

The University of Chicago Law School Roundtable

Volume 9 | Issue 1

Article 4

1-1-2002

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Recommended Citation

Pa, Monica (2002) "Towards a Feminist Theory of Violence," *The University of Chicago Law School Roundtable*: Vol. 9: Iss. 1, Article 4.
Available at: <http://chicagounbound.uchicago.edu/roundtable/vol9/iss1/4>

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TOWARDS A FEMINIST THEORY OF VIOLENCE

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INTRODUCTION: THE CONTEXT—STORIES AND STATISTICS

While feminism has pushed to show that there is little difference between the sexes save biology, “recorded criminal behavior had remained a stubborn exception to this rule.”¹ However, over the last ten years, women have broken through the glass ceiling of violent criminal offending. Women are now carjacking: in San Francisco, 14- and 15-year-old girls carjacked a 57-year-old female driver, locked the driver in the trunk of the car, drove her around the city, and then, upon letting her out of the car, pointed a .38 caliber pistol at her head and threatened to kill her.² The girls were also armed with pepper spray, gloves, duct tape, and knives.³ Their motive was to impress a local street gang.⁴

Women are now committing aggravated assault: “In Concord, New Hampshire, four girls surround(ed) a 14-year-old girl as she (got) off a school bus at the mobile home park where she lived and beat her with baseball bats.”⁵ In Virginia, “a beauty queen named Traci Lippard broke into the home of her rival and attacked the girl’s father with a hammer.”⁶

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1. Frances M. Heidensohn, *Women & Crime* 142–43 (NYU, 2d ed 1995).
2. Cheryl Hanna, *Bad Girls and Good Sports: Some Reflections on Violent Female Juvenile Delinquents, Title IX & The Promise of Girl Power*, 27 *Hastings Const L Q* 667, 667–68 (2000).
3. See id at 667.
4. See id at 668.
5. Cheryl Hanna, *Ganging Up on Girls: Young Women and Their Emerging Violence*, 41 *Ariz L Rev* 93, 94 (1999) (“Ganging Up”), quoting Royal Ford, *Razor’s Edge*, *Boston Globe*, May 24, 1988, at 13.
6. Patricia Pearson, *When She Was Bad* 31 (Viking 1997).

Women are now committing murder: In Chicago, Illinois, three female gang members lured two boys into a bathroom under the pretense of partying.⁷ One girl shot one of the boys in the back of the head, execution style, and then passed the gun to her girlfriend, who then shot the other boy in the back of the head.⁸ In Cromwell, Connecticut, two eighteen-year-old girls are charged with using box cutters to slash the necks of two other teenage girls.⁹

These, of course, are the headline grabbers. But are they simply isolated, sensationalized events? Not according to many reports by criminal and juvenile justice agencies. In December 1999, the Bureau of Justice Statistics reported that arrest rates for violent crimes among juvenile females (17 and under) and young adult women (18–24) “have risen substantially from the early 1980s.”¹⁰ Federal Bureau of Investigation (“FBI”) arrest reports indicated that the juvenile female arrest rate for violent offenses in 1995 was approximately 250% higher than the rate in 1985.¹¹ In 1997, the rate at which young women (18–24) were arrested for violent crimes continued to climb at about 80% above the rate 10 years earlier, and currently is at the highest level recorded.¹² The singular growth in female arrests for Violent Crime Index offenses may be the result of dramatic increases in arrests for aggravated assaults.¹³

28% of violent female offenders are juveniles.¹⁴ In 1999, the Office of Juvenile Justice and Delinquency Prevention reported that the juvenile female violent crime rate for 1997 was 103% above the 1981 rate, compared to only a 27% increase for males.¹⁵ Between 1989 and 1998, arrests of girls for serious violent offenses increased by 64.3%, and an astonishing 125.4% for “other assaults.”¹⁶ Between 1989 and 1993, the relative growth in juvenile arrests for Violent Crime Index offenses involving females was practically double the growth for males (55% versus 33%).¹⁷

Across the board, statistics indicate that women are being arrested for a

7. Ganging Up at 94 (cited in note 5), citing *State v Mulero*, 176 Ill 2d 444, 449, 680 NE2d 1329, 1331 (1997).

8. See *id.*, still citing *Mulero*, 176 Ill 2d at 449, 680 NE2d at 1331.

9. See *id.* at 95, citing Ford, *Razor's Edge* (cited in note 5) (brackets original).

10. Bureau of Justice Statistics, U.S. Department of Justice, *NCJ 175688, Women Offenders 5* (1999) (revised 2000) (“DOJ Report”).

11. See *id.*

12. See *id.* Moreover, although both male and female rates of committing murder have declined since 1993, “the only group of women for whom the rate of murder offending has not continued to decrease are those age 18–24.”

13. DOJ Report at 5–6 (cited in note 10).

14. See *id.* at 5.

15. Meda Chesney-Lind, *Are Girls Closing the Gender Gap in Violence?*, 16 *Crim Just* 18, 19 (2001) (“Gender Gap”).

16. *Id.*

17. U.S. Department of Justice, “Female Offenders in the Juvenile Justice System” 1 (June 1996). During the period between 1989 through 1992, although the Violent Crime Index arrest rate generally increased for juveniles, this rate increased more than 55% for females, as opposed to slightly less than 33% for males.

wide range of offenses at an unprecedented rate. Between 1990 and 1996, state courts reported that the number of convicted female defendants grew at 2 ½ times the rate of increase for male defendants.¹⁸ The Bureau of Justice reported that: "For every category of major crime for the period of 1990 to 1996—violent, property, drugs, and other felonies—the rate of increase in the number of convicted female defendants has outpaced changes in the number of convicted male defendants."¹⁹

What is the significance of these statistics? Some would say little, given criminology's wide skepticism about both the validity and reliability of criminal statistics.²⁰ Some would say none, as women's arrest rates for serious violent crimes have changed only slightly when viewed in comparison to the rise in crime overall.²¹

However, what this paper seeks to evaluate is not so much whether women's violence actually exists and/or is on the rise, but rather, the social meaning of the violent female criminal. Female violence evokes contradictory social meanings and conflicting political and popular responses. On one hand, depictions of women committing violent crimes seem to provide the most compelling images of crime and deviance, similar to reactions evoked by children committing violence. (This is in stark contrast to how male aggression is treated as common or routine, part and parcel of high spirits or healthy childhood development.) Popular opinion appears to associate a rise in women's crime rates with decay in social moral fiber. At the same time, statistical increases in female violence are applauded as a sign of women coming to power. Indeed, gender parity in criminal offending patterns seems to provide resounding support for feminism's assertion that women are really no different from men in terms of passion, rage, destruction or sadistic pleasure.

This paper looks at how the female violent criminal has been portrayed and what this particular criminal statistic signifies to feminist theory, criminology, penological policy and popular media. Section I begins with a rough and cursory survey of existing literature concerning female violent crimes. This section provides a sampling of theories that have emerged to explain the recent explosion of women's violent criminal conduct. I focus on four main theories: women's empowerment, women's oppression, women enacting violence differently, and the sexualization of aggression. It is important to note that the purpose of presenting these theories is not to assess their accuracy or persuasiveness—instead, I present these theories to illustrate a phenomenon, and to ask a question: why are there so many theories in the first place? On an obvious level, the sheer vol-

18. DOJ report at 5 (cited in note 10).

19. Id at 6. This is particularly true for property crimes, where although males convicted of such crimes dropped about 2%, convictions for female defendants increased 44%.

20. Heidensohn, *Women & Crime* at 3 (cited in note 1).

21. See generally Meda Chesney-Lind, *Challenging Girls' Invisibility in Juvenile Court*, 564 *Annals Am Acad Pol & Soc Sci* 185, 186–87 (1999) ("Challenging Girls' Invisibility"); Gender Gap (cited in note 15).

ume and range of theories that emerged over the last 20 years exemplifies society's preoccupation with female criminal violence—our dark fascination with Lizzy Borden, Andrea Yates, Patty Hearst. On a deeper level, the academic and popular responses to violent female criminals shed light on an important and complex debate within feminist criticism: how, and in what ways, do women assert their desires or exercise power.

What makes the proliferation of theories surrounding women's crime that much more perplexing is the fact that female criminal offending patterns may not have actually experienced a statistical increase. Section II argues that women's crime has not been on the rise over the last ten years, but instead only recently "discovered" by reporting agencies, journalists, and feminists. All four theories make a central error by failing to challenge critically evidence of increases in women's offending patterns. Thus, there is little reliable empirical support suggesting that women's violence is actually on the rise.

Section III considers why it is that so many criminologist, feminist, and media agencies were fascinated by flawed criminal statistics. As Section I illustrates, numerous theories emerged attempting to explain this nonexistent "phenomenon." This final section considers why so much attention was and is paid to violent women. I first observe that a preoccupation with female crime existed ever since the first wave of feminism in the early 1900's. In fact, this concern was so great that early in the last century, New York established a court specifically to address a crime wave of wayward girls.²² Second, I argue that the historic and current interest in women's criminal offending patterns is a wrongheaded attempt at understanding the methods and circumstances under which women effectuate their desires or vocalize their frustrations. The interest in violent women is actually an interest in whether women can and want to be powerful. This paper culminates by exploring the extent to which popular and academic fascination with female violence is actually an attempt to understand the ways in which women use and abuse power.

I. FEMINIST THEORIES OF VIOLENCE: EXPLANATORY THEORIES

A. THEORIES FOCUSING ON INCREASING GENDER EQUALITY

Some girls who are as young as twelve are carjacking older women at knife-point.²³ Are they the new Charlie's Angels? The rising rates of women's arrest and incarceration may indicate a closing of the historic underrepresentation of

22. Rachel Devlin, *Female Juvenile Delinquency and the Problem of Sexual Authority in America, 1945-1965*, 9 *Yale J L & Human* 147, 164 (1997).

