



Gender Perspective of Victimization, Crime and Penal Policy **14**

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Abstract

This chapter examines three criminological perspectives through a gender lens. The first part is dedicated to crime and gender. This chapter presents official data of reported and convicted persons in European countries, discussing crime trends and the different involvement of sexes in certain criminal offences. Further, this chapter points to possible differences in the ethology of crime from a gender perspective at three levels: individual; family, and social. The second section deals with gender and criminal victimization, with special attention dedicated to issues of domestic violence and sexual crimes. The third section of this chapter analyses the penal policy of the courts. Data is presented on sentencing practices in European countries, with an emphasis on certain criminal offences. Besides data on imprisonment, attention is paid to other penal sanctions. This section of the text further explains possible factors related to the different sentencing of women and men. They are divided into two categories: the first is those mainly related to socio-economic characteristics and crime committed; the second is those that reflect courts as gender institutions. Finally, this chapter gives explanations of different treatments of trans offenders in the criminal justice system.

14.1 Introduction

Women commit significantly fewer crimes compared to men. This applies to practically all crimes, while differences can be observed in terms of higher, or lower, frequency in participation of women in the commission of certain criminal offences. Additionally, the number of female crimes is relatively small, and therefore, a slight increase in absolute numbers may lead to the conclusion of an inexplicably high increase. According to Heidensohn, between 10% and 20% of all individuals dealt with criminal proceedings in several European countries were women.¹ At the same time, historical studies show that this share, with occasional deviations, does not significantly differ from today.² Although crime rates rose during the twentieth century, women's crime remained stable or even declined slightly.³ However, self-reported studies on delinquency have shown that more girls than boys are unwilling to admit committing an offence. This led to a conclusion that the gender gap, especially with respect to youth crime, is narrower.

¹Heidensohn (1991), p. 57.

²Burman (2004), p. 43.

³Heidensohn (1991), p. 57.

Furthermore, the increase of arrested, convicted, and imprisoned females, especially for assault and drug-related crimes, suggested that they are becoming more violent.⁴ As for the characteristics of women's crime, unlike men, females commit less serious criminal offences, such as theft, handling stolen goods, drug offences, prostitution, fraud, forgery, and minor motoring offences.⁵ In addition, women who commit crimes, in most cases, do so for the first time. Only a small number of women could fall into the category of professional perpetrators.⁶

The most common victims of violent crimes are men, as men are the most common perpetrators of violent crimes. However, this varies across types of violent crimes. Male victims of homicide are more common than female victims. The relationship between perpetrators and victims differs; while an acquaintance or stranger more often kills men, women are more often killed by a current or former intimate partner. "Women are much more likely than men to be targets of certain kinds of victimization, such as rape and domestic violence".⁷ Despite these differences, explanations of victimization cannot be based only on gender perspective without considering other victimological factors that influence the probability of victimization, including class, and race. Furthermore, considering different rates of victimization across countries, wider social, economic, and political circumstances as well as social norms should also be taken into consideration.

Many researchers pay attention to the penal policy of courts from a gender perspective. Although some scholars assert that women have been treated more leniently than men, others point out that women commit less serious crimes, especially less violent crimes. Together with the notion that they are less often recidivist, helps to explain this possible difference. Although the percentage of women in prisons is generally stable, the past few decades have been characterized by a greater increase in female's share in penal institutions in some countries. There are different explanations for this increase. While some assert that women have become more violent and have become more involved in crime generally, other points to changes in reactions of formal social control. Regarding gender differences in sentencing, the distinction between legal and extra-legal factors can be observed, which is discussed in detail in the final section of this chapter.

All of these issues are of great importance for policymakers. Analysis of criminal offending, as well as victimization, shows that in many cases these experiences represent an expression of gender that must be understood in intersection with class and race. The criminological aspect is valuable because it can reveal: the real extent of crime and victimization; the role gender plays; the forms of victimization that are not regulated by criminal law, and the impact and consequences on victims. Policymakers should use this knowledge with respect to crime prevention, the

⁴Cauffman (2008), p. 122.

⁵Burman (2004), p. 42.

⁶Heidensohn (1985), p. 61.

⁷Britton (2011), p. 82.

creation of gender-sensitive criminal law legislation and the application of legal norms in practice.

14.2 Gender and Crime

14.2.1 Crime Trends in Europe from Gender Perspective

There are nine possible data sources regarding gender, crime, and criminal justice in Europe,⁸ but none of these offer complete information. Despite some gaps, the European Sourcebook on Crime and Justice Statistics (hereinafter European Sourcebook)⁹ could be considered the most reliable source according to some views.¹⁰ Therefore, the section briefly presents data from it.

As for the crimes committed by women in European countries, it is noticeable that there are large differences.

According to the latest available data from the European Sourcebook for 2015 (police statistics), the percentage of women in relation to total offenders per 100,000 population varies and ranges from at least 4.5% (Georgia) to 26.2% (Greece). Among the countries with higher percentages of women are Germany, Luxembourg, Poland, Austria. In contrast a share of less than 8% was recorded in Albania, Croatia, Montenegro, Azerbaijan, and Moldova (Table 14.1). For the period 2006–2015, data is available for 15 European countries, of which eight show a percentage increase in women's share. At the same time, the increase in the total number of perpetrators per 100,000 population increased in only two of these eight countries. Other countries showed a decline in the rate of perpetrators, either with or without significant variations.¹¹

⁸The United Nations Survey on Crime Trends and the Operation of Criminal Justice Systems, The World Prison Brief, the European Sourcebook of Crime and Criminal Justice Statistics, the Eurostat Data Collection, the International Crime Victimization Survey, the European Commission for the Efficiency of Justice, *Statistiques Pénales Annueles due Conseil de l'Europe (SPACE)*, the International Self-Delinquency Study and the International Violence against Women Survey. According to: Gelsthorpe and Larrauri (2014), pp. 391–392.

⁹This source is regularly developed by experts in the framework of the Council of Europe, including not just statistical but also information on rules and definitions behind the data. The last edition is the sixth, updated to April 9th 2021.

¹⁰Gelsthorpe and Larrauri (2014), p. 374.

¹¹Aebi et al. (2021). Retrieved from: <https://wp.unil.ch/europeansourcebook/printed-editions-2/>.

Table 14.1 Percentage of women from European countries among offenders in 2015—criminal offences: total

State	Total offenders per 100,000 pop.	of which % women	State	Total offenders per 100,000 pop.	of which % women
Albania	1178.6	7.9	Italy	1586.3	18.5
Armenia	364.4	12.2	Latvia	1169.9	12.5
Austria	2918.8	20.8	Lithuania	919.5	10.5
Azerbaijan	170.1	6.9	Luxembourg	5051.2	23.7
Bulgaria	566.8	13.4	Moldova	482.7	7.7
Croatia	1425.7	7.9	Montenegro	579.7	7.1
Cyprus	698.3	8.7	Netherlands	1784.3	16.3
Czech Republic	966.1	15.6	Poland	840.4	11.3
Finland	4788.1	18.6	Portugal	1803.1	20.2
France	1748.4	17.9	Serbia	694.5	10.9
Georgia	567.8	4.5	Slovenia	2191.9	18.6
Germany	2917.6	24.8	Spain	684.9	13.9
Greece	1022.5	26.2	Sweden	1796.5	20.9
Hungary	1004.4	16.3	Switzerland	1670.5	20.2
Iceland	1176.8	23.0	Ukraine	313.1	11.7
Mean	1335	15.0	Minimum	0	4.5
Median	1013	14.8	Maximum	5051	26

Source: European Sourcebook of Crime and Criminal Justice Statistics 2021, sixth edition

Example

In the period 2006–2015, an obvious decrease in the homicide rate of reported female offenders has been recorded. Whereas in 2006, the mean value for the percentage of women reported for homicide was 9%, and 13.1% in 2010, in 2015 this share was less than 1% in all countries that submitted data. On the other hand, an increased percentage of women's share for bodily injury can be noticed (data was observed for minor and aggravated forms of bodily injury since this data is the most complete). Of the 18 countries that submitted data, for at least 2 years in the observed period from 2006–2015, an increase was recorded in almost 14 countries (close to 80%).¹² ◀

According to the latest available data for 2015 for conviction statistics (Table 14.2), the mean value of the share of women was 13.8%. The lowest percentage share of convicted women was 5.4% (Turkey), whilst the highest value in the same year was recorded in England and Wales (29.5%). A high percentage of convicted women (more than 20%) was also registered in Luxembourg, Cyprus and Finland.¹³

¹² *Ibid.*

¹³ *Ibid.*

Table 14.2 Percentage of women from European countries among convicted persons in 2015—criminal offences: total

