideology that emphasizes bureaucratic rationality, modern technology, centralized authority and scientific control.

Taylor, Critical Criminology at 444:

Hence, it shores up the conception that those in power under existing social arrangements are in reality engaged in balancing the interests of all, where other groups are pressing only sectarian claims.

See also J. Schaar, Legitimacy in the Modern State in P. Green & S. Levinson, Power and the Community: Dissenting Essays in Political Science (1970), at 303-08.

Gramsci at 5:

Every social group, coming into existence on the original terrain of an essential function in the world of economic production, creates together with itself, organically, one or more strata of intellectuals which give it homogeneity and an awareness of its own function not only in the economic but also in the social and political fields. The capitalist entrepreneur generates alongside himself the industrial technician, the specialist in political economy, the organizers of a new culture, or a new legal system, etc.

Quinney, at 105-10, demonstrates that the people in charge of various crime control agencies are in fact part of an interlocking political-economic elite.

See L. Radzinowicz, Ideology and Crime (1966), at 101, who advocates the necessity of treating each problem as it arises and in its particular context rather than approaching all problems on the basis of some single general principle.
Platt at 4. Platt, who withdrew from his position as Research Director of a Chicago project called Legal Services to Youth funded by the Ford foundation, described the project in *Dialogue with Platt*, 8 Issues in Criminology 19 (1973), at 25:

> While in the short-run it appeared to be humanitarian and benevolent, in the long run it did great injustices to the Black community. It didn't create a strong community organization, it channeled residents away from political action, and it encouraged the community to rely on professionals and experts who did not have any kind of stake in the long-range development of their constituency.


See O'Hare, “What is Crime?” at 21-37.


Platt at 2, 5.

Consequently, reform of the criminal justice system is often viewed as a process of the enlightened experts fighting a losing battle against an ignorant public and a corrupt government. See Skolnick at 18:

> . . . the public demands simple and straightforward solutions based on criminal sanctions both without comprehending the price such solutions entail and the complexities of the roots of the crime.

Radicals are not opposed to “reform”. Rather, a distinction is made between truly ameliorative and progressive reforms which lay the basis for more fundamental change and those which merely legitimate and solidify existing power relations. At all times, however, the radical is aware that no mere reform will achieve the desired goal since the phenomenon to be “reformed” arises from the nature of capitalist society itself.

See O'Hare at 165:

> I realize that the ultimate good is not to reform prisons but to develop a better adjusted social machinery. But criminal laws, criminal courts, and penal institutions are very important parts of our social machinery and we must patch up what we have so that it will operate with as little friction and waste of human life as possible while we are building the machinery of the new order.

J. Mitford, *Kind and Usual Punishment* (1973), lists reforms which perpetuate the system and those which offer a genuine challenge. Unfortunately, Mitford lacks clarity in clear class analysis. She sees the criminal law as a method of control of the dominant class. It is not enough to show who controls but also what the aims of the control are and who benefits. She writes as if all good people should support her suggestions. Those who benefit from a system will oppose all reforms which in fact threaten the status quo.

A similar failure to analyze the aims of control is evident in Quinney and Domhoff.


> The problem will be to keep control over the possibly monstrous system we are creating, a system that will be able to track and influence our activities at almost all times and places.

J. Skolnick at 17, “Even for those experiencing oppression, the U.S.A. is not nearly so legally repressive as a nation might be.”

O’Hare at 165:

> The human race must be fed and clothed and sheltered, and only human labour applied to natural resources can do that. So in the end all human progress depends on the workers gradually fitting themselves to use more intelligently the means of production and distribution of the things necessary to human life.
O'Hare at 165:

I realize quite well that all criminal laws have their roots deeply planted in the economic conditions of modern society, and that our prisons are merely cesspools of our inefficient and maladjusted industrial machinery. To me it seems logical to conclude that crime will not be materially lessened until a greater measure of industrial security has mitigated the economic struggle for existence for the masses of the people; until the living conditions of mankind have ceased to breed human abnormalities.

Taylor at 442:

[In] so far as crime-producing features of contemporary capitalism are bound up with the inequities and divisions in material production and ownership, then it must be possible via social transformations to create social and productive arrangements that would abolish crime.

See note 1.

For an amusing and eclectic popularization of analyses of the sexual basis for female crime, see G. Sparrow, Queens of Crime. (1973).

See note 3. For later biological theories, see:

L. West, Proposal for the Center of Study and Reduction of Violence, Neuropsychiatric Institute, UCLA, (1973). (Proposal to relate “violence prone” women and menstrual cycles).

J. Crowie, W. Crowie, & E. Slater, Delinquency in Girls (1968). (Chromosomal explanation of delinquency, certain traits such as bigness lead to violence.)