23. See Hanna, 27 *Hastings Const L Q* at 667 (cited in note 2); *Ganging Up* at 94 (cited in note 5).

women in criminal law. Women were historically perceived as physically, emotionally and intellectually incapable of committing crimes.²⁴ Cesare Lombroso, an Italian physician and the first to offer an explanation of female crime in the early 1900's, attributed women's lower crime rate to women's "piety, maternity, want of passion, sexual coldness, weakness, and undeveloped intelligence."²⁵ He believed that women were really "big children," lacking the more refined intelligence necessary for committing crimes such as robbery, murder and assault. William Bonger, a prominent socialist criminologist, likewise theorized that women committed less crime because they lacked the strength and courage to deviate from social norms.²⁶

Twelve-year-old girls may be undermining Lombroso. Several feminists and criminologists theorized that the emerging equality between male and female violent offending is due to the increasing empowerment of women in all sectors of society. Versions of this theory emerged in 1975.²⁷ That year, the FBI reported an astonishing increase in women's arrest rates for nontraditional crimes: the number of women arrested for murder was up 105.7%, forcible rape arrests increased by 663%, and robbery arrests were up 380.5%.²⁸ In 1976, Chief Ed Davis of the Los Angeles Police Department similarly associated the women's liberation movement: "The women's liberation movement has triggered a crime wave like the world has never seen before[.]"²⁹

Freda Adler popularized this perspective in academia with her book *Sisters in Crime*.³⁰ Considering women's rising participation in the labor market, she argued that shifting social roles and women's increased participation in traditional male power structures resulted in the concomitant adoption of masculine behaviors.³¹ Adler argued that "[t]he departure from the safety of traditional female roles and the testing of uncertain alternative roles" are criminogenic risk factors for girls.³² Thus, "as the position of women approximate the position of men, so does the frequency and type of their criminal activity."³³

24. See Heidensohn, *Women & Crime* at 111–21 (cited in note 1).

25. Deborah W. Denno, *Gender, Crime, and the Criminal Law Defenses*, 85 J Crim L & Criminology 80, 87 (1994).

26. See *id.* at 87–88.

27. See Meda Chesney-Lind, *The Female Offender: Girls, Women, and Crime* 113–15 (Sage 1997). See also Henry H. Brownstein, *The Social Reality of Violence and Violent Crime* 96–97 (Allyn & Bacon 2000).

28. Chesney-Lind, *The Female Offender* at 112 (cited in note 27), citing Federal Bureau of Investigation, US Department of Justice, *Crime in the United States—1972* 124 (1973); Federal Bureau of Investigation, US Department of Justice, *Crime in the United States—1975* 191 (1976).

29. *Id.* at 112, citing J.G. Weis, *Liberation and Crime: The Invention of the New Female Criminal*, 6 Crime & Social Just 17.

30. Freda Adler, *Sisters in Crime: The Rise of the New Female Criminal* 95 (McGraw-Hill 1975); discussing Adler, see Rita J. Simon and Jean Landis, *The Crimes Women Commit, The Punishments They Receive* 1 (Lexington 1991).

31. See also Simon & Landis, *The Crimes Women Commit* at 2 (cited in note 30).

32. *Id.* at 250.

33. *Id.* at 251.

Adler's theory has had a recent resurgence in popular media. For example, on September 5, 1996, the *Los Angeles Times* reported that "[t]hirteen-year-old girls steal cars. Fourteen-year-old girls stab each other with screwdrivers. Fifteen year olds fight with their hands until one ends up in a coma" as a form of "equal-opportunity badness." On August 2, 1993, *Newsweek* noted that "Some girls now carry guns. Others hide razor blades in their mouths . . . [this] plague of teen violence is an equal-opportunity scourge."³⁴ On December 23, 1992, the *Washington Post* ran a story titled "Delinquent Girls Achieving a Violent Equality in D.C." On March 29, 1993, an NBC News broadcast noted:

Gone are the days when girls were strictly sidekicks for male gang members . . . Now girls also do shooting . . . the new members, often as young as twelve, are the most violent . . . Ironic as it is, just as women are becoming more powerful in business and government, the same thing is happening in gangs.³⁵

Another theory that also focuses on women's equality considers how race and socioeconomic context may have contributed to the increase in women's criminal activities. Female offenders overwhelmingly consist of lower-income, inner-city minority women, and the concentration of poverty is associated positively with levels of criminal activity.³⁶ "In response to the economic crisis within their communities, black female gangs today have become more entrenched, more violent and more oriented to 'male' crime."³⁷ Specifically, "gender is a less salient factor" in the emergence of the back-alley drug economy, particularly the violent crack cocaine markets of the late 1980's and early 1990's.³⁸ This development may have pulled women into violent street crime at rates comparable to their male counterpart.³⁹ For example, one female gang member responds:

Girls is making it, f[] the fellas . . . If we can work for some man selling dope, why can't we sell for ourselves? I don't need some man telling me sh[], and I sure don't need some man making cash off my a[] . . .⁴⁰

34. Chesney-Lind, *The Female Offender* at 34 (cited in note 27), citing C. Leslie et al, *Girls Will Be Girls*, *Newsweek*, Aug 2, 1994, at 44.

35. Id at 36, citing *NBC World News Tonight*, March 29, 1993.

36. Id at 117-18, citing the work of I. Sommers & D. Baskin, *Sex, Race, Age, and Violent Offending. 7 Violence & Its Victim* 191-201 (1992), and I. Sommers & D. Baskin, *The Situational Context of Violent Female Offending*, 39 *Crime and Delinquency* 136-162 (1993).

37. *Ganging Up* at 111 (cited in note 5), quoting L.T. Fishman, *The Vice Queens: An Ethnographic Study of Black Female Behavior* (1998) (paper presented at the Annual Meeting of the American Society of Criminology, and quoted as cited by Randall G. Sheldon et al, *Girls and Gangs: A Review of Recent Research*, 47 *Juv & Fam Ct J* 21, 37 (1996).

38. Chesney-Lind, *The Female Offender* at 118 (cited in note 27), quoting Baskin et al, *The Political Economy of Female Violent Street Crime*, 20 *Fordham Urban L J* 401, 417 (1993).

39. Id.

40. *Ganging Up* at 99 (cited in note 5), quoting Carl S. Taylor, *Girls, Gangs, Women and Drugs* 56

However, despite this personal account, ethnographic studies of inner-city crack markets undermine the proposition that this alternative economy provides any opportunity for women to gain independence, and hence adopt male assertive behaviors.⁴¹ Women's participation in the crack market was likewise limited, and if anything, it only diminished the market for prostitution, the only other income-earning opportunity traditionally available to women in this socioeconomic sector.⁴²

Another theory focusing on women's equality argues that the deindustrialization of inner-city neighborhoods of the 1990s may have led to the degendering of male and female relationships and thus resulted in lessening women's criminal inhibitions.⁴³ This theory argues that as poor urban minority males lost their breadwinner status, their stranglehold on patriarchal authority within the family diminished. Moreover, staggering increases in rates of incarceration of minority men led to the disappearance of males within these communities.⁴⁴ This created an opportunity for women to enter traditional male power structures, such as being the head of the family.⁴⁵ This theory postulates that women, being drawn to criminal behaviors for the same reasons as men, now had an opportunity to explore those options.⁴⁶ This theory concludes that it was the vacuum of males inhabiting traditional authoritative roles that led poor minority women to adopt more aggressive tendencies.

The prolific variations on the "Equality Theory" were matched by the numerous criticisms it provoked. The main criticism was that Women's Liberation never occurred in the poor inner city – the location for the majority of crimes. Female offenders, largely lower income, minority women with little education and truncated employment opportunities, were not the beneficiaries of the 1970's women's liberation movement.⁴⁷ Instead, only white middle-class women reaped the spoils. Critics argued that female delinquents' rejection of gendered behavioral responses were probably not instigated by increased participation in traditional male power sectors. Claire Feinman argues:

Poverty and drugs are the major determinants of women's criminality . . . There is no evidence that could link the women's movement either to the increase in the crimes committed by women or to the nature of women's criminal behavior. They continue to act in traditional ways both in the crimes they commit and in the manner in which they

(Mich St 1993) (brackets added).

41. Id.

42. Id.

43. See Chesney-Lind, *The Female Offender* at 117–18 (cited in note 27).

44. See generally William Julius Wilson, *When Work Disappears: The World of the New Urban Poor* (Knopf 1996).

45. For example, women who commit crimes are disproportionately heads of households with dependent children. See Simon and Landis, *The Crimes Women Commit* at 10 (cited in note 30).

46. Chesney-Lind, *The Female Offender* at 118 (cited in note 27).

47. Id at 115.

commit them[.]⁴⁸

It is highly debatable whether there in fact exist an increased equality among men and women. That being the case, “women’s social existence [is] bad enough without their collective attempts to achieve liberty and equality being viewed pejoratively as criminogenic.”⁴⁹

Moreover, equalization arguments have historically worked to disadvantage incarcerated women. For example, a self-proclaimed “equal opportunity incarcerator,” who instituted a female chain-gang program, claimed: “If women can fight for their country, and bless them for that, if they can walk a beat, if they can protect the people and arrest violators of the law, then they should have no problem with picking up trash in 120 degrees.”⁵⁰

Finally, the post-modern feminist critics of Adler’s Equality Theory argues that it is a highly naïve conception of liberty to view the rise in women incarcerated for using knives and guns as emancipation.⁵¹ This theory adopts a non-reflexive view of power that mistakes violence for an assertion of self-will. It assumes a fundamental faith in the autonomy and intelligence of brute force, an explosion of violence as a cathartic experience of finding voice, identity and strength. However, by failing to explore the underlying power structures that evoke such responses, this perspective ignores how existing economic and social realities limit and command women’s choices.