State	Total offenders per 100,000 pop.	of which % women	State	Total offenders per 100,000 pop.	of which % women
Albania	559	5.5	Latvia	481	11.8
Armenia	94	7.7	Lithuania	636	9.6
Austria	374	14.2	Luxembourg	1498	20.8
Belgium	1614	18.3	Netherlands	546	12.6
Bulgaria	386	8.4	Poland	684	10.3
Croatia	308	11.4	Portugal	597	12.2
Cyprus	6387	20.0	Serbia	494	9.2
Czech Republic	622	15.1	Spain	673	13.6
Finland	3321	20.8	Sweden	1095	17.3
France	864	10.1	Switzerland	1505	16.8
Georgia	406	6.3	Turkey	1971	5.4
Germany	911	19.8	Ukraine	222	11.6
Hungary	728	11.8	UK: England and Wales	2158	29.5
Italy	363	16.6	UK: Northern Ireland	1317	16.8
Latvia	481	11.8	UK: Scotland	1860	16.9
Mean	1014	13.8	Minimum	94	5.4
Median	622	12.6	Maximum	6387	29.5

Source: European Sourcebook of Crime and Criminal Justice Statistics 2021, sixth edition

Example

The mean value of women convicted of homicide ranged from 7% in 2006 to 9.5% in 2015. Austria and Finland are leading countries in terms of women being convicted for homicide in 2015, accounting for 16%. The lowest percentage of convicted women for this crime was in Turkey (2.6%) and Albania (2.9%). Another example is the crime of fraud. The smallest percentage in 2015 was recorded in Georgia (0.4%), while the highest percentage was in Scotland (48.6%). A high percentage was also recorded in the Czech Republic (34.1), Germany (33.9%), Finland (33.8%), England and Wales (32.7%), and Switzerland (31.9%).¹⁴ ◀

The comparison with police records for many countries is not possible due to a lack of data. For the countries that submitted data, it can be concluded that many countries do not follow the trend; changes in conviction records do not follow changes in police statistics. Albania is an example of opposite trends, with an increase in the share of women in police records, while there is a decrease in the

¹⁴ *Ibid.*

judicial statistics. The situation is similar in Sweden, displaying an increase in the number of women in police statistics, whilst a decline in judicial statistics. In Finland, on the other hand, in the period of 2006–2015, there is a decline of women in police records and an increase in judicial records. An example of similar trends can be found in Poland, where there is a continuous increase in the percentage of women in both data sources.¹⁵ Therefore, even without detailed analysis, there are no similarities between European countries. The claims in literature on the increase in the gender gap should be interpreted with caution since they may refer only to countries where these studies were conducted.

A study conducted by Jennifer Schwartz, for example, included data on reported and convicted women in the USA, Canada, United Kingdom, Finland, Norway, Sweden. The study started from the assumption that the real increase in female crime should be reflected across each stage of the criminal justice system.¹⁶ The author analysed the assault to homicide ratio and the case flow from arrest to imprisonment. One of the conclusions of this study is that the United Kingdom represents an outlier in terms of growth in the female percentage of prosecutions. In Sweden, Norway, and Finland, the female share was fairly stable. Thus, the United Kingdom, but not the Scandinavian countries, witnessed a sustained and sizeable increase (10%) in the period 1997–2006. The author concluded this gives support to policy change explanation, rather than an actual change in female criminal behaviour.¹⁷

Judicial statistics data often do not indicate a match between the trend of the percentage of share of women, and the trend of convicted persons in relation to 100,000 of the population. This must be taken into consideration before making any conclusions. It is possible that other external factors could explain both the increase or decrease in crime of females and males.

Example

In Germany during the period from 2011–2015, there was an increase in the share of convicted women, while at the same time, a decrease in the rate of all convicted persons was recorded. A similar situation was found in England and Wales, Poland, Finland, Armenia, Croatia. In comparison the situation is quite the opposite in Albania, with an increase in the rate of convicts, accompanied by a lower percentage of convicted women.¹⁸ ◀

In literature, the increase in women's crime is usually explained in two ways. According to the first view, the liberalization of women in terms of their status and changing gender roles, leads to an increase in committed criminal acts. These changes create more opportunities, enabling women to become perpetrators more often.¹⁹ In addition, it is argued that the „changing gender-role expectations have

¹⁵ *Ibid.*

¹⁶ Schwartz (2013), pp. 809–810.

¹⁷ *Ibid.*

¹⁸ Aebi et al. (2021).

¹⁹ Chu et al. (2021), p. 2.

allowed for greater freedom and assertiveness, that these changes have “masculinized” female behaviour and engendered in women an “imitative male machismo competitiveness”.²⁰ While Adler advocated the thesis of masculinization and predicted an increase in violent offences committed by women, Simon highlighted the importance of higher involvement in the labour market to increase the number of opportunities for crimes, primarily property and occupational.²¹ The opposite thesis concerns economic marginalization, claiming changes in women’s lives are reflected in a deteriorated economic status, higher divorce rates, and, consequently, a larger number of single mothers have led to an increase in women’s participation in crime. This could be explained by the fact that women’s personal and economic position is more dependent on the private sphere than men. Family relations, especially when it comes to traditional gender roles, act preventively in terms of women’s participation in crimes.²² The weakening of traditional family ties and social control, a characteristic of social development, together with possible stress and frustration of women due to a marginalized economic position, can lead to greater involvement in crime.²³ Certainly, women who belong to marginalized groups, such as minorities, low income women, and those who live in disorganized urban areas, are the most affected.²⁴ The thesis of economic marginalization starts from the fact that most convicted women are far from being liberated, and instead, they disproportionately come from the “underclass”.²⁵ As an example, for Russia, it is stated that “the increased number of Russian women involved in criminal cases is linked to increasingly worse socio-economic conditions, an increase in psychological disorders and problems of dependency on psychoactive substances, and also increasingly stronger discrimination”.²⁶

The results of the conducted studies indicate different conclusions. It is pointed out that the improvement of the status of women acts in the direction of reducing violent crimes, primarily homicide, while at the same time leading to an increase in other forms of crime such as property crimes, drug offenses, fraud. A study conducted by Simon for the period of 1963–1970, included analysis of the crime rate of women in 25 countries, concluding that the greatest increase was recorded in countries with advanced industrial and technological development. In a study covering 30 years (1962–1995), the results still indicated a similar conclusion.²⁷ The results of this cross-national study indicated that “in those nations where women have more years of schooling, higher representation in the labour force and lower fertility rates they are more likely to be involved in the property offences of as theft and especially fraud”.²⁸ The study, which analysed data on women’s crime for 2006

²⁰Steffensmeier et al. (2006), p. 74.

²¹According to: Britton (2000), p. 61.

²²Steffensmeier et al. (2006), p. 74.

²³Agha (2009), p. 578.

²⁴Steffensmeier et al. (2006), p. 74.

²⁵Wang (2021), p. 3.

²⁶Lysova (2014), p. 5.

²⁷Chernoff and Simon (2000), p. 9.

²⁸Chernoff and Simon (2000), pp. 16–17.

for 27 European countries, reiterates the importance of the thesis on liberalization and its impact on the growth of property crimes such as larceny, fraud, embezzlement and theft.²⁹ Contrarily, Reckdenwald and Parker point to the importance of economic marginalization on female crime and confirm that this factor is relevant in explaining property crimes (specifically robbery), drug-related crimes, homicide in partner relations, and domestic violence. Still, the authors concluded that economic marginalization has a different impact on robbery and drug-related crimes than domestic violence. Pressure and frustration due to limited resources, social support, and power have a decisive role here.³⁰ Hunnicut and Broidy indicate that liberation and economic marginalization interact. They found statistical support for the influence of economic marginality on female conviction rates. Still, the positive relationship was confirmed between two emancipation variables (women in industry and age-dependency ratio) and female conviction rates.³¹

However, it can be argued the increase in female crime is not the result of changes in their behaviour, but a change in penal policy.³² Steffensmeier et al. state that “policy change actually consists of the following three elements: a) elasticity of violence definitions, b) the broadness of offence categories, c) the variability in the gender/violence relationship depending on behavioural or item content.”³³ The first element means that citizens, police, and other officials have considerable discretion in defining violence. The second element implies that definitions of crimes, such as simple and aggravated assault, are broad and encompass various behaviours. Finally, the third element implies that the gender gap is smaller in the case of less severe acts of violence, which have a lower degree of guilt, take place in a private setting and against the inmate.³⁴

It should be noted that media portrayal has considerable impact with regards to these changing patterns in the criminal justice system regarding women and, especially, juvenile girls.³⁵ As Chesney-Lind says: “When male juvenile violence increases, the media response is “So, what else is new?”, whereas violence of juvenile girls represents a threat for a social order”.³⁶ Although official statistics and victimization reports do not support assertions of the increase of female crime, juvenile girls are in many media covers, books, and commentaries portrayed as “mean”, “sneaky”, “lying” and “cruel”.³⁷

²⁹ Chu et al. (2021), p. 18.