E. Glueck & S. Glueck, Four Hundred Delinquent Women (1934).

W. Healy & A. Bonner, Delinquents and Criminals: Their Making and Unmaking (1926).

E. Spaulding, An Experimental Study of Psychopathic Delinquent Women (1923).

O'Hare at — O'Hare went to prison with the intention of studying female prisoners. She had studied Lombroso and wrote:

But I was never able to discover the expected physical marks of the “criminal type”, and none displayed, so far as I could determine, the stigmata of criminalism of which Lombroso writes. The only stigmata that I could discover were those of poverty, excessive child-bearing, undernourishment, and overwork. In every phase of most of the women's outside lives, these things were commonplace, and I think I am justified in feeling that they were the great determining factors in their delinquency.

W. I. Thomas, Sex and Society (1904); The Unadjusted Girl (1923).

S. Freud, New Introductory Lectures on Psychoanalysis (1933).


D. Pollack, The Criminality of Women (1950) [hereinafter cited as Pollack].

Kate Richards O'Hare who was warned by the Warden all the women prisoners “lied like troopers,” had this to say about inherent feminine deceitfulness:

They had learned by bitter experience that truth is an outcast from the courts, and that their prison life was a maze of lies.

The first thing I was compelled to do . . . was to stitch a lying label on the overalls I made. (stating that this prison made garment was manufactured by
a respectable firm. . . The warden lied to the women prisoners, the chaplain lied to them . . . [s]ociety lied to them . . . that the purpose of their imprisonment was to "reform" them. . . And I am not sure that women convicts are the only women who lie, I rather think all women do. We are forced to in order to live. . . I have evaded the truth for all the men I know — my father, brothers, schoolmates, sweethearts, husbands, sons, employer and employees; for my doctor, lawyer, minister and co-workers in the labour movement. And I presume I shall keep right on prevavicating for men to the end of my days. All women do. It is the price we pay for even approximate peace. [O'Hare at 77.]

Klein at 5.

There are endless examples of how assumptions about women are reflected in social policy.

Rehabilitation:

The history of the Indiana Women's Prison, the first separate facility for women in the country, is a fascinating study in how ideology determines the rehabilitative goal for women. Reform comes through the saving grace of work. For women, however, that meant instilling conventional standards of sexual morality and in preparing them for roles as mothers and housewives, or at least "domestics". Prison programs to this day retain this characteristic both in their type and lack of variety. Women are trained to be hair dressers, nurses aides, or if they are particularly bright, secretaries.

This ideal had consequences for the formal organization and management of the institution. The reform process was to be guided by benevolent, maternal matrons and the prison was organized on the "home" or cottage system. Reporters and undergraduates who visit the prison these days often remark in shocked surprise, "Why it's more like a campus than a prison!"

Similarly the new decarceration programs reflect the notion that women prisoners are nonviolent, more acceptable to the community and more amenable to reform.

Discriminatory sentencing:

C. Termin, 11 AM. CRIM. L. REV. 358 (1973), which notes that longer sentences for women were originally intended to increase the possibility of reform. A comment in 82 HARV. L. REV. 921 (1969), argues that differential sentencing for women is justified because they may be more susceptible to rehabilitation. See also, the INDIANA WOMEN'S PRISON REPORTS for the development of the indeterminate sentence for women in Indiana. In 1880 the prison officials began to cry for longer sentences. In 1900 the Indiana Legislature extended the indeterminate sentence to women. This was some 20 years earlier than the indeterminate sentence was adopted in most states [Takagi, The Correctional System, 2 CRIME AND SOCIAL JUSTICE 82 (1974)], reflecting the pioneering spirit of the Indiana Prison System.

"Criminalization" of Female Juveniles:

Girls are incarcerated for far less serious offenses than boys and for far longer periods. [THE CHALLENGE OF CRIME IN A FREE SOCIETY at 56.] They are often incarcerated for sexual offenses and for becoming pregnant [L. Singer, Women and the Correctional Process, 11 AM. CRIM. L. REV. 295 (1973)].

Most women writing about female crime focus on the woman prisoner from a liberal or institutional perspective. Some are merely anecdotal accounts of prison life by prison matrons:

J. Kelley, WHEN THE GATES SHUT (1967).

C. Woods, WOMEN IN PRISON (1869). (Matron with reforming Christian zeal.)

F. Robinson, FEMALE LIFE IN PRISON (two volumes, 1962). (Apparently written in fact by a man.)

Others are sociological studies of adaptive behavior of women prisoners:
E. Heffernan, Making it in Prison: The Square, the Cool, the Life (1972).