B. THEORIES FOCUSING ON WOMEN’S OPPRESSION

Adler’s Equality Theory touched off a huge debate in feminist criminology. However, what is most notable is that this debate was merely one of many conversations occurring about women’s crime and violence. Another popular and controversial theory that emerged to explain women’s increasing violence focused on women’s oppression and placed oppressive social forces, rather than empowerment or emancipation, as the primary determinant of women’s criminal conduct.⁵² This theory rejects the proposition that women’s aggression is a set of autonomous responses, or fully vocalized desires emancipated from oppressive patriarchal orders. Rather, women’s conduct is commanded and determined by the very structures that the equality theory presumed extinct. This theory argues that women’s emerging violence should be understood as responding to and coerced by poverty, neglect, sex and race discrimination, and most impor-

48. Simon & Landis, *The Crimes Women Commit* at 11 (cited in note 30), quoting Clarice Feinman, *Women in the Criminal Justice System* 26 (Praeger, 2d ed 1986).

49. Heidsensohn, *Women & Crime* at 156 (cited in note 1).

50. *Id.* at 164.

51. *See id.*

52. *See generally* Chesney-Lind, *The Female Offender* chs 2, 3, 5, 6 (cited in note 27); Simon & Landis, *The Crimes Women Commit* at 9–11 (cited in note 30); Brownstein, *Violent Crime* at 101–03 (cited in note 27).

tantly, physical and sexual abuse.⁵³ Ann Lloyd argues:

women's violence comes from a place different from men's. A 'violent' woman is not the female equivalent of a violent man . . . Most of the women I've met ended up in Special Hospitals, and they had had typically appalling lives, characterized by rejection, abuse, confusion, drugs, booze and a deep distrust of authority.⁵⁴

Criminologist Meda Chesney-Lind observes that violent girls within the juvenile justice system report extraordinarily high levels of abuse and trauma, as compared to their male counterparts:

20 percent of violent girls stated they were physically abused at home compared to 10 percent of violent males and 6.3 percent of nonviolent girls. Patterns for sexual abuse were even starker: roughly one out of four violent girls have been sexually abused compared to one in 10 of non-violent girls. Follow-up interviews with a small group of violent girls found that they had learned at home that "might makes right" and engaged in "horizontal violence" directed at other powerless girls (often with boys as the audience). Certainly, these findings *provide little ammunition for those who would contend that the "new" violent girl is a product of any form of "emancipation."*⁵⁵

This is also the observation of the National Mental Health Association.⁵⁶ "[A]s a result of repeated exposure to multiple forms of violence and trauma, Posttraumatic Stress Disorder is prevalent among [incarcerated] adolescent girls . . . with nearly 50% meeting diagnostic criteria for the disorder."⁵⁷ Similarly, in 1990, the American Correctional Association's study of girls in the juvenile correctional setting indicated that 61.2% of girls had experienced physical abuse, and nearly half said that they had experienced this abuse 11 or more times.⁵⁸ 54.3% of the girls had experienced sexual abuse, and for most this was not an isolated incident. Most girls were 9 years old or younger when the abuse began. Chesney-Lind argues that given the amount of violence facing women, it is a wonder why *more* women are not violent.⁵⁹

Criminal law appears to be adopting the view of female violent offenders as abused victims. This is most apparent where the female offender is also a domestic violence survivor. The admissibility of battered women's syndrome evidence was first upheld in 1984 in *State v Kelly*.⁶⁰ The Federal Sentencing Guidelines have followed suit by providing a downward departure where there is "serious coercion, blackmail or duress, under circumstances not amounting to a

53. See *id.*

54. Ann Lloyd, *Doubly Deviant, Doubly Damned* 190 (Penguin 1995).

55. See Gender Gap at 20 (cited in note 15), citing Sibylle Artz, *Sex, Power, and the Violent School Girl* (Trifolium 1998) (emphasis added).

56. See <<http://www.nmha.org/children/justjuv/girls/jj.cfm>> (last visited November 2001).

57. See *id.*

58. Chesney-Lind, *The Female Offender* at 26 (cited in note 27).

59. *Id.* at 98.

60. 97 NJ 178, 478 A2d 364 (1984).

complete defense[.]”⁶¹ Courts have employed this language in the Federal Sentencing Guidelines to carve out a battered women’s defense.⁶²

However, even where the situation is not directly intimate abuse, courts have been willing to find that the female offender was a coerced, unwilling criminal accomplice. For example, in *United States v Johnson*, the Ninth Circuit held that where several female participants in a drug trafficking conspiracy were controlled by a violent, male drug lord, this circumstance amounted to duress, and thereby warranted a downward departure from the Guideline’s proscribed sentencing range.⁶³ Similarly, the Ninth Circuit in *United States v Roe* held that sentencing judges may consider the long history of abuse suffered by the defendant in departing from the Guideline sentencing range.⁶⁴

Two distinct challenges emerged to rebut Oppression Theory’s treatment of female offenders as oppressed victim. First, critics argued that the perspective on female criminals as abused and psychologically damaged may undermine “both the ways in which these girls perceive their own power and find pleasure in their lives.”⁶⁵ This causal theory so thoroughly victimizes women that it strips their conduct entirely of agency, autonomy, rage and rationality. It harkens back to Lombroso’s infantilization of women, or the historic pathologizing of female violence. Oppression Theory denies the assertiveness and instrumentality of women’s responses. For example, it was too easy for the media to cast Patty Hearst as brainwashed, discounting her political agenda and personal anger. Women may have made bad choices, but it was a choice nonetheless. Viewing women’s violence as compulsory undermines women’s ability to negotiate and survive the world in which they live.

The second main criticism of the Oppression Theory was that such a theory relies on biased empirical studies that presumed and specifically sought out women’s victimization. Empirical evidence showing that women’s violence is a response to physical, sexual, or psychological abuse may be inaccurate due to research bias. For example, a 1991 study of presentence reports prepared by probation officers in New Haven, Connecticut indicated that a larger proportion of women (1/3 compared to 1/10 of men) were characterized as having been physically or sexually abused.⁶⁶ However, the researcher found that this was because the probation officers “were more inclined to probe the women’s family histories.”⁶⁷ Similarly, the “*Sourcebook of Criminal Justice Statistics*, ostensibly the

61. See *id.* at 209. See also the policy statement at US Sentencing Commission, *Guidelines Manual* § 5K2.12 (2001) (“Federal Sentencing Guidelines” or “Guidelines”).

62. Ilene H. Nagel & Barry L. Johnson, *The Role of Gender in a Structured Sentencing System: Equal Treatment, Policy Choices, and the Sentencing of Female Offenders Under the United States Sentencing Guidelines*, 85 J Crim L & Criminology 181, 209 (1994).

63. *United States v Johnson*, 956 F2d 894 (9th Cir 1992).

64. *United States v Roe*, 976 F2d 1216, 1217–18 (9th Cir 1992).

65. *Ganging Up* at 112 (cited in note 5).

66. Pearson, *When She Was Bad* at 57 (cited in note 6).

67. *Id.* at 57.

most objective data about annual American crime rates . . . contain[s] a table that cites the percentage of incarcerated women who were abused as children. *There is no comparable table for incarcerated men*, even though the influence of child abuse on subsequent violent behavior is well documented[.]”⁶⁸

Critics of the Oppression Theory argue that the prevailing presumption of women’s victimization rests on questionable empirical evidence. When women committed their violent offense against men, only 35% of the offenders attacked an intimate or relative.⁶⁹ Presumably, a significant percentage of these women were responding to some form of intimate abuse. Yet, this percentage of abused women acting in self-defense should not become the explanative model for all female crimes.⁷⁰ This is not to discount self-defense theories where they are applicable. Rather, this criticism merely challenges the essentializing umbrella that casts all violent women as abused victims. Assuming that all female criminals are only responding to oppressive social orders involves a dangerous theoretical leap that may, in the end, infantilize women as actors and over-emphasize the role of oppressive forces. More nefariously, it posits women as *more* susceptible to oppressive forces than men, who, in juxtaposition, are cast as self-determinatively criminal.

C. THEORIES FOCUSING ON WOMEN’S DIFFERENCE

The Women’s Difference feminists soon jumped into the female crime debate. The Women’s Difference Theory focused on how physical and psychological differences between genders affected criminal offending patterns, and suggested that despite the increasing number of violent crimes committed by women, this may not entail a congruence in the quality of men’s and women’s offending behaviors or the nature of male and female violence.

Physiologically, some criminologists suggest that biological difference between men and women partially explain the disparities in violent offending patterns. These explanations range from analyzing biological, somatic, and hormonal differences between male and female criminals,⁷¹ to common sense observations that bullies are usually bigger. Most simply, men are generally larger and physically stronger, and this imagery is associated with a propensity for physical activities, such as hunting and fighting. This iconic representation of brute force keys violence to corporeal injury, and aggression to the ability to physically in-

68. Id at 57 (second italics added).

69. DOJ report at 3 (cited in note 10).

70. See generally Pearson, *When She Was Bad* at 56–63 (cited in note 6). Pearson cites a scene in the movie *Thelma and Louise* (MGM 1991) as an example as how society persists in viewing all women’s crime as a product of their victimization. In one scene, an actress states: “it’s ironic,” says the kindly wife of the lead detective, “now the biggest case of your life comes along and you’re hunting down a victim of child abuse.” Id at 58.

71. Id at 8; notably, studies on testosterone levels in male and female inmates were held inconclusive because individuals kept in confined cages will naturally exhibit more aggressive behaviors.

jure. “Sticks and stones may break my bones but words can never hurt me.” Yet, a conception of violence concentrated on brute force negates a whole range of violent injuries and punishable conduct.