³⁰ Reckdenwald and Parker (2008), p. 220.

³¹ Hunnicut and Broidy (2004), pp. 150–151.

³² Steffensmeier et al. (2006), p. 77.

³³ Steffensmeier et al. (2006), p. 77.

³⁴ Steffensmeier et al. (2006), p. 77.

³⁵ Heidensohn and Silvestri (2012), p. 340.

³⁶ Chesney-Lind and Shelden (2014), p. 16.

³⁷ Males (2010), p. 14.

14.2.2 Factors of Criminal Offending from Gender Perspective

Male dominance in crime influenced theoretical explanations in criminology, which in principle did not take into account the gender-difference. The low participation of females in crime is one of the reasons for the neglect of women criminals in criminology. However, as Smart notes, female criminality has not been perceived as great a threat to society as male's criminality, not only because of the rarity of women's criminal offences, but because of the nature of these offences. Unlike men, women mostly commit less serious crimes.³⁸ Daly and Chesney-Lind assert that "criminology is androcentric, shaped by male experiences and understanding of the social world. These realities shape theories of crime which neglect female's experiences as perpetrators or victims".³⁹ Therefore, the question arises whether and how pathways to crime for men and women differ?

According to the Pathway theory, men and women enter the criminal justice system differently. Some of the factors of more importance for female criminality are a history of personal abuse, mental illness, substance abuse, economic and social marginality, homelessness, and relationships.⁴⁰

Qualitative studies in feminist criminology pointed to different pathways of female crime. One of the most cited is Daly's classification that includes five pathways: (1) *harmed and harming women* are those who were abused or neglected as children. These women are identified as a "problem child", who "acts out" and becomes violent when drinking alcohol. Drug problems and psychological problems are also common in this group; (2) *battered women* are those in a relationship with violent men or they have recently ended such a relationship; (3) *street women* are pushed out, or they run away from abusive households to the streets. They usually commit drug-related offences, theft, and prostitution; (4) *drug-connected women* are addicted to drugs via a relationship with a boyfriend or they sell drugs; (5) *other women* commit crimes due to immediate economic circumstances or greed. Their crimes are not related to drug addiction nor street life.⁴¹

According to Daly, "pathways of harming and harmed men, street men, drug-connected men were also identified, but 35% males in the sample took male-only pathway". Men were classified into the following categories: (1) 'explosively violent men', used violence to control/dominate others; (2) 'bad luck men', either in the wrong place at the wrong time, used by other men, or reacting to harassing men; and (3) 'masculine gaming men', engaged in crime as a form of recreation/means to demonstrate masculinity. This classification did not fit male's pathways to crime.⁴²

Russell et al., in their research, also made comparisons between female's and male's pathways to prison, identifying the following common trajectories: (1) peer

³⁸Smart (1995), p. 16.

³⁹According to: Simpson (1989), p. 605.

⁴⁰Gehring (2018), p. 116.

⁴¹Daly (1992), p. 28.

⁴²Cited from: Russell et al. (2020), p. 539.

group association/deviant lifestyle; (2) harmed and harming, and (3) economically motivated. In contrast, two pathways were marked as women only: (1) adulthood victimisation and dysfunctional intimate relationships, and (2) naivety and deception. Further, an economically motivated pathway consisted of two types: (1) economic, familial provisioning (in most cases, women commit property offences, half of them lived in poverty. Usually, they had dependent children and other family members financially dependent on them), and (2) greed (exclusively to males).⁴³

With respect to gender perspective in the following text this chapter presents some of these crime factors on three different levels: individual, family, and social/societal.

14.2.2.1 Individual-Level

One of the first considerations of the factors to explain women's crime is stated by Lombroso, who, *inter alia*, asserts that women's crime is a consequence of their biological inferiority. He claimed that female offenders are doubly deviant. Firstly, because they represent an anomaly concerning male criminals, and secondly, women act against their biological nature by committing criminal acts.⁴⁴ Although such ideas are outdated,⁴⁵ the issue of biological factors is still relevant. As men commit violent crimes incomparably more often, there are opinions that biological predispositions can explain this.⁴⁶ However, detailed analysis of research conducted in the domain of genetics, structural brain imaging, neuropsychology, psychophysiology, and hormones related to antisocial behaviour indicated that many of these risk factors are associated not only with the antisocial and criminal behaviour of men, but also women.⁴⁷ Dunedin Multidisciplinary Health and Development Study testing neurological abnormalities and heart rate was unable to establish a significant difference between genders.⁴⁸ As for possible differences, some authors point to brain asymmetry. Greater frontal activation is found on the right, than on the left, in the brains of antisocial females. This was not found in antisocial boys.⁴⁹ Further, female crime could be affected by menstruation and premenstrual syndrome. Dalton is one of the proponents of this connection. Using a sample of female prisoners, she examined how the menstrual cycle phases are related to committing crimes. She concluded that almost half of the respondents in the sample committed a crime

⁴³ Ibid, pp. 559–559.

⁴⁴ Gelsthorpe (2004), p. 16.

⁴⁵ These opinions have been criticized because they have not taken into account factors such as class, race, economic status which are of great importance in crime etiology. See: Smart (1995), p. 18. On the other hand, Naffin states that Lombrosian thoughts are abandoned in respect to explanations of male crime, but that “our concept of female offender still rests firmly in biological mould”—Naffin (2016), p. 70.

⁴⁶ Gelsthorpe (2004), p. 16.

⁴⁷ Portnoy et al. (2014), p. 275.

⁴⁸ Moffit et al. (2004), p. 105.

⁴⁹ Goldweber et al. (2009), p. 219.

during or immediately before menstruation.⁵⁰ In respect to males, it has been tested whether testosterone is related to aggressiveness in boys, however conclusions point to the importance of mediating social factors.⁵¹

In addition to the aforementioned biological explanations, other potential explanations for female crime can be found in psychological theories. Freud, for example, believed that women were inferior to men. Thomas develops the myth of the manipulative women, while Pollak states that women are inherently inconsistent, cunning, vindictive, more capable of manipulating, and are without passion.⁵² As for some peculiarities of personality characteristics, Dunedin's study shows that there are no significant differences between male and female offenders in relation to intelligence, reading achievement, difficult temperament, hyperactivity or internalizing problems.⁵³ There are opinions that the crime rate of women is lower because they adopt social cognitive abilities earlier in life and have better pro-social skills.⁵⁴ Further, Gilligan's theory of moral development could be used as an explanation for the lower involvement of women in crime. According to this theory, men often make moral decisions based on an ethic of justice (sets of rules and principles), whereas women's decisions are based on "ethic of care".⁵⁵ Women will consider how the commission of crime would affect their family members dependent upon them. If their needs (for example, for food) outweigh the "immorality of crime", then it is possible for a woman to commit the crime.⁵⁶

When it comes to the relation between mental illness and crime, scientific conclusions are inconsistent. A study conducted in Finland on homicide offenders found no gender differences in psychiatric disorders.⁵⁷ A meta-analysis that included 62 conducted studies indicated that mental illness was not more common among female prisoners than men. The study shows that personality disorders are more prevalent in the male population in prisons, however women with this type of disorder are not negligible.⁵⁸ For perpetrators of domestic violence, and also for victims, it is stated that there are no significant differences from the gender aspect when it comes to antisocial personality traits and borderline personality traits.⁵⁹ However, there are also conclusions that a larger proportion of female offenders encounter mental health problems, as a consequence of higher levels of violence.⁶⁰ The higher share of women prisoners with mental health problems than men does not

⁵⁰Dalton (1961), pp. 1753–1754.

⁵¹Sylvers et al. (2009), p. 154.

⁵²Klein (2009), pp. 376–379, 383–384.

⁵³Moffit et al. (2004), pp. 98–99.

⁵⁴Gelsthorpe (2004), pp. 19–20.

⁵⁵Simpson (1989), p. 620.

⁵⁶*Ibid.*

⁵⁷Putkonen et al. (2011), p. 57.

⁵⁸Jones (2008), pp. 173–174, according to: Lukić (2019a), p. 338.

⁵⁹Hilinski-Rosick (2016), p. 52.