Others are descriptions of prison life:

K. Burkhart, Women in Prison (1973). (Voluminous interviews with prisoners written from a radical-liberal perspective.)

E. Chandler, Women in Prison (1973). (An outsider for whom "reform" is becoming a good upstanding middle-class woman like herself.)

A 95.3% increase in arrests, and a 277.9% rise in "serious crimes" since 1960, three times the rise in male crimes. F.B.I., Uniform Crime Reports. (See Table IV.)


Vedder & Somerville commented that while female juvenile delinquency was not much of a problem compared with boys, it is worth the time to study and control them since women raise families and are the critical agents of socialization.

Quinney at 55: "The weapons of control are in the hands of that class, and its response to any challenge is force and destruction."

Taylor, New Criminology at 40.


This is an hypothesis which needs testing. To be sure, there are counter examples — the many radical women on the F.B.I.'s ten most wanted list, the S.L.A., etc. The black women who took the course in criminal law we taught at the Indiana Women's Prison, considered themselves to be part of the "criminal element" and were proud of it. The working class white women, however seemed abject, isolated and had little self-confidence or self-esteem.

"Alienation" for Marx was not a psychological term, but rather a social one. Alienated social relations are ones that tend to deprive agents, individual or collective, of control over their activity and its results. The classical example is wage labor which alienates the worker from his or her product.

Kate Richards O'Hare noted the class relationship to the crimes women commit: 80-90% of the women were in for minor crimes against property — all were poor, physically and mentally degraded. The federal prisoners were better educated and for the most part charged with crimes of skill and daring — harboring deserters, embezzling post office funds, smuggling, automobile banditry and white-slaving.

The modern "politics" are women sought for conspiracy, bombings, robberies and kidnappings. They come from the "best" families and have achieved the maximum equality the system allows. Whether their politically motivated crimes are "progressive" is another question. Terrorists reflect the system they oppose by displaying a lack of faith in oppressed people's capacity for self-organization into a mass movement. It is for that reason they are called "liberals with bombs."

The list is endless. See, e.g., K. DeCrow, Sexist Justice (1969). Ms. DeCrow, president of N.O.W., admits that formal legal equality cannot in itself change the position of women because of the economic base of their oppression, but sees the problem of the legal system as exclusively one of male domination. The implied solution is more women police, judges, jurors, etc., who presumably would behave radically different from their counterparts.


Betty Friedan in The Feminine Mystique (1963), documents this process. During the war women's magazines featured articles on the superiority of bottle-feeding over breast-feeding. "Rosie the Riveter" was the national heroine. After the war, the children of working mothers were sure to become juvenile delinquents. The fictional heroine became the housewife who was distinguished from the crass, desexed career girl by her womanly virtues.


O'Hare at 79:

While women have even greater insecurity in the struggle for existence and must meet aggravated problems in selling their labour power, they have one advantage: in addition to their labour, women have another saleable commodity — their sex. So when women are faced by alternatives of prostitution or crime, they usually choose the former.


M. Wolfgang, Patterns in Criminal Homicide (1958), at 32-34, 207 [hereinafter cited as Wolfgang].


Ward at 160. A nonviolent homicide is one committed with a single shot, stab or blow.

Ward at 871.

M. Cameron, The Booster and the Snitch (1964), at 125. Cameron also notes that 90% are amateurs [at 56], that most do not repeat the offense [at 151], and that the average value taken is $16.40, which is considerably lower than the $28.36 figure for men [at 71-72].


Id.

Ward at 781.

The white collar crime investigated by Sutherland (restraint of trade, patents, misrepresentation in advertising, financial manipulation, etc.) is a nearly all-male phenomenon and involves conduct which is difficult to detect and for which legal sanctions are either inadequate or difficult to enforce.

M. Elliott, Crime in Modern Society (1952), at 246-47.

E. Sutherland & D. Cressey, Criminology (1970), at 127.

See note 61.

Id.

Pollack at 2-4.

W. Reckless & B. Kay, The Female Offender: Report to the President's Commission on Law Enforcement and the Administration of Justice (1967), at 13:
A large part of the infrequent officially acted upon involvement of women in crime can be traced to the masking effect of women's roles, effective practice on the part of women of deceit and indirection, their instigation of men to commit their crimes (the Lady Macbeth factor), and the unwillingness on the part of the public and law enforcement officials to hold women accountable for their deeds (the chivalry factor).

See also Herman & Haft, Sourcebook on Prisoners’ Rights (1973) at 341.

*Ward at 867.


*Nagel at 176.

*This thesis would, of course, be defeated by statistics showing that the occupational status of most female criminals is "housewife." This, however, is unlikely to be the case.