An example of the physical/biological Difference Theory is a prominent biosocial study which presented research indicating gender differences in predictions of crime.⁷² This study, by considering frequency of disciplinary problems, juvenile crime rate, and adult crime rates, held that “biological factors were found to be more predictive of crime among females, whereas environmental factors were found to be more predictive of crime among males.⁷³ Because the factors most predictive of female delinquency involved abnormal movements, number of neurological abnormalities, right eye preference, and left foot preference,⁷⁴ the study concluded “that female delinquents have a greater degree of neurological dysfunction than male delinquents.”⁷⁵

A subset of Difference Theory focuses on psychology. Some research indicates that aggressive responses are gendered, and although the violence may be the same, differences in male and female psychology dictate distinctions in motive and means. Men are from Mars, and women are from Venus. As this adage makes clear, behavioral assumptions classify men as destructive and violent, and women as loving and relational. Recent statistics from the Bureau of Justice support the proposition that men and women are different in the *types* of violence that they enact. For example, those statistics reveal that “[m]ale and female violent offenders differed substantially in their relationships to those they victimized. An estimated 62% of female violent offenders had a prior relationship with the victim as an intimate, relative, or acquaintance. By contrast, 36% of male violent offenders were estimated to have known the victim.”⁷⁶ When women kill, they are more likely to kill family members (32%), and young vic-

72. Denno, 85 J Crim L & Criminology at 114–15 (cited in note 25). This biosocial study, one of this country’s largest longitudinal studies of biological, psychological, and sociological predictors of crime, followed nearly 1000 Philadelphia residents from birth through early adulthood and examined numerous variables. The individuals came from families who participated in the Philadelphia Collaborative Perinatal Project at Pennsylvania Hospital between 1959 and 1966. This is one of the few studies who followed both males and females, and thus were able to consider gender differences in criminal offending.

73. *Id.* at 82.

74. The Study reported:

For female delinquents, the only two factors predicting disciplinary problems – abnormal movements and neurological abnormalities – were also strong predictors of their crime as juveniles, and, in the reduced form equations, their crime as adults. Among males, lead intoxication, the strongest predictor of disciplinary problems, was also a strong predictor of their crime as juveniles, and in the reduced form equation, their crime as adults. . . . The fact that females appeared to be unaffected by lead, even though they were raised in the same or similar environment as males, suggests that males may be relatively more vulnerable to certain kinds of environmental stressors. Similarly, abnormal movements or neurological abnormalities had no effect on ability or behavior among males.

Id. at 118. Abnormal movements may include fasciculation, tremors, tics, and mirror movements.

75. *Id.* at 114.

76. DOJ report at 3 (cited in note 10).

tims (24% were under three years old) than are boys (1% of whose victims are family members).⁷⁷ This statistic may be read to indicate that women were inclined to utilize violence only where their relationships are threatened or frustrated, but rarely in unrelated settings, unlike men who use violence instrumentally to advance individual goals. Women were more inclined to kill a lover out of scorn than a stranger for his wallet.

Several psychologists and moral theorists advance Women's Difference Theory. Carol Gilligan's groundbreaking and controversial theory of women's difference set off a major feminist debate. Gilligan Theory posits that women, more often than men, possess an ethic of care—a penchant for caring, and heightened concerns for the preservation of personal and emotive ties.⁷⁸ Women's singular concern over care and nurturance may explain the historic underrepresentation of women among those who commit violent crimes. This morality of caring is perceived as innate, and women's increased participation in political and economic arenas would do little to corrupt this natural tendency.

This theory can be complicated by acknowledging that women are socially conditioned to adopt caring and relational thinking. Thus, these tendencies are not innate or biological responses, but instead, are developed through hermetical patriarchal conditioning. However, both variants of the theory, biological and social, view women as singularly predisposed to caring and relational concerns and so less prone to aggressive or violent reactions.

The Psychological Difference Theory postulates that the current rise of women's violence may not be caused by the gradual adoption of masculine behavioral responses in an increasingly equalize society. Rather, the particular enactment of violence by women is significantly different.⁷⁹ A 2000 psychological study of women's violence and personality concluded that the statistical rise in female violence is deceptive because the majority of women incarcerated for violent offenses are not aggressive individuals, but rather, docile individuals who were provoked by extreme circumstances.⁸⁰ Women incarcerated for violent crimes were far more likely than their male counterpart to commit a one-time act of extreme violence. Male violent offenders were overwhelmingly repeat violent offenders.⁸¹ Female one-time violent offenders tended to have shorter

77. Id.

78. See generally Carol Gilligan, *In A Different Voice* (Harvard 1982).

79. For example, research comparing male and female career criminals found substantial differences:

(1) . . . females participate in substantially less violent crime than males during the course of their criminal careers; (2) the careers of violent females both begin and peak earlier than those of males; (3) females are far less likely than males to repeat their violent offenses; and (4) females are far more likely to desist from further violence.

Denno, 85 J Crim L & Criminology at 94 (cited in note 25).

80. Edelyn Verona & Joyce L. Carbonell, *Female Violence And Personality: Evidence for a Pattern of Over-controlled Hostility Among One-Time Violent Female Offenders*, 27 Crim Just & Behavior 176 (2000).

81. Id at 178, 192.

criminal records than all types of male inmates and nonviolent female inmates.⁸² The overwhelming majority of male violent offenders were classed as exhibiting “undercontrolled aggression,” meaning that they had a lower inhibition against aggressive behavior.⁸³ By contrast, violent female aggressors were classed as exhibiting “overcontrolled aggression,” meaning that they had an extremely high tolerance for provocative stimuli.⁸⁴ Thus, despite their offenses, *female one-time violent offenders possessed less violent personalities*.⁸⁵ They were inclined to “internalize negative affect as guilt and hurt rather than externalize it as anger directed at a target. . . . As a consequence, women accumulate[d] high levels of instigation (or pent-up provocation), eventually surpassing their inhibition threshold.”⁸⁶ Confronted with repeat provocation, and as instigation accumulated over time, these women exploded with an uncharacteristically violent response. Given that the great majority of women are one-time offenders, Difference Theory presents this phenomenon as evidence that women are not as violent as men. For the most part, women remain compassionate in their relationships, and resistant to brazenly react with violence unless extremely provoked.

Furthermore, Difference Theory argues that the motivation for and method of enacting violence highlights significant differences between male and female responses. The study found that “[f]emale violence tends to involve angry aggression (injury to the other person is the main motive) as opposed to instrumental aggression (aggression used to achieve some other end).⁸⁷ Put another way, women’s aggression “is the *failure* of control’ while for men it is ‘the *imposing* of control over others.”⁸⁸ For example, where a homicide occurs, women were more likely than men to use a knife than a gun, indicating that the homicide was more reflexive than planned.⁸⁹ For this reason, Difference Theory concludes that women are less violent than men because women are hesitant to utilize violence unless forced by external circumstances to do so.⁹⁰

Difference Theory argues that women’s differential enactments of violence should not be viewed or punished the same as their male counterparts. Thus equality in sentencing, most pronounced in the Federal Sentencing Guidelines, fails to acknowledge differences that may actually result in a disparate impact on women. For example, women are less likely to have a major planning role in any

82. Id at 177.

83. Id at 178.

84. Id.

85. Id. at 178–79.

86. Id.

87. Id at 177–78.

88. Brownstein, *Violent Crime* at 99 (cited in note 27).

89. *Challenging Girls’ Invisibility* at 188 (cited in note 21). See also DOJ report at 4 (cited in note 10). The DOJ reports that “just over half of women committing murder and two-thirds of males committing murder used a firearm. Female offenders were substantially more likely than male murderers to have used a knife or other sharp object to commit the crime.”

90. Verona & Carbonell, 27 *Crim Just & Behavior* at 190 (cited in note 80).

joint enterprise.⁹¹ However, often in narcotic conspiracy charges, which involve hefty mandatory sentencing minimums, women may receive heavier sentences than their male counterparts, although they were most likely not the leaders or organizers. This occurs because downward departures for cooperation are unavailable to women since, given their limited role, they often have nothing to proffer—under § 5K1.1 of the Guidelines, the Federal Sentencing Commission permits a defendant’s “substantial assistance” to authorities to be a basis for the sentencing judge to depart below the guidelines or applicable mandatory minimum sentences upon motion by the prosecution.⁹²

Moreover, this theory argues that because of their gender-specific “circumstances, female offenders may be less culpable than the [crimes] for which they are legally held responsible would suggest.”⁹³ For instance, female offenders tend to have little or no prior criminal records.⁹⁴ Second, an overwhelming majority of women’s crimes are nonviolent. Where women do commit violent acts, they tend to be isolated, one time incidents, unlike males who tend to commit repeat violent offenses.⁹⁵ Third, women have much lower recidivism rate than their male counterpart.⁹⁶ Fourth, “the consequences of male violence were generally more serious for the victim in terms of weapon use, injury, and out-of-pocket losses to the victim.”⁹⁷

Critics of the Difference Theory argues that by highlighting the difference between male and female violence, this theory dichotomize women’s predisposition for home and hearth as distinct from atomistic aggression. Women respond reactively with violence when a response is necessarily required by their relationships, as opposed to proactively using violence when they individually desire or seek out a specific end. But, critics argue, this may be a faulty dichotomy. Aggressiveness may not be in conflict with relational thinking, and in fact, women may be instrumental and aggressive in how they protect their relationships or exhibit care. “Violence is often a bid for security, when something of profound value is threatened. That something may be as psychologically inchoate as selfhood, or as concrete as four walls and a roof. Whatever women’s ‘basic instincts’ are, relationalism does not, in itself, render them gentler.”⁹⁸

91. Nagel & Johnson, 85 J Crim L & Criminology at 214 (cited in note 62).

92. See, for example, Myrna S. Raeder, *Gender and Sentencing: Single Moms, Battered Women, and Other Sex-Based Anomalies in the Gender-Free World of the Federal Sentencing Guidelines*, 20 Pepp L Rev 905 (1993). But see Nagel & Johnson, 85 J Crim L & Criminology at 217–18 (cited in note 62), arguing that, in practice, prosecutors often offer women pretextual substantial-assistance motions because women are sympathetic defendants for other reasons, and citing Ilene H. Nagel & Stephen J. Schulhofer, *A Tale of Three Cities: An Empirical Study of Charging and Bargaining Practices Under the Federal Sentencing Guidelines*, 66 S Cal L Rev 501 (1992).