⁶⁰According to Gartner and Jung (2014), p. 430.

necessarily mean that it is a risk factor, but rather the higher proportions reflect the prevalence of mental illness in the general population. Alternatively, this could simply be a reaction to incarceration.⁶¹

Addiction to alcohol and narcotics should also be mentioned at the individual level, bearing in mind this is a factor associated with many crimes. For example, no significant gender difference was found in respect to homicide offenders.⁶²

14.2.2.2 Family Level

The family environment is primarily important for the understanding of juvenile delinquency. Several factors stand out in this context: inadequate parenting styles; family disorganization; low socio-economic status of the family; domestic violence; alcohol and psychoactive substance abuse of parents, and parental crime. The question is whether these factors act differently, taking into account the gender of juveniles. The educational style differs depending on the gender of the child. Daughters are generally treated more leniently, and unlike sons, they are under greater control and restrictions, so that “bad things” do not happen to them while growing up.⁶³ Heimer and De Coster emphasize that differences between female and male juvenile violence, depends not only upon levels of parental control, but also upon types of control. According to these authors, “girls” learning of violent definitions will be shaped primarily by the indirect control achieved through emotional bonding to families. In contrast, boy’s learning of violent definitions will be shaped primarily by more direct parental control, including supervision and coercive discipline.⁶⁴ In the theory of power control, Hagan pointed out differences in the control over girls in patriarchal, matriarchal, and egalitarian families. It is concluded that with the transition to egalitarian family forms, there will be a decrease in the delinquent behaviour of young men and an increase in female delinquency, caused by the greater level of power that women gain at work and home.⁶⁵

Studies show that witnessing criminal offences, as well as personal experience of victimization, within the family are associated with juvenile delinquency. Unlike men, who suffer such events for a short time before they react, the situation is different for girls. They tend to internalize these problems through withdrawal, depression and suicide. After several negative experiences, they react aggressively.⁶⁶ In order to escape from victimization within the family, many girls run away from home, steal and leave school.⁶⁷ Russel et al. emphasize that abuse and neglect in childhood of females are more related to substance abuse, school failure, and victimization in adulthood in comparison to men. While men with troubled

⁶¹ Hedderman (2004), p. 239.

⁶² Putkonen et al. (2011), p. 97.

⁶³ Siegel and Welsh (2011), p. 155.

⁶⁴ Heimer and De Coster (2011), p. 352.

⁶⁵ Messerschmidt (2009), p. 435.

⁶⁶ Hawkins Anderson (2012), p. 44.

⁶⁷ Gehring (2018), p. 118.

childhood more often harmed others, internalization of trauma was more common for women (via substance abuse).⁶⁸ Previously, family conflicts were thought to have more impact on males than on female juveniles, and only for the status offences was it the opposite.⁶⁹ However, recent research shows that the frequency of domestic abuse was the highest in aggressive girls,⁷⁰ with studies generally illustrating that girls are more often abused within families than boys.⁷¹ Childhood victimization is related to later violent behaviour, nonetheless, results of empirical studies are different.⁷² Asscher et al. find that sexual victimization was a stronger predictor for sex offences of males, any form of violent victimization was a predictor of violent offences for males, whilst only physical abuse was a predictor for female violence.⁷³ Studies further convey childhood exposure to intimate partner violence is of great importance in the later manifestation of violence for both men and women.⁷⁴

Victimization by a partner is one of the factors that could lead a woman to commit a crime, as already mentioned in the pathways of female's crime. This type of domestic violence is known as "violence resistance." Usually, offenders are women who previously suffered "intimate terrorism", a severe, one-sided violence and typically male to female.⁷⁵ Although female partners also victimize men in cases other than self-defense, empirical research emphasizes that domestic violence has more severe consequences (especially physical injuries) for women.⁷⁶ Often, violence by women occurs in the context of ongoing aggression and violence.⁷⁷ Extending beyond men victimized by female partners, the literature should pay more attention to gay and lesbian couples. Estimates of the prevalence of domestic violence among same-sex partners are different; possibly due to the, even higher, reluctance of gay and lesbian victims to report that a partner has victimized them.⁷⁸

Example

According to some estimates, "the majority of women prisoners have been victims of one or more types of violence, both as children and adults, and many were in violent relationships before their arrests".⁷⁹ Contemporaneously, research over the past three decades shows that three-quarters of all-male victimizations in

⁶⁸Russell et al. (2020), p. 559.

⁶⁹Chesney-Lind (1987), p. 219, according to: Lukić (2019b), p. 264.

⁷⁰Chesney-Lind and Shelden (2014), pp. 55–58.

⁷¹Belknap and Holsinger (2006), p. 56.

⁷²Belknap and Holsinger (2006), p. 51; Robertson and Burton (2010), p. 323.

⁷³Asscher et al. (2015), p. 220.

⁷⁴Williams et al. (2014), p. 366.

⁷⁵Williams et al. (2014), p. 367.

⁷⁶Dobash and Dobash (2004), p. 328.

⁷⁷*Ibid.*

⁷⁸Hilinski-Rosick (2016), p. 53.

⁷⁹Marcus-Mendoza (2016), p. 214.

the context of partner homicide were preceded by partner violence against a female perpetrator.⁸⁰ ◀

14.2.2.3 Social and Societal Level

Socialization of both women and men into sex roles takes place not only within the family but also within other social circumstances. These include occupational structures, peer groups, and culture.⁸¹ Some authors characterize social networks as social level, whereas cultural and societal norms and beliefs (such as gendered power relations, gendered behavioural expectations, gendered (in)equality) would be a societal level.⁸² According to Bertrand, “our culture condones and even expects a certain amount of acting out and aggressive behaviour in young boys, but it is less tolerant of the foibles of young girls.”⁸³ Sutherland and Cressey highlighted that the gender gap in crime would be the lowest in countries in which females have the greatest freedom and equality with men, such as Western Europe, Australia, Canada, and the United States, and highest in countries in which females are closely supervised, such as Algeria. This difference between female and male crime varies with the social positions of the sexes in different groups within a nation, age, size of a community and the crime rate in an area.⁸⁴

Consequently, the liberalization of women should have an impact on behaviour change and gender mainstreaming. In white-collar and corporate crime, women are mostly involved in simpler crimes such as fraud or embezzlement. In contrast, crimes such as securities trading or restrictive agreements are mostly committed by men; fewer women are in higher positions in companies and consequently, they have fewer opportunities to commit these crimes. The motives may also differ; while women commit crimes to satisfy some of their own or the family’s needs, men do so because of status.⁸⁵

Example

The results of one conducted research at the European level show that, at least when it comes to the average level of white-collar crime (e.g., occupational fraud), there is no gender difference. Females are twice as likely to commit crimes of asset misappropriation as their male counterparts.⁸⁶ ◀

⁸⁰Doerner and Lab (2012), p. 213.

⁸¹Naffin (2016), p. 81.

⁸²Korkmaz (2021), pp. 159–160.

⁸³Naffin (2016), p. 74.

⁸⁴Sutherland and Cressey (1978), pp. 132–133.

⁸⁵Hilliard and Neidermeyer (2018), p. 815; Holtfreter (2014), p. 497.

⁸⁶Hilliard and Neidermeyer (2018), p. 832.

However, the conducted research does not show that female criminals are emancipated.⁸⁷ On the contrary, most female offenders come from disorganized social backgrounds and have low socio-economic status. Although many women are employed, a large proportion is still economically marginalized, doing occasional or low-paid jobs. Turning to criminal activities may prove to be a logical outcome for some of these women.⁸⁸ Smart points out that “while middle-class women have benefited from changes in labour market, the position of black and working-class women may actually have deteriorated.”⁸⁹ More frequent divorces also contribute to the worsening economic situation of an increasing number of women who are single mothers.⁹⁰

The contribution of the feminist studies is also reflected in the question of what the characteristic of men is, not as members of the working class, subordinate individuals or migrants, rather the male gender itself in causing them to commit crimes. Researchers who studied rape, domestic and relationship violence concluded that men see these crimes as the ultimate masculine accomplishment.⁹¹ However, this position has been criticized by arguing that masculinity depends upon class, race, and age. If there is no possibility to demonstrate masculinity by using legitimate means, it is likely that a crime will be committed.⁹² Proving masculinity is not just about street crimes but also corporate crimes. Just as masculinity can be a reason for men to commit crimes, the question is whether the committing of crimes by women is the manifestation of their femininity? Although some authors explain women’s crime in terms of a means of doing femininity, others point to the necessity to question the explanations in terms of doing masculinity or femininity. Firstly, the tendency to view women’s actions only as an expression of “femininity” and men’s of “masculinity” is a tautology and restricted to gender dualism. Secondly, gender inequalities should be coupled with those of race, class, and age.⁹³ Barak et al. examine several research results and conclude that there is no standardized “class” experience, “race” experience, or “gender” experience, rather there is a repertoire of interacting class, race, and gender identities.⁹⁴ This intersectional approach advocates multiracial (multicultural) feminism as well.⁹⁵ This perspective emphasizes that differences in respect to class, race, sexuality, age, physical ability and nationality are as important as gender. Gender should not have primacy over other forms of inequality that have multiple and cross-cutting effects on the micro and macro level. These claims are based on the critiques of the dominance approach,

⁸⁷ Chesney-Lind and Shelden (2014), pp. 135–138.