93. Nagel & Johnson, 85 J Crim L & Criminology at 214 (cited in note 62).

94. Verona and Carbonell, 27 Crim Just & Behavior at 190 (cited in note 80).

95. Id.

96. Id.

97. Id.

98. Pearson, *When She Was Bad* at 20 (cited in note 6).

D. THEORIES FOCUSING ON FEMALE SEXUAL RIVALRY

Law professor Cheryl Hanna recently entered the women's crime debate with her theory that women are becoming more violent because aggression is becoming increasingly sexualized. She argues that sexual competition is the motivation for women's aggression, and so women's violence is sexual. According to the Department of Justice, three out of four violent female offenders had a female victim, indicating that "girls are killing girls."⁹⁹ This may be the result of women internalizing their own oppression, and so becoming as misogynistic as men. The following account by a PlayGirl Gangsta illustrates the extent to which women's violence against other women may mimic the worst of misogynistic male crime:

One night Angel and ten of us in the back of a pickup truck we stole drove into Inglewood, looking for the enemy. Somebody spotted a carload at the 7-Eleven. We took off after them, chasing them to La Cienega, where they crashed into a pole. We all jumped out of the truck and charged their car.

There was four of them, two guys and two girls. . . . I had this long steel pole sharpened to a point. I used it to smash the windshield . . . I opened this door where this fat chick sat and whacked her on the shins . . . You could hear her bones cracking. Pop! Pop! She was screaming. Then I took the pole and rammed it between her legs.¹⁰⁰

Hanna argues that female violence stems from misdirected aggression in female-to-female sexual competition, not merely the appropriation of misogynistic attitudes.¹⁰¹ She argues that the current rise of female violence over the last ten years is influenced by the increasing sexualization of violence, and the proliferation of "commercial feminism," that markets female aggression as sexy.¹⁰²

Hanna posits that the modern eroticization of female aggressiveness has transmogrified female competition for male sexual attention to violence against other women. Relying on anthropological principles, she argues that women engage in competition to mate with the highest status male available.¹⁰³ While most women engaged in "secondary competition" with other women (where the girl has no specific adversary but still engages in competitive behavior),¹⁰⁴ com-

99. Hanna, 27 Hastings Const L Q at 671 (cited in note 2).

100. Ganging Up at 130 (cited in note 5), quoting Gini Sikes, *8 Ball Chicks* 25 (Anchor 1997).

101. Hanna, 27 Hastings Const L Q (cited in note 2).

102. Angelina Jolie as the title character in *Lara Croft: Tomb Raider* (Paramount 2001) is an example of this tendency. In the film, she is touting a fantastically large gun slung around khaki, military-style daisy dukes

103. Ganging Up at 115–19 (cited in note 5).

104. An example of indirect competitive aggression includes obsession over hair, clothes and weight in competing with unspecified women.

petition has become increasingly direct, external, and violent.¹⁰⁵ In speaking with girls incarcerated in San Francisco Juvenile Hall, several girls listed sexual competition as the reason for assaulting another girl: "A girl talks trash about me, I'm gonna stop her." What kind of trash? "Disrespecting me." "Saying things behind my back." "Stealing my man."¹⁰⁶

For example, female gang initiation rituals show how women's violence is thoroughly eroticized. There are two primary methods of initiating new gang members, although variations are several. "Jumping-in" rituals, one of the most common, is where several gang members beat up a new gang member for a period of time. Hanna observes: "Girls often express glee in describing the process of jumping in another girl."¹⁰⁷ This practice is sexualized because boys are often in the background cheering "get her" and "you go girl."¹⁰⁸ Some girls dress up for the occasion. In one video of a girl gang "jumping-in" episode, five girls viciously beat another girl while boys cheer in the background.¹⁰⁹

"Rolling in" initiation rites are where a new member rolls two dice, and the number rolled will be the number of men she must sleep with on a single occasion.¹¹⁰ A recent incident in San Antonio illustrated the difficult complex between "women's self-perceived power and experience of powerlessness" in this initiation rite:

A twelve-year-old girl now sat in the juvenile detention center on charges she lured her thirteen-year-old friend to a party in a trailer, so that nine male gang members, ranging in age from fourteen to thirty-one, could brutally rape her. During her indictment, the girl showed no remorse—the same had been done to her. In detention she'd received dozens of fan letters from gang boys who admired her nerve.¹¹¹

Interestingly, the girl's resolve in this situation underscored her belief that the victim had a choice in "consenting" to this conduct. Moreover, her direct community appreciated the "nerve" of her violence. This situation illustrates a disconnect between external theory and self-definition, and the potential condescension by theorist as anthropologist, externally imposing a characterization or moral calibration of foreign events.

There are two main challenges to Hanna's position. First, Hanna's theory heavily relies on the statistic that 75% of female offenders had a female victim.¹¹² Then again, 70% of males had a male victim.¹¹³ Thus, this may simply mean

105. Hanna, 27 Hastings Const L Q at 675–76 (cited in note 2).

106. Id at 684.

107. Ganging Up at 125 (cited in note 5), citing Mary G. Harris, *Cholas: Latino Girls and Gangs* 112 (AMS 1988).

108. Id at 126.

109. Hanna, 27 Hastings Const L Q at 685 (cited in note 2).

110. Ganging Up at 125–26 (cited in note 5), citing Sikes, 8 *Ball Chicks* at 101–02 (cited in note 100).

111. Id at 125, citing Sikes, 8 *Ball Chicks* at 102 (cited in note 100).

112. Hanna, 27 Hastings Const L Q at 671–72 (cited in note 2). Hanna states that explanations of female crime "fail to explain why three out of four violent female offenders have a female victim—and in

that violent offenders will most often victimize persons of the same gender. Moreover, the 5% difference may be accounted for by the fact that men remain physically larger than women, rendering it slightly more difficult for women to physically assault men.

Second, Hanna's theory is problematic because of its central reliance on the primacy of heterosexual desire in women's lives. She casts women's violence as solely reducible to their desire for sexual relationships with men, to the exclusion of other ambitions. This harkens back to historically conservative theories that regard female deviance only in terms of sexuality. For example, it was once thought that women committed crimes during "generative" phases, such as menstruation, pregnancy, and menopause.¹¹⁴ It was also thought, (and this notion is still prevalent) that female delinquency is the result of a confused psychosexual identification.^{115, 116}

Hanna mimics this tendency by reducing women's violence to only a manifestation of frustrated sexual desire. Although she acknowledges that female violence may be used in an instrumental fashion, the ultimate motive is to obtain relationships, love, and attention. She wrongly limits the range of women's motivations to only those stereotypically female, without considering women's desire for money, ambition, power, or sadistic pleasure.

II. THERE MAY BE NO RISE IN WOMEN'S VIOLENT CONDUCT

A more careful examination of recent statistics indicates that women are no more violent now than before. This being the case, all four aforementioned theories are fundamentally flawed because they presumed the existence of a statistical increase in women's violent offending patterns. They treated increases in women's violent crime arrests and incarceration, and shifts in women's conduct as obvious and unequivocal, and in so doing, skipped a crucial analytical step by failing to challenge the reliability of the recently announced criminal statistics.

fifty percent of the cases, that is an acquaintance. Neither theory explains why girls are attacking girls[.]”

113. DOJ report at 3 (cited in note 10).

114. Denno, 85 J Crim L & Criminology at 88–89 (cited in note 25). For example, scholar Otto Polak, in his book *The Criminality of Women* 10 (Penn 1950) (citing Clara Thompson, *Cultural Pressures in the Psychology of Women*, 5 *Psychiatry* 331, 333 (1942)), argued that women's passive roles during sexual intercourse and their ability to feign arousal is evidence of their deceitful nature. Thus, “such deceit allows females to conceal their crimes which if detected would be similar in frequency to males.”

115. Devlin, 9 *Yale J L & Human* at 170 (cited in note 22).

116. For example, *People v Santos*, No 1KO46299 (Kings County, NY Crim Ct Nov 3, 1982) (unreported case), was the first case in the United States to hold that PMS was no defense to an assault charge in 1982. Subsequent cases, although permitting acceptance of PMS evidence, does not permit PMS to be a defense because this theory lacks scientific support. However, *Commonwealth v Richter*, No T90-215256 (Fairfax County, Va Gen Dist Ct June 4, 1991) (unreported case), permitted PMS to be a defense. See Denno, 85 J Crim L & Criminology at 136–37 (cited in note 25) (notably, PMS defenses are successful in England).

A more nuanced analysis of female offending patterns requires consideration of the shifting definitions of crime and violence, and the method and extent of law enforcement and surveillance. When considering these factors, the much touted increase in women's violent crime seems exaggerated. This is due to three reasons. First, where women committed the same crimes as men, the historic hesitancy to acknowledge women's aggression led to an underreporting or misrepresentation of these crimes. Second, where women committed "female" types of hostility, the masculinized lexicology of violent criminal behavior failed to view these crimes as violence. These two tendencies rendered women's violence invisible in the past, with room to be conveniently "discovered" by modern feminism and criminology.¹¹⁷ Third, where women commit innocent but gender-transgressive conduct, law and law enforcement have recently begun redefining these acts as criminal violence.

A. UNDERREPORTING OF VIOLENT CRIMES COMMITTED BY WOMEN

Historically, there has been an underreporting of women who commit "male" crimes. This has occurred in three respects. First, considering self-reporting information (data based on surveys given to non-incarcerated individuals), some researchers argue that "there is not an increase of violence among women and girls, "so much as a closing of the gap between what girls have always done (and self-reported) and arrest statistics."¹¹⁸ Research using self-reported data of youth involvement in violent offenses fails to show the dramatic changes found in official statistics."¹¹⁹ Self-reported data from 1970s and 1980s, and even a study in 1945, have indicated a higher involvement of girls in aggressive conduct than is reflected in official narratives of violent crime.¹²⁰ Current research in aggression using self-reporting methods also fails to show a dramatic increase in female violence.¹²¹ Moreover, when a broader definition of "aggression" is utilized to include verbal aggression, only 5% of the variance in

117. See Gender Gap at 19 (cited in note 15) (Chesney-Lind argues that "[t]he fact that these forms of aggression have been largely ignored by scholars as well as the general public also means that there is substantial room for girls' aggression to be 'discovered' at a time where concern about youth violence is heightened.")

118. Challenging Girls' Invisibility at 188-89 (cited in note 21). See also Gender Gap at 19 (cited in note 15); for a self-reporting study, see Artz, *Violent School Girl* at 26-28 (cited in note 55).

119. *Id.*

120. *Id.* See also Chesney-Lind, *The Female Offender* at 41 (cited in note 27); Devlin, 9 Yale J L & Human at 161 (cited in note 22).

In 1945, Austin Porterfield asked a group of college students in Fort Worth, Texas to report what "delinquencies" they had committed while they were in high school (none of them had ever been officially charged as a juvenile delinquent). Women reported a rather surprising array of pranks and "acts of public annoyance," including "painting and flooding rooms" (18%), setting off fireworks in public buildings (9%), throwing "spit wads at others' displeasure" (30%), reckless driving (23%), trespassing (17%) and using abusive language (37%).

121. Chesney-Lind, *The Female Offender* at 41 (cited in note 27).

aggression is explained by gender.¹²²

Second, law enforcement was historically reluctant to formally arrest women and girls. With respect to female juvenile delinquents:

girls who came to [the] attention of social agencies, youth bureaus, and even the police were never referred to the juvenile court, no matter the infraction. In general, local police and social agencies had a variety of ways of 'sheltering' girls from the judicial system in order to keep their misdeeds, as the saying went, 'off the blotter.'¹²³

This often occurred regardless of the infraction.¹²⁴ Women's and girls' cases were usually handled "informally or discreetly either to spare the girl the experience of going to court or to safeguard her reputation. In effect, girls' behaviors were literally 'adjusted' . . . to fit the normative fiction of what that behavior was supposed to look like and (statistically) reflect."¹²⁵

Third, official state discourses reinforced the historic invisibility of female violence. A literal example of this obfuscating tendency is found in the widely perceived absence of female serial killers in criminal justice literature. "Serial killer" is a legal term of art, coined by the FBI Behavioral Science Services Unit in 1978.¹²⁶ Serial killer is defined as a series of homicides perpetrated against a sequence of more than three victims, all of whom were strangers, with a cooling off period in between each kill.¹²⁷ The FBI's purpose in classifying "serial killers" was to create a psychological profile to locate a roaming killer who leaves bodies along a trail. There is no practical application for profiling "place-specific" killers, "because as soon as you find the body you have an obvious pool of suspects."¹²⁸ Because the overwhelming majority of serial murderers are place-specific (killing inside the home, apartment building, or hospital wards), such killers rarely evoked federal scrutiny or semantic recognition.¹²⁹

Thus, although approximately 17% of known American serial killers are women, and at least 25% of them have been arrested and convicted since 1972, this is not reflected in official discourses of terror, violence or pathology.¹³⁰ Although Aileen Wuornos was arrested in 1992 for the shooting deaths of seven men, and less than two years prior, Dorothea Puente was convicted for murder-

122. Gender Gap at 19–20 (cited in note 15).

123. Devlin, 9 Yale J L & Human at 156 (cited in note 22).

124. Id at 156.

125. Id.

126. Pearson, *When She Was Bad* at 158 (cited in note 6).

127. Id at 157. Note that there is some debate as to whether this is an accurate definition. Others may argue that the required number is ten. The term "serial killer" is to distinguish the "mass killer," who is attacking several people simultaneously.

128. Id at 158.

129. Id at 158–59.

130. In fact, because serial killing is predominately committed by Caucasians, white women were more likely to commit a serial murder than a Black, Asian, or Hispanic man by a factor of one hundred to one. Id.

ing eight of her building tenants, in “March 1995, retired FBI special agent Roy Hazelwood reportedly announced at a homicide conference in Calgary, Alberta, ‘there are no female serial killers.’”¹³¹ Although female serial killers have existed throughout history—such as Louise Peete, who was born in 1883 to high-society parents, drove all four of her husbands to suicide, shot and killed at least two other men, and bludgeoned a woman to death—these tales have little modern currency.¹³²

The cultural amnesia surrounding a history of female killers underscores how these crimes failed to resonate collectively. Female killers do not carry the mythic force of classic predators primarily because, as location-specific killers, “they don’t touch the chord of anxiety we feel about The Dark, about the World Out There in the shadows behind our houses[.]”¹³³ Whereas male predators are snipers, and “senseless in their motive and random in their targets,” better correspond to our bogeyman notions.¹³⁴ Moreover, male killers more often desecrate and display their victim’s bodies, and are more often motivated by sexual violence. Thus, male serial killer’s crimes may feel more visually and viscerally horrifying.

B. FAILING TO ACKNOWLEDGE WOMEN’S CONDUCT AS VIOLENCE

As these tales of female serial killers makes clear, women can be just as violent as their male counterparts but in subtly different ways, such as roaming versus location-specific killing. Yet, these differences become significant where violence is conceived of in masculinized terms. Criminal violence is conceptualized as public assertive acts between strangers. Fistfights, gun duels, military battles, or serial killing and mutilating victims, are the classic “violence” prototypes, as opposed to relational violence, such as infanticide, or spousal, familial and child abuse. Violence, envisioned as public, renders private violence invisible and incomprehensible.

The majority of women’s violence occurs in the “private” sector. A larger percentage of juvenile female homicides is targeted at family members (39%, compared to 9% for boys).¹³⁵ More generally, Pearson reports that “[w]omen commit the majority of child homicides in the United States, a greater share of

131. *Id.* at 156–58.

132. *Id.* at 156. See also *People v Peete*, 28 Cal 2d 306, 169 P2d 924 (1946). Also, for example, “we have never heard of the mid-fifteenth-century Countess Elisabeth Bathory, of Hungary, who bled to death 610 peasant girls, whom she abducted and kept in her castle dungeon so that she could fill rejuvenating beauty baths with their youthful blood. . . . and no one paid much attention to Belle Gunness, who fled Chicago in 1908 after killing forty men and four children[.]” Pearson, *When She Was Bad* at 156 (cited in note 6).

133. *Id.* at 153.

134. *Id.* at 153.

135. Howard N. Snyder and Melissa Sickmund, *Juvenile Offenders and Victims: 1999 National Report* 54–55 (Natl Center for Juv Just 1999).

physical child abuse, an equal rate of sibling violence . . . about a quarter of child sexual abuse, an overwhelming share of the killings of newborns, and a fair preponderance of spousal assaults.”¹³⁶ Because of this, victims were usually more hesitant to report these crimes, and law enforcement was generally unwilling to prosecute these acts as violence. This under-prosecution may occur because, given that the violence occurred in the home and not to random strangers, the perpetrator’s violence may not be viewed as a social or public threat.

Nonetheless, what these considerations suggest is *not* that women lack instrumental aggression or horrible destructive tendencies, but instead, that their conduct, articulated in slightly different ways, is often marginalized, ignored, misnamed, or forgotten. Marybeth Tinning, in New York, murdered eight of her nine children, ranging in ages from one week to five years, to get attention from family and doctors.¹³⁷ “Kathleen Householder, of Rippon, West Virginia, smashed a rock over the head of her two-week-old daughter to make her stop ‘fussing.’ . . . Sheryl Lynn Massip, of Orange County, California, had no sleep for six weeks, took her colicky baby outside, put him on the road, and ran over him with her car.”¹³⁸ These horrifying stories of women behaving badly may fail to resonate in our collective consciousness as violence because they were private, instrumental, relational, and perpetrated by women.

What this makes clear is how “violence” is an empty rhetorical category rather than an innate, organic, or self-evident truth. What conduct is termed “violent” depends greatly on the particular socio-historical context.

C. RELABELING GENDER-TRANSGRESSIVE CONDUCT AS VIOLENCE

On one hand, some women’s destructive behaviors were *not* viewed as violence because they were feminized private responses, at the same time, however, where women committed public displays of aggression, such gender transgressive conduct was increasingly relabeled by law and law enforcement as criminal violence. The rising number of women arrested for violent crimes may not be the result of shifting behavioral response. Instead, the criminal justice system, like media agencies and feminist theorists, recently began conceiving of women, especially poor, young, minority women, as increasingly violent.¹³⁹ As these institutions became more vigilant against any manifestations of this “emerging violence,” women’s formerly innocuous behaviors were becoming increasingly

136. Pearson, *When She Was Bad* at 7. See also DOJ report at 3 (cited in note 10).

137. Pearson, *When She Was Bad* at 94 (cited in note 6); this behavior is classed as Munchausen Syndrome by Proxy, a version of Munchausen Syndrome, where a person self-inflicts injuries or invents symptoms in an unceasing quest for attention. Where the syndrome exists by proxy, a person inflicts injuries on someone else.

138. *Id.* at 82.