⁸⁸ Marsh et al. (2006), pp. 158–159.

⁸⁹ Heidensohn (1985), p. 157.

⁹⁰ Blanchette and Brown (2006), pp. 31–32.

⁹¹ Britton (2000), p. 37.

⁹² Messerschmidt (2011), p. 359.

⁹³ Miller (2014), pp. 26–29.

⁹⁴ Barak et al. (2010), p. 25.

⁹⁵ Burgess-Proctor (2006), p. 35.

according to which all women universally suffer the effects of patriarchy. On the contrary, the existence of diversity among women should be acknowledged.⁹⁶ This perspective offers an explanation for the fact that not all marginalized women opt for criminal offending, while some affluent middle-class women do commit crimes. The decision whether to conform to legal order or not, and to achieve goals or desires, is determined by the way a concrete person navigates through different forms of oppressions.⁹⁷ Class, race and gender have the possibility to enhance a position in a society, or to constrain choices. For example, men have more choices than women, whites have more choices than minorities and the rich have more chances than the poor.⁹⁸

14.3 Criminal Victimization from a Gender Perspective

14.3.1 Domestic Violence

The Istanbul Convention, the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210), was opened for signature on 11 May 2011. Ten years later, it has been signed by 45 countries, of which 33 have ratified the convention. In this treaty, violence against women is.

► **Definition** “Defined as any act that causes ‘physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life’.

Domestic violence is a recognized global public health problem, where one out of three women have been subjected to such violence during their lifetime, and combatting men’s violence towards women is on the agenda for the World Health Organization.⁹⁹

In Europe, one in three women have experienced physical and/or sexual violence since the age of 15, 1 in 20 have been raped, one in two have been sexually harassed, and one in five have been stalked.¹⁰⁰ However, this differs across countries; those with a larger population with low economic status have higher rates of domestic violence. The opposite also holds true; countries with a larger population with high economic status has lower rates of domestic violence. Additionally, the highest rates of domestic violence are found in Sub-Saharan Africa and the lowest rates in East

⁹⁶Burgess-Proctor (2006), p. 34.

⁹⁷Bernard (2013), p. 8.

⁹⁸Lynch (2016), p. 7.

⁹⁹EIGE (2021); WHO (2021).

¹⁰⁰EIGE (2021).

Asia.¹⁰¹ Furthermore, repeated victimization in terms of recidivism is high, ranging from 15% to over 40%.¹⁰²

Most studies in Western societies show a heterogeneous group of abusers, regardless of ethnicity, culture, or gender.¹⁰³ Although the type of violence and behaviours might differ across countries due to national legislation, abusers are more similar than different and can be found in all societies. One typology consists of two subtypes, the general violent and the family only perpetrators, can be used to describe the most common perpetrators of domestic violence.¹⁰⁴ The first subtype is the general violent abuser. This is the man who might have a criminal lifestyle, including being violent towards others. The second subtype is the family-only abuser who is only violent towards the victim and, in some cases, family members. They are otherwise rather well-adjusted in society. The major difference is that the general violent abuser is more difficult to handle; he does not follow regulations set by the state and thereby has a higher risk for recidivism. In contrast, the family only abuser follows the rules to a greater extent, decreasing the risk for relapse. However, both types are at risk for recidivism if no risk management is set in.¹⁰⁵

The cost of gender-based violence has been estimated to be 109 billion Euros per year in the EU. The costs are split into provision and services: health, social welfare, and justice (38.9%); physical and emotional impact (48.2%), and lost economic output (11.6%). Additionally, 1.3% has been spent on specialized services to prevent violence, such as shelters, helplines, support centres and counselling.¹⁰⁶ Although the costs are huge, little money is spent on preventing and supporting victims. Most victims are women; there is an undefined and unwritten law that women should voluntarily help their sisters in need. However, it is unreasonable that states depend on sisterhood to be the foundation of the risk management needed to help and support women victimized by severe violence. Non-governmental organizations (NGOs) are the foundation of the supportive work done to protect women. First, they need to be funded properly, and second, they cannot be the sole and primary services to support victims of domestic violence.¹⁰⁷ It is a state obligation under the Istanbul Convention and CEDAW. This varies across countries, depending on how welfare systems are managed. Even in countries with a well-organized large welfare system like Sweden, NGOs are not well funded by the government; they rely upon voluntary work by women to protect and support victims of domestic violence.

The victim support services provided, build to some extent on the ideal victim of domestic violence. This has resulted in domestic violence being synonymous with

¹⁰¹ WHO (2021).

¹⁰² Belfrage and Strand (2012), Goldstein et al. (2016) and Loinaz (2014).

¹⁰³ Dixon and Browne (2003), Petersson and Strand (2020), Thijssen and de Ruiter (2011) and Tran et al. (2016).

¹⁰⁴ Petersson (2020).

¹⁰⁵ *Ibid.*

¹⁰⁶ EIGE (2021).

¹⁰⁷ See Chap. 13 in this book.

men's violence against women. Nils Christie's theory of the "ideal victims" from the mid-1980s is a theory consisting of six characteristics. To be an ideal victim, the victim should be: (1) weak; (2) involved in a respectful project; (3) be in a legitimate place; while the perpetrators should be (4) "big and evil"; (5) unknown to the victim, and (6) the victim should also be powerful enough to claim victim status. Therefore, according to Christies theory the ideal victim of domestic violence would be a woman (weak), a mother (respectful project), who is non-violent, no history of substance abuse and engaged in a respectable work, or a stay-at-home-mom (be in a legitim place). At the same time, her abuser is a man who commits severe violent crimes (big and evil). She also has to be strong enough to seek and claim help (powerful to claim victim status). The support system is predominantly set up to fit this profile. If the victim is not an "ideal victim", it will be much more difficult to get support. For instance, some shelters are only available for female victims and their young children. A consequence of this is that women who with a teenage son might not be welcome to stay at the shelter.

Moreover, the support services are not equipped to handle either male victims of partner violence or LGBTQIA+ victims of such violence. Not being an "ideal victim" makes it even more difficult to report the crime since they don't feel that society could offer them help or support. They also have more difficulties reporting the violence since they might not be well received, nor taken seriously.¹⁰⁸

Male victims of domestic violence do not receive the same attention as female victims due to a misperception that it is rare. In reality, including less severe violence which does not demand hospital care, it is almost as common as for women. A U.S. study estimated prevalence rates of women being violent towards their male partners to range between 23% and 29%.¹⁰⁹ However, when it comes to the severe violence that needs medical attention, men's violence towards women is by far the most common type of domestic violence.

Domestic violence includes sexual minorities as defined by the Gender Equity Resource Centre (2019) as "members of sexual orientations that are marginalized, such as LGBTQIA+ identities". However, the scarce research on domestic violence in couples consisting of sexual minorities mainly focuses on same-sex couples, where studies show that domestic violence is as common, or even more common, in same-sex relationships. In a Nationwide survey in the U. S, results show that lesbian women are even more victimized than heterosexual women, ranging from 43% to 48%, while 26% of gay men were victimized.¹¹⁰

¹⁰⁸Oskarsson and Strand (2021).

¹⁰⁹Black et al. (2011).

¹¹⁰Kuehnle and Sullivan (2003), Peterman and Dixon (2003), Oskarsson and Strand (2021) and Pattavina et al. (2007).