139. Brownstein, *Violent Crime* at 96 (cited in note 27).

scrutinized and criminalized.¹⁴⁰

Women's conduct may be more highly scrutinized where the conduct does not adhere to traditional views of docile feminine behavior. The increase in women's Violent Crime Arrest index may be located in the 142.6% increase in females being charged with "other assaults."¹⁴¹ In the federal system, three out of four violent women offenders committed simple, as opposed to aggravated, assault.¹⁴² However, simple assault does not require physical contact, only a *threat* of harmful physical contact, and in some cases, verbal aggressiveness is sufficient.¹⁴³ Law enforcement may be more inclined to arrest "mouthy," aggressive or defiant women, unlike their male counterparts who engage in similar behaviors. For example, a 1999 California study observed this law enforcement bias. Where girls were charged with "person offenses," the majority of assault charges were for nonserious, mutual combat situations with parents."¹⁴⁴ In one case, the charge of simple assault was based on a girl throwing cookies at her mother.¹⁴⁵ Other research indicated that girls were charged with "other assault" where they were bystanders or companions to males involved in skirmishes and fights.¹⁴⁶

Notably, this relabeling of women's innocent but aggressive conduct has taken a surge following the 1992 amendment to the Juvenile Justice and Delinquency Prevention Act ("JJDP").¹⁴⁷ According to Chesney-Lind, the amendment was passed with the intent to deinstitutionalize status crimes by prohibiting law enforcement from detaining juveniles arrested for these minor infractions.¹⁴⁸ A status offense permits "the arrest of youth for a wide range of behaviors that violate parental authority: 'running away from home'; being 'a person in need of supervision,' 'incorrigible,' 'truant' . . . Although not technically crimes,

140. Challenging Girls' Invisibility at 187-88 (cited in note 21). Chesney-Lind argues: "Relabeling as violent offenses behaviors that were once categorized as status offenses . . . cannot be ruled out in explanations of arrest rate shifts . . . this relabeling . . . has been particularly pronounced in the official delinquency of African American girls[.]"

141. *Id.* at 187. See also DOJ report at 2 (cited in note 10) (The Department of Justice reported: "Nearly 3 in 4 violent victimizations committed by female offenders were simple assaults[.]")

142. DOJ Report at 2 (cited in note 10). Whereas just over half the violence of male offenders is described as simple assault. Moreover, simple assault offenders were more likely to be described as white. This may suggest that some adjustments are made in charging white women offenders over women offenders with a minority background.

143. One is guilty of a simple assault if that person: "(a) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or (b) negligently causes bodily injury to another with a deadly weapon; or (c) attempts by physical menace to put another in fear of imminent serious bodily injury." *Black's Law Dictionary* 115 (6th ed 1990) (citing Model Penal Code §211.1). The second circuit has implied, in dicta, that an intent to cause injury is not a necessary element of a simple assault. See *United States v Martin*, 536 F2d 535, 535-536 (2d Cir 1976).

144. Gender Gap at 20 (cited in note 15).

145. *Id.*

146. Challenging Girls' Invisibility at 188 (cited in note 21).

147. *Id.* at 190-93.

148. *Id.*

these offenses can result in a youth's arrest[.]”¹⁴⁹ “Status offenses accounted for about 23% of all girls' arrests in 1994 but only about 8.6% of boys' arrests.”¹⁵⁰ Because female juveniles were far more likely to be arrested for these crimes, this amendment had a significant impact on female juvenile arrest rates.¹⁵¹ This amendment faced great resistance from law enforcement and judges who wanted to incarcerate misbehaving juveniles, particularly girls.¹⁵² Chesney-Lind concludes that to get around enforcement of the JDDPA, girls were increasingly charged with more serious offenses so that they could be held by law enforcement.¹⁵³ For example, under the 1980 amendment to the JDDPA pushed for by the National Council of Juvenile and Family Court Judges, judges were able to reclassify a status offender who violated a court order as a delinquent, and thus, detainable. As a result, female offenders held in contempt were substantially more likely to be placed in detention.¹⁵⁴

In sum, the FBI reports of increasing female violence are misleading because of the historic underreporting of women committing masculinized violence and the marginalization of women committing feminized private violence.¹⁵⁵ In addition, there was a recent move towards criminalizing innocuous, gender-transgressive conduct by lower-income, minority women. What these factors make plain is that there was no actual increase in female aggressive behavioral patterns and no new expansion in women's contributions to violence. Women were not doing anything differently. Rather, increasing attention and shifting social notions merely permitted criminologist and feminist to discover, name, and “phenomenon-ize” previously ignored conduct.

III. VENUS ON MARS: THE SOCIAL SIGNIFICANCE OF VIOLENT WOMEN

These added considerations shed significant doubt as to whether there has been an actual increase in female violent conduct over the last ten years. Given

149. Chesney-Lind, *The Female Offender* at 11 (cited in note 27).

150. *Id.* at 12.

151. *Id.* at 12. Chesney-Lind notes:

Status offenses have always played a significant role among the offenses that bring girls into the juvenile justice system. They accounted for about a quarter of all girls' arrests in 1996, but less than 10% of boys' arrest—figures that remained relatively stable during the last decade. In 1996, over half (57.5%) of those arrested for *one* status offense—running away from home—were girls.

Challenging Girls' Invisibility at 189 (cited in note 21).

152. Chesney-Lind, *The Female Offender* at 68–74 (cited in note 27).

153. Challenging Girls' Invisibility at 191 (cited in note 21). For example, “[i]n 1980, the National Council of Juvenile and Family Court Judges was able to narrow the definition of a status offender in the amended act so that any child who had violated a ‘valid court order’ would no longer be covered under the deinstitutionalization provisions.

154. *Id.*

155. See generally Pearson, *When She Was Bad* (cited in note 6).

this challenge, what then explains the increased attention by law enforcement, corrections officials, and the media and academia over the last twenty years? Why have these institutions run with flawed statistics with so few dissenting voices? What is most disturbing is how feminist theorists have gravitated towards this subject, without critically analyzing statistical and research data regarding this perceived surge—uncharacteristic for a discipline meticulous in exposing theoretical oversights and faulty presumptions. This final section makes two arguments: (1) that there is a preoccupation with women's violence, dating back as early as the 1800s; (2) that this preoccupation is due to a misguided belief that women's violent behavior somehow comments on women's power in society.

A. HISTORIC INTEREST IN WOMEN'S CRIMINALITY

Interestingly, fascination with the "waywardness" of girls is not a new phenomenon. Indeed, the trial of Lizzy Borden, the woman tried for and acquitted of hacking to death her father and stepmother in Fall River, Massachusetts, in 1893 remains "the most continually absorbing case in the annals of this nation's homicides."¹⁵⁶ At the time, Borden's trial completely engrossed the American press.¹⁵⁷

Concerns over the relationship between women's empowerment and criminal proclivity emerged at about the same time. The First Wave of feminism, leading to the ratification of the 19th Amendment in 1920, also "saw an attempt to link women's rights with women's crime."¹⁵⁸ For example, in 1921, W.I. Thomas wrote that the "emancipation of woman' with its concomitant freedom from chaperonage, [would increase] intimacy between the sexes in adolescence, and a more tolerant view towards all things unclean."¹⁵⁹

Historian Rachel Devlin has studied the treatment of female delinquency in the United States post-war era. Between 1946 and 1965, the American public saw a veritable siege of media stories about girls becoming increasingly "tough," "hardened," and "vicious."¹⁶⁰ In 1954, *Newsweek* reported that "police noted with alarm that girls were imitating their boyfriends, organizing gangs [and] there were reports of a girl gang which overpowered other girls and cut off their hair." That same year, *Time Magazine* reported chaos and mutiny at a girls school "where the situation is described by teachers and students as a 'powder keg' with girls arming themselves with knives."¹⁶¹ In fact, this view was so prevalent that in the early part of the century, a juvenile court was specifically created for girls

156. Heidsensohn, *Women & Crime* at 86 (cited in note 1).

157. *Id.* at 86.

158. Chesney-Lind, *The Female Offender* at 113 (cited in note 27).

159. *Id.*, citing Carol Smart, *Women, Crime and Criminology: A Feminist Critique* 70–71 (Routledge 1976).

160. Devlin, 9 *Yale J L & Human* at 160 (cited in note 22).

161. *Id.*

between the ages of sixteen and twenty-one in New York City, formally titled the "Wayward Minor Court," and informally named "Girls Term."¹⁶² Moving to the 1970's, as previously discussed, this era was similarly fixated on women's increasing criminality, with front-page articles in the *New York Times* and the *Wall Street Journal*.¹⁶³ It was during this era that Freda Adler developed her controversial theory of women's violence, thereby spawning the current debate in feminist criticism about women's criminality.

B. WHY THIS FASCINATION WITH WOMEN'S CRIME?

There has been a fascination with women's criminal proclivities for, arguably, as long as there has been feminism. There is a resilient preoccupation with women's capacity for violence because there is an interest in exploring how women exercise and articulate power.¹⁶⁴ To understand this seeming contradiction, we must first examine the social formulation of power. Common understandings of power oftentimes make power look a lot like violence. Margaret Atwood states: "I have to recant, give up the old belief that I am powerless and because of it nothing I can do will ever hurt anyone."¹⁶⁵ There exists a popular misconception that the realization of power necessarily entails the ability to injure. Inherent in power is the threat of violence, and it is precisely this threat that lends power its coercive ability. Power means having the capacity to effectuate desires, to demand respect, to control context and circumstances, to persuade others, to dominate others, to enforce one's will. Power is self-determination. To be powerful then, under this formulation, is to act in spite of external dictates, in spite of what other individuals or society may want or believe. Many individuals commonly viewed as traditionally powerful people fit this conception: world leaders, police officers, judges, CEOs. The threat of violence underlies and constitutes their claim to power. In this way, a person's possession of power is positively correlated to their potential for coercion, a threat of violence.

Returning then to my original question: Why do feminists care so much about whether women are becoming increasingly violent? I submit that power is

162. *Id.* at 164. The court operated under two amendments to the Wayward Minor Act of 1925. The Wayward Minor Statute addressed any person between the ages of sixteen and twenty-one who was addicted to drugs, associated with "dissolute persons," was a prostitute, or was "willfully disobedient to the reasonable and lawful commands of parent" as legally "wayward." Girl's Term was an experimental tribunal for teenage girls. It was designed to be a socio-legal tribunal using the most up-to-date psychiatric methods to diagnosis and rehabilitate those described in 1955 as "the sexually promiscuous girls, the runaway, the undisciplined, defiant youngster, the neglected girl." Girls were brought in by their parents in 98% of the cases.