14.3.2 Sexual Crimes

According to crime statistics in Europe,¹¹¹ the rate of sexual violence per hundred thousand inhabitants varied between 1.98 and 162.03 in 2009, increasing to 3.36 and 274.81 in 2018. Liechtenstein had the median value at 23.61. The countries with the highest sexual violence rates in 2018 were England and Wales, Scotland, Northern Ireland, Sweden, and Iceland, all above 158.13. The lowest rates were seen in Greece, Albania, Montenegro, and Cyprus, below 3.94. In 2018, the median rate for being a victim of rape was 0.75, varying from 0.00 to 15.18 for men. For women, the median was 8.07, varying from 1.91 to 147.63. Furthermore, the median rate for being a victim of sexual assault was 4.79 and varied from 0.19 to 25.89 for men. The median rate for women was 25.65, varying from 1.39 to 201.09.¹¹²

Example: The Nordic Paradox

The highest rates for rape can be found in Norway (15.18 for men and 75.78 for women), and Sweden, (10.25 for men and 147.63 for women). For sexual assault, the highest rate can be found in Sweden, for both men (25.89) and women (201.09). The gender equality index for the EU-28 is 67.9, where the highest value can be found in Sweden 83.8.¹¹³ The Nordic paradox is somewhat contradictory; at Nordic countries, particularly Sweden, have both the highest gender equality index and the highest rates of gender-based violence, according to the crime statistics.¹¹⁴ One explanation for this could be that reaching gender equality means that gender norms are put out of balance, leading to more violence by men. Another explanation could be that it reflects victims being freer to talk about gender-based violence, thereby increasing reporting. However, many of the explanations further confirm the existence of the paradox. More research is needed to find the answers to this knowledge gap.¹¹⁵ ◀

¹¹¹ Official statistics from police data of 41 European countries are part of the official crime statistics Eurostat. Overall, over a 10-year period (2008–2018) crime rates of assaults, car thefts, and robbery are decreasing in society. Furthermore, intentional homicides have decreased with 30% in the EU-27 from 2008 to 2018.

¹¹² Crime Statistics (2021). Eurostat [Database—Crime and criminal justice—Eurostat \(europa.eu\)](https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&plugin=1).

¹¹³ EIGE (2021).

¹¹⁴ Gracia and Merlo (2016).

¹¹⁵ *Ibid.*

14.4 Gender Perspective in Relation to Penal Policy

It is a widespread opinion that women are treated more leniently than men by the criminal justice system. This “chivalry” approach¹¹⁶ is noticeable in respect to the imposition of penal sanctions. It can also be found in criminal law, in police reaction and in the different treatments of men and women in prisons.¹¹⁷ The focus in this chapter is primarily on the penal policy of the courts due to the text limit. Apart from presenting imposed penal sanctions from a European perspective, this part of the chapter analyses whether courts actually have different approaches in imposing penal sanctions on men and women.

14.4.1 Penalties and Sanctions on Women in Europe: Official Data

Relating to the first issue, it is not possible to determine a difference in the imposition of sanctions in Europe between men and women, and to its effective implementation.¹¹⁸ The data available does not allow a comparative analysis, due to the differences between the regulations within the European area and the availability of information. In any event, the main sources of information on these topics are:¹¹⁹ (1) The Council of Europe Annual Penal Statistics, with two reports, SPACE I, on imprisonment,¹²⁰ and SPACE II, on non-custodial sanctions and measures,¹²¹ and (2) The European Sourcebook.¹²²

According to SPACE I and II, the progression of imprisonment and non-custodial sanctions imposed on women in the European context is as follows:

- (a) Concerning imprisonment, SPACE I shows that the percentages have remained stable for the last years, where 95% of the population consists of men and 5% of women. Although there are differences between countries, in 2020, Latvia had the highest rate (8.6%) within the countries with at least one million inhabitants whereas Albania had the lowest (1.8%), the under-representation of women in correctional institutions remains consistent in Europe. This stabilization of the

¹¹⁶This theory, made by Pollak in 1950, establishes that women receive better treatment than men as an expression of the general attitude of protection from men towards women. Goethals et al. developed this idea in the 90s, proposing two specific assumptions: (1) Women receive a gentler treatment than men committing the same crime (2) Chivalry is an exclusively male feature, so this gentler treatment wouldn't take place when judges are females (Goethals et al. 1997, p. 222).

¹¹⁷Acale Sánchez (2019), pp. 1–15.

¹¹⁸Heidensohn (2012), p. 128.

¹¹⁹For a comparative with imprisoned women worldwide, see World Female Imprisonment List, made by the Institute for Criminal Policy Research (last available data from 201): https://www.prisonstudies.org/research-publications?shs_term_node_tid_depth=27.

¹²⁰<https://wp.unil.ch/space/space-i/>.

¹²¹<https://wp.unil.ch/space/space-ii/>.

¹²²<https://wp.unil.ch/europeansourcebook/>.

imprisonment rate for women in the last years has been preceded, nevertheless, by an increase in the convictions rates of women in Europe as of the year 2000. This is similar to that produced in the rest of the world, according to the last edition of the “World Female Imprisonment List” (2017).¹²³ In particular, from 2000 onwards, the numbers for imprisoned women worldwide increased by 53%, whereas it was just 20% during the same period for men.¹²⁴ These figures are despite the little evidence to show that female criminality has increased, in their number or seriousness.¹²⁵ This is better known as a “criminal paradox”. This is a trend explained through the verification of two reasons: an increase of the judicial punitiveness against crimes committed by women; and regulatory changes to increase the minimum penalty of several crimes. Examples of the latter include changes to public health. This mainly affects female offenders,¹²⁶ and especially migrant ones.

- (b) In connection with non-custodial sanctions and measures, considered by the SPACE II as sanctions under the probation agencies’ responsibility, a lower level of difference it is noted between men and women, nonetheless extreme. In 2019, the average percentage of men serving a non-custodial sanction was 89%, whereas for women the figure stood at 11%. In fact, the percentage of women serving such kinds of sanctions is consistently higher, except for Greece and Serbia, than the percentage for imprisoned women (around 6% of the total imprisoned population).¹²⁷ The explanation for these differences may be related to the lesser seriousness of the offences, coupled with an estimate of a lower rate of recidivism for women. Non-custodial measures may be considered more appropriate in those conditions.

This data is consistent with the findings published in the European Sourcebook of Crime and Criminal Justice Statistics. The results include the confirmation that the percentage of imprisoned women is still low, with an average of 5%. This reflects the general trend from the first edition of this Sourcebook in 1996. In fact, the slight change in the percentage moving from 4.9% in 2011 to 5.2% in 2016 is evidence, together with a similar trend in foreign population, of the relative stability of the European prison population.

In terms of specific crimes percentages, the results show: total convictions (imprisonment and non-custodial) imposed on women was 13.8% in 2015; they were sentenced to imprisonment for intentional homicides (9.5%), 9.8% assault (9.8%); causing serious injuries (7.4%), sexual assaults in general (1.6%); rape (1%); child sexual abuse (1.5%); robbery (6.15), theft (15.8%); fraud (23.4%); cyber fraud (27.4%), document forgery (16.9%); money laundering (24.5%);

¹²³Phoenix (2018), p. 185.

¹²⁴Rope and Sheahan (2018), p. 16; Prison Reform Trust (2017).

¹²⁵Malloch and McIvor (2012).

¹²⁶Rope and Sheahan (2018), p. 16.

¹²⁷Aebi et al. (2020), p. 9.

corruption offenses (12%), and drug trafficking (8.5%). The low data relating to sexual offences is expected, as is the higher concentration for crimes against property, both being similar to previous years. The representation of drug trafficking as lower than for violent crimes (both for homicides and injuries), conveys a change in those traditionally considered as women crimes. This may be due to legislative reforms in a de-criminalizing way. Therefore, the analysis shows concurrent progress for both groups of crimes, based on data from the European Institute for Crime Prevention and Control for the period 2010–2015.

Finally, the data from the European Sourcebook 2021 allows us to confirm that, at least as a general trend beyond the differences among countries, the recidivism rate is higher for men. This reflects the differences between the sexes in their criminal career; violence is more frequently associated with men and significantly less so for women.

14.4.2 Gender Differences in Sentencing

The first issue to address is related to the question around the differences made by the courts when judging crimes committed by men and women. The answer is not affirmative or negative; the research shows there are more factors to be considered, beyond gender, to explain the differences in the conviction rate for men and women in Europe, the USA, and worldwide.

The role of gender in court decisions finds a paradigmatic exponent in Grühl, Welch, and Spohn. This study concluded that adult women were treated more leniently than men; they were less likely to receive tougher penalties and imprisonment, or provisional detention as a precautionary measure. To explain this situation, they exposed several reasons:¹²⁸ (1) Judges thinking of women as individuals to be protected; (2) differences in female criminality (less violence and a lack of criminal records are among mitigating circumstances). Aggravating circumstances may include taking advantage of a victim's lack of defence and committing crimes against life in the intimate environment, and (3) the presence of other factors like race-based discrimination that would have an indirect impact on the sentence. These assumptions alone are unable to explain the complexity of these differences. Nevertheless, it provides a working basis for a research area that still produces relevant knowledge, to ensure equal legal treatment by the criminal system.

In view of this complexity, the section presents the main conclusions to this respect by presenting differences based on the initial focus of each research, the comparative variables, and the explanation to interpret the results. Regarding the approaches, it is possible to make the main distinction, between whether a perspective is based on generalized court chivalry or on a critical perspective. It is therefore

¹²⁸ Grühl et al. (1984), pp. 464–467.

possible to show the criminal decision as a reflection of gender stereotypes in the society, especially those ones that directly affects family relationships.¹²⁹

Various researches attempt to explain benevolent treatment received by female offenders, in the understanding that this is a common situation. Reference can be made to studies analysing the influence of gender and race in homicide sentencing in the USA. It has been found that men, youth, and repeat offenders are imprisoned for longer periods in cases of homicides.¹³⁰ More recently, Leiber and Peck proved that women are 25% less likely proceed to the next stage of criminal procedure (court) than men.¹³¹ However, the possibility of receiving an advantage in terms of dismissal is related mainly to misdemeanours. Otherwise, some researchers conclude that women are more likely to receive a non-custodial sentence. Although, when women are sentenced to imprisonment, they have the same length probability as men.¹³² The results of these researchers, whose main thrust is to prove the influence of gender in the criminal response and the presumption of a general “gentlemanly and paternalistic treatment” to female offenders, could be systematized according to the knowledge they bring regarding other gender adjuvants factors. These are promoters of differences in sentencing:

Gender and race: there are a wide variety of studies on race and gender as determinants of the criminal response. These have produced different results, although the majority conclude that Black women are more likely to receive a longer penalty than Caucasian and Hispanic ones,¹³³ and more likely than Caucasians to be sentenced to imprisonment.¹³⁴ Regarding the effective completion of the imprisonment, Black women serve a lower percentage of the penalty imposed than Black men, however still higher than white and Hispanic women.¹³⁵

Age: several studies confirm that women in higher age groups are more likely to receive an imprisonment penalty.¹³⁶ Nevertheless, other researchers claim just the opposite; better conditions for younger women are related to the most common use of parole, whereas the probability of being punished with this penalty, rather than none, is higher than for older women.¹³⁷

Level of education and employment: some researchers have found that women with a higher level of education are more likely to receive an imprisonment sen-

¹²⁹ In this last sense see Daly (1987), pp. 154–155.

¹³⁰ Franklin and Fearn (2008), p. 285.

¹³¹ Leiber and Peck (2015), p. 784.

¹³² Freiburger and Hilinski (2013), pp. 75–79.

¹³³ Albonetti (2002), pp. 39–60. In the opposite direction, Demuth and Doerner (2014), p. 261.

¹³⁴ Spohn and Beichner (2000), pp. 167–169; Goulette et al. (2015), p. 412.

¹³⁵ Bradley and Engen (2016), p. 269.

¹³⁶ Spohn and Beichner (2000), p. 173.

¹³⁷ Freiburger and Hilinski (2013), pp. 69–71.

tence,¹³⁸ whereas others have shown just the opposite.¹³⁹ The same applies to employment.

Criminal Records: some studies show that women with criminal records are more likely to be condemned. This factor is also crucial to decide the severity and length of the penalty.¹⁴⁰

Type of crime committed: several researchers have focused their attention on proving the relation between criminal response against women and type of crime, not on a gender roles basis, but in the gentle treatment female offenders receive generally. Among these studies, it can be found that those focused on proving the reaction against drug-related crimes committed by women. In this area, some researchers expose that although women are not judged more severely than men, they are more likely to receive an imprisonment penalty in those cases.¹⁴¹ This result partly contradicts the results in other studies that showed more beneficial treatment for women involved in crimes against property or drug-related crimes, whilst they are more likely to receive severe treatment than men when they were involved in violent crimes.¹⁴² Regarding serious offences, the latest research seems to confirm the initial scenario of better treatment to female offenders. For instance, these are the results of a study where penalties for men and women who were perpetrators of multiple homicides and were compared. This research would reject: (a) better treatment for women was based on the relationship dynamics between perpetrators, giving women a passive role in the shadow of man; and (b) gender and criminal records as the most influential factor for most severe penalties.¹⁴³ This is the conclusion reached by other studies focused on the treatment of sexual female offenders, however this infringes social stereotypes related to women in the sexual area and in the caring function, especially when regarding child victims. In particular, sexual male offenders receive tougher penalties than women. This creates assumptions that women receive special court protection, regardless of the social and gender rules violated when committing those crimes.¹⁴⁴ These results are confirmed by similar studies questioning the myth of the “evil woman”, even though sexual crimes are perceived as typically male crimes and far removed from female sexuality stereotypes.¹⁴⁵

In addition to these results, the intersectional approach suggests taking into consideration the influence of all these factors in terms of vulnerability and inequality. This requires to include legal variables to explain most of the changes in the enforcement of judgments and the valuation of concurrent circumstances during the

¹³⁸Freiburger (2011), pp. 143–167.

¹³⁹Brennan (2006), p. 86.

¹⁴⁰Demuth and Doerner (2014), p. 257.

¹⁴¹Freiburger (2010), p. 388.

¹⁴²Rodriguez et al. (2006), p. 335.

¹⁴³Fridel (2019), p. 333.

¹⁴⁴Embry and Lyons (2012), pp. 157–158.

¹⁴⁵Deering and Mellor (2009), pp. 409 ff.; Hassett-Walker et al. (2014), pp. 80–81.

resocialization process.¹⁴⁶ This approach means a questioning of gender perspective in the explanation of violence against women¹⁴⁷; this explanation analysed a single axis of inequality that, at best, added some individual variables (such as age, race, or education level) and behavioural aspects (criminal records, type of crime) out of context. Intersectional perspective highlights two main risks of this gender-based analytic structure: invisibility of differences between individual and structural features of people expressing conditions different from heteronormativity and (dis)ability; and the failure to question the idea that these differences could have different analytic values in different moments (mainly due to law changes and to personal and affective circumstances in each rehabilitation process).

Studies consider criminal court systems as a gender institution whose actions reproduce and perpetuate gender inequalities, reflecting traditional thoughts on how to treat men and women. In this understanding, some authors stated that women could receive tougher treatment, regardless of the crime they committed, simply because they were violating gender rules. Nowadays, this theory, better known as “evil woman theory” or “selective chivalry”,¹⁴⁸ poses that gentle treatment would only act upon behaviours linked to female social roles. In contrast, the penalty would increase in those crimes that violate female gender roles, double deviance,¹⁴⁹ perceived as “male crimes”.¹⁵⁰ Nevertheless, it is important to qualify this statement by focusing, not just on the nature of crime, more or less linked to gender roles, but on the existence of a specific context of group, or family framework, to reproduce the disparities of the patriarchal order. This is the idea highlighted by: studies addressing the influence on children or dependent people; studies on crimes meaning a double deviation based on gender stereotypes; references to a gender-based assessment of culpability capacity, and the latest developments on the influence of gender equality in the enforcement of sentences.

Dependent children: results on this differ. Various studies¹⁵¹ proved that mothers are more likely to receive longer penalties or imprisonment. Whereas the majority of studies noted just the opposite.¹⁵² A common explanation is that better treatment underlies that idea of family protection and the traditional role of women in the family; the caretaker, protector, and facilitator of the children’s education. The seriousness of the penalty seems to be linked to a failure in their caregiver role¹⁵³ and to the prediction of negative consequences for children and dependent people

¹⁴⁶Gaub and Holtfreter (2015), pp. 306 ff.

¹⁴⁷Sokoloff and Dupont (2005), pp. 38–41; Nixon and Humphreys (2010), p. 139.

¹⁴⁸The evil woman hypothesis would assume women are sentenced more harshly than men for offenses which reflects a severe departure from gender roles, Embry and Lyons (2012), pp. 148–149.

¹⁴⁹Heidensohn (1985).

¹⁵⁰Rodriguez et al. (2006), p. 332.

¹⁵¹Brennan (2006), p. 86; Griffin and Wooldredge (2006), pp. 914–915.

¹⁵²Spohn and Beichner (2000), p. 173; Koons-Witt (2002), pp. 313, 317; Daly (1987), pp. 167–168.