163. Chesney-Lind, *The Female Offender* at 34–35 (cited in note 27).

164. As opposed to theoretical constructs of power such as those of Nietzsche and Foucault.

165. Pearson, *When She Was Bad* at the second-to-last page of unpaginated front matter (cited in note 6).

commonly understood as the ability to dominate and control others. Because power and violence are so intimately related and commonly confused, a statistical increase in women committing violence may be misconstrued as indicating that women are becoming increasingly powerful. Much feminist theory espouses this non-reflexive view of power that mistakes violence for an assertion of self-will. Much feminist criminal theory wrongly assumes that if women are able to enact violence, if they have no qualms about killing a person in cold blood, then this means that women are increasingly able, and viewed as able, to animate their desires, ambitions, carnal rage or sadistic pleasures. This shifting conception thereby grants women entry and acceptance into traditional male power roles. Law Professor Cheryl Hanna treats women's violence as a form of "girl power."¹⁶⁶ Criminologist Patricia Pearson argues that "we cannot insist on the strength and competence of women in all the traditional masculine arenas yet continue to exonerate ourselves from the consequences of power by arguing that, when the course of it runs out more darkly, we are actually powerless." According to Pearson, violence is darkly exercised power, or merely power in excess.

Given such analytical sloppiness, when the Department of Justice declared that women were becoming increasingly violent, many feminists were quick to seize this development, and as previously mentioned, numerous flawed theories proliferated to explain this perceived "phenomenon." This phenomenization occurred despite the fact that the statistics were probably inaccurate, and despite the fact that women's criminal conduct had been previously underreported, adjusted, misnamed, and disregarded, and despite the fact that there have historically been other periods of time where women's criminality was perceived to have surged. Women's underrepresentation in violent criminal offending has thus far remained an impenetrable rejoinder to feminists' claim of women's sameness in aggressive, competitiveness, and bawdy behaviors. Thus, shifting empirical evidence regarding this aspect was a welcomed development because in a perverse way, feminism, confusing violence as indices of power, had been looking for the moment at which women begin dominating and controlling others.

Feminist theorist bell hooks argues that feminism's failure to critique this conception of power in modern political discourse dramatically limited feminism's radical capacities.¹⁶⁷ Instead of challenging "power's" totalitarian potential, feminism concerned itself only with women's fear of power, women's lack of power, and means of achieving power.¹⁶⁸ By seeking only this sort of power

166. Ganging Up at 138 (cited in note 5).

167. bell hooks, *Feminist Theory From Margin to Center* 84–86 (South End, 2d ed 2000).

168. In this manner, women were conceived as disempowered relative to men because they were unable to control and dominate this singular group. However, this ignored how women exercised considerable power over other women and children, thereby masking the violence committed by women against these groups.

as an aim, by demanding admittance to men's monopoly on coercion, women's emancipation merely achieved the ability to oppress others rather than subverting the very system ushering in these hierarchal domineering tendencies.¹⁶⁹

Moreover, this myopic formulation of power is misguided because it ignores how violence is often the last resort of desperate people, and how those in power rarely rely on force or coercion to actualize their desires. Aggression is not an autonomous response or simply a fully vocalized desire, instead, it is often a reaction commanded by oppressive social and economic realities. Despite this, many criminologists continue to look at emancipation-like attributes, such as increases in educational levels, labor force participation, and income ratios, in analyzing changes in female crime patterns.¹⁷⁰

The belief that violence is actually an act of power has a real world impact on how women's crimes are treated by the criminal justice agencies. This is most specifically found in findings of criminal culpability and punishment. Feminists often perceive female offenders receiving more lenient sentences for committing a crime as evidence of women's lack of power, respect and autonomy. "[E]arly feminists at the Seneca Falls convention argued in their Declaration of Sentiments, [that] men ought not to withhold from women 'the right to be held accountable for crime[.]'"¹⁷¹

Indeed, female offenders have historically received more favorable sentencing dispositions than similarly situated male offenders.¹⁷² The Bureau of Justice Statistics reported in 1996 that "the average sentence and time served for women were shorter than for males with equivalent offenses."¹⁷³ The rationale for this disparity may be a chivalrous paternalism based on gendered stereotypes of women as (1) weaker and more passive than men, and therefore not proper subjects for imprisonment; and (2) more submissive and dependent than men, and therefore less responsible for their crimes.¹⁷⁴ Research into this discrepancy is revealing. One judge stated: "I don't think there's any rational or objective thought about it, but there's a feeling that incarceration for a woman is far more degrading than for a man[.]"¹⁷⁵ Another judge in Washington, D.C., stated: "I am more lenient toward women, and I've just not been able to grasp why that is, except I love my mother very much."¹⁷⁶

169. Id at 89, stating that "Feminist activists now know that women are likely to exercise power in the same manner as men when they assume the same positions in social and political arenas."

170. See generally Simon and Landis, *The Crimes Women Commit* at xiv (cited in note 30).

171. Ganging Up at 102 (cited in note 5), quoting Naomi Wolf, *Fire with Fire: The New Female Power and How It Will Change the 21st Century* 201 (Random House 1993).

172. Nagel & Johnson, 85 J Crim L & Criminology at 185 (cited in note 62).

173. DOJ report at 1 (cited in note 10).

174. Nagel & Johnson, 85 J Crim L & Criminology at 188 (cited in note 62).

175. Id.

176. Simon & Landis, *The Crimes Women Commit* at 62 (cited in note 30), quoting Angela Musolino, *Judge's Attitudes Towards Female Offenders* [sic] (unpublished manuscript 1988). The Supreme Court of Pennsylvania's 1967 decision in *Commonwealth v Daniels*, 210 Pa Super 156, 232 A2d 247 (1967), illustrate the

Naomi Wolf argues: "Accountability for crime sounds, from a victim feminist point of view, like an odd 'right' to demand. But the moral adulthood of power feminism knows that real justice is not a sentimental pardon, but a contract or covenant, and that the sword of justice has two sides."¹⁷⁷ This argument illustrates the extent to which the sloppy theoretical confusion of power and violence has a dramatic, real-world impact on social planning and penological policy. According to Wolf's argument, leniency in sentencing denies women the instrumentality and agency of their criminal conduct, and implies "a moral inferiority that undermines claims to full citizenship and equal personhood."¹⁷⁸

These arguments, however, espouse a faulty assumption that women's crime is a demonstration of their increasing power, and wrongly assumes that the failure to punish equally is a denial, infantilization, or condescension of women's assertive conduct and abilities. Again, the ability to be a functioning citizen or a powerful individual does not depend on whether one is able to dominate and control others. Violent conduct is not a form of self-realization. Where a woman violently dominates another person, it does not mean that she had power and it was abused. It may also mean that she lacked choices and opportunities, and violence was an act of desperation.

CONCLUSION

The Amazons were a legendary matriarchal society. The ancient Greeks considered the Amazons their most fearsome opponents because they were ferocious and brave, and often defeated the greatest of Greek heroes. Their primary weapon was archery, and every woman would cut off their right breast to better facilitate holding the bow. This is their namesake, "a" meaning "without" and "mazon" meaning "breast."

The Amazons are one of the many cultural myths that we tell about women's power and violence. This myth provides a striking metaphor for how society understands the ways that women vocalize their power, abilities, desires and destinies within a patriarchal constellation. For Amazons to possess such threatening coercive power, they existed as deformed and degendered, as a neu-

policies underlying differential sentencing based on gender. In *Daniels*, the court upheld a Pennsylvania statute permitting indeterminate sentences for women while requiring that male defendants have their minimum sentence determined by a judge at an open hearing, saying:

This court is of the opinion that the legislature reasonably could have concluded that indeterminate sentences should be imposed on women as a class, allowing the time of incarceration to be matched to the necessary treatment in order to provide more effective rehabilitation. Such a conclusion could be based on the physiological and psychological make-up of women, . . . their role in society, their unique vocational skills and their reaction as a class to imprisonment

Daniels, 210 Pa Super at 164, 232 A2d at 251-52.

177. *Ganging Up* at 133 (cited in note 5), quoting Wolf, *Fire with Fire* at 201 (cited in note 171).

178. Nagel & Johnson, 85 J Crim L & Criminology at 196 (cited in note 62).

tered mother.

In many ways, modern myths deifying violent women de-breast the female offender. Thus far, to accommodate women's emerging social and political equality, various discourses cast women as lacking difference in order to enact the same power. Discourses surrounding women's violence were no different, and in fact, cultural theorists, media agencies, and feminists were preoccupied with what female offending statistics revealed about women's social realities. Numerous debates emerged about how women's violence resembled that of their male counterparts in motive and means. However, there was little consideration about *why* these stories proliferated, or *why* women's violence has a potential for such meaning or revelation. Feminism's lurid fascination with the statistical increases in women's violence, as exemplified by the tremendous response to the December 1999 FBI report, arises from a misconstruction of violence as empowerment. Because power is misconceived of in domineering and coercive ways, feminists were looking for power in all the wrong places. At the same time, the lexicology of crime was miscast as a form of socially permissible conduct merely gone astray or gone too far.

Feminism must challenge this entrenched semiotic and reconceptualize power that is life-affirming and creative. It should "equate power with the ability to act, with strength and ability, or with action that brings a sense of accomplishment[.]"¹⁷⁹ By extricating power from its domineering attributes, we can reconcile two seeming contradictions: while women may be less violent or differently violent than men, this has no correlation with their ability to be soldiers, firemen, police officers, lawyers, world leaders, or CEOs. Criminal violence statistics reveal nothing about women's abilities and desires, and thus we should not be concerned, much less preoccupied, with stories or statistics of female violence. Only by developing this shadowed and nuanced theory of violence, a theory casting power as self-assertive and socially affirming, and violence as its counterpoint, can Mars and Venus, Amazons and angels, coexist in one coherent and socially resilient story.

179. hooks, *Feminist Theory* at 90 (cited in note 167).