¹⁵³Freiburger (2010), pp. 387–388.

derived from custodial sentences.¹⁵⁴ However, taking into consideration family responsibilities is a protective factor for both men and women. This hypothesis is apparently confirmed by a further study, where paternity and maternity had no effect on the length of the sentence compared to people with no children. It did reveal, nonetheless, different effects in the penalty depending on gender-based parental models. In particular, mothers living with their children prior to arrest were more likely to receive a more lenient sentence, whereas this feature, or the involvement in family duties, does not correlate in the same way for men.¹⁵⁵ Higher penalties imposed on mothers seem to depend on the type of crime committed, in terms of violating or not the social gender roles; courts perceive these kinds of behaviours as a risk for their children and dependents.¹⁵⁶

Crime is considered as double-gender deviance: although some studies have revealed better treatment for female offenders in serious crimes, not relating to female criminality, it is also true that in specific crimes, a tougher treatment for female offenders has been witnessed, for example domestic crimes with a woman as victim,¹⁵⁷ partner violence with a man as the victim¹⁵⁸ and violent sexual crimes. Regarding the last, an emotional perspective has been found in the facts narrative when compared to the same crimes committed by men, promoting the idea of the women as a villain and unfeminine.¹⁵⁹

Assessment of guilt in female offenders: studies related to the interpretation of female crime highlight female offenders are seen as victims of their own past, context, and destiny.¹⁶⁰ Consequently, they are likely to be diagnosed as mentally disturbed.¹⁶¹ It is therefore common to find mitigating circumstances: passive and assistance involvement during when more than one person commits the crime¹⁶²; greater willingness to collaborate with the clarification of the facts, and more possibilities of regret.

Influence of structural gender equality: although researchers in this area have highlighted that this influence is minimal in explaining the individual sentences, some structural variables revealed significant effects, both for men and women. This is the case for countries with higher female participation in the work area; this is related to a reduction in punitiveness. Correspondingly, those countries with a higher proportion of women with university degrees are more likely to impose a custodial sentence.¹⁶³

¹⁵⁴ Koons-Witt (2002), p. 306.

¹⁵⁵ Tasca et al. (2019), p. 1911.

¹⁵⁶ Hagan and Nagel (1983), pp. 116–117.

¹⁵⁷ Romain and Freiburger (2016), p. 207.

¹⁵⁸ Franklin and Fearn (2008), p. 282.

¹⁵⁹ Damiris et al. (2020), pp. 9–10, 12.

¹⁶⁰ O'Hara (1998), pp. 91–92.

¹⁶¹ Allen (1987).

¹⁶² Crew (1991), p. 72.

¹⁶³ Nowacki (2019), p. 15.

This overview of different approaches and research aimed to verify gender-based differences in sentencing, allowing us to confirm the need to contextualize different variables under family or group criteria in playing a role in the understanding of women's crimes, as well as the tendency to read this context from patriarchal stereotypes and asymmetries.

In addition, it is necessary to highlight that the tools implemented to reach more judicial impartiality, Sentencing Guidelines,¹⁶⁴ do not seem to have eliminated those differences. This verifies the existence of an unavoidable scope of discretion in every interpretative process, that could be influenced not just by stereotypes and personal views, but also by judges' feelings, thoughts, and reasoning.

14.4.3 Features in Criminal Treatment of Trans Offenders

Transgender people are overrepresented in the criminal system; in the USA, ex-convict transgender women represent 21%, trans people, genderqueer people or transgender men represent 10%. Their proportion in the rest of the adult population is only 5%.¹⁶⁵ The explanation of this is mainly based on: (1) increased social vulnerability, as a consequence of family rejection, bullying, and discrimination in different life areas such as employment, housing, identity documents, and social welfare; and (2) direct or indirect criminalization of this community.¹⁶⁶ An obvious example of this last aspect could be found in the sexual work field, which is usually performed by racialized trans women.

Usually, the treatment during trial is not appropriate: they are often denied to be named as they would like; their guilt is attempted to be linked to "ambiguity" based on their identity, and they find special challenges to have a specialized legal defence. This increases the possibilities of pre-trial detention and a tougher punishment (Lambda Legal's Survey). The highest probability of getting a tougher penalty as sex offenders is also documented.¹⁶⁷ Unfortunately, the research on this is extremely low. It is therefore necessary to frame specific studies to assess their extension, and depth in the criminal justice system, to enforce additional protective tools.¹⁶⁸

During imprisonment,¹⁶⁹ trans people are subjected to high-risk conditions: being victims of harassment; sexual assault; health challenges, and lack of respect in their daily life. This results in an important hardening of physical and psychological

¹⁶⁴ A detailed explanation of the implementation of neutral guidelines in the judicial area in order to avoid preferential or discriminatory treatment of offenders based on race, social status and specially gender, could be found in Nagel and Johnson (1994), pp. 190–197.

¹⁶⁵ Center of American Progress and Movement Advancement Project (2016).

¹⁶⁶ Grant et al. (2011), pp. 158 ff.

¹⁶⁷ Mogul et al. (2011).

¹⁶⁸ Ryan (2016): www.lag.org.uk.

¹⁶⁹ Bassichis (2007), p. 35.

effects; in many instances, the custodial sentence is served in isolation to ensure safety.¹⁷⁰

14.5 Conclusion

Traditional explanations of crime have not taken into account the role of gender. Feminist approaches in criminology have made great contributions in respect to gender issues. Firstly, they tried and succeeded in moving from the “androcentric” positions within criminological thought, in order to include women as victims, offenders and employees in the criminal justice system. Before feminists works, crimes such as domestic violence and sexual harassment have been neglected and treated as a private matter. Feminists have also contributed in the development of research methodology that focused on qualitative approach, as more appropriate in respect to female victims. After the inclusion of women as another sex in criminology, feminists continued their efforts by paying more attention to different categories of women and acknowledging that not all women suffer the same experiences. This means that women of colour, indigenous and migrant women should also be included in research. Further developments went beyond simplistic division between sexes and instead focused on theorizing of gender (Chesney-Lind)¹⁷¹ and promoting an intersectional approach, in which gender represents just one level of oppression. The twenty-first century is characterized by backlash politics which posits women as violent as men and that juvenile girls are becoming increasingly violent. This is supported by a more punitive approach of formal social control toward women, as well as by moral panics in societies. Feminists criticize this situation and assert that women are not becoming more violent; the increase of reported and convicted women is the consequence of changed policies. However, analysis of data for European countries for reported and convicted persons shows great differences between countries in respect to the share of women offenders. It is further observable that the higher percentage of women offenders is related to certain criminal offences such as fraud. In contrast, women are far less reported or convicted of homicide. In order to explain these differences, beside classical criminological theories, gender oriented theoretical approach is necessary and useful. It is this perspective that emphasized the importance of intersection of criminalization and victimization in many cases, of which domestic violence is an example. This does not mean that all female offenders have experienced victimization. Many of them opt for criminal behaviour for other reasons, profit is just one among many motives. In contrast, males are also victims of domestic violence, however they have been neglected as victims in literature. Gay couples also report domestic violence, and so it is obvious that we must go beyond traditional views of male offenders and female victims.

¹⁷⁰ Lydon et al. (2015): <https://www.blackandpink.org/wp-content/uploads/2020/03/Coming-Out-of-Concrete-Closets-incorporated-Executive-summary102115.pdf>.

¹⁷¹ Chesney-Lind (2006), p. 8.

Contrary to other regions, Europe shows general stability in respect to the percentage of females sentenced to imprisonment. Of course, there are differences between countries and between criminal offences. This illustrates the need to interpret crime, victimization, and penal policy in every country in correlation to the general picture. Relating to sanction policy, the text has pointed to the existence of the main controversy over the general treatment (favourable or unfavourable) female offenders receive on a gender basis. This issue is not to be solved under just one perspective, with the data available at present. It requires a different approach based on the type of crime and other variables; race, ethnic minority group, criminal records, and children or dependents. These variables, jointly with gender, seem to significantly influence the punishment the offender is going to receive. In addition, overrepresentation of trans-inmates in the criminal execution system has been revealed, together with a discriminatory and biased treatment during the sentencing process. At this point, it is important to highlight the lack of research on this specific topic; providing no possibility for detailed and concluding knowledge.

Questions

1. How would you explain different crime rates of sexes between European countries?
2. In what ways can formal social control affect fluctuations in women's crime?
3. How would you explain the larger involvement of women in the commission of certain criminal offences such as fraud, theft, and bodily injury?
4. What are possible explanations of lower participation of women in crime?
5. To what extent could theories of masculinity explain the overrepresentation of men in criminal behaviour?
6. How can the suppression of domestic violence influence the crime of women and men?
7. In which ways criminalization and victimization of women intersect?
8. Has any relevant change referred to gender occurred over the last few years in applying penalties? If the answer is yes, please point out which one.
9. Which are the main approaches to explain the gender-based difference of treatment for offenders by criminal institutions?
10. Is there any special feature on the criminal treatment trans-people receive by criminal justice?

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