

CHAPTER 1

Tackling Key Questions About Gender, Crime, and Justice

In the past two decades, there has been a tremendous increase in theory and related research that pertains to gender, crime, and justice. Theory has been developed to answer several key questions, such as the following:

- Why are there different patterns of victimization for women and men, girls and boys, and people who are and are not heterosexual?
- How does gender affect the way that the criminal justice system, medical personnel, and others respond to victimization?
- How do laws affect people in different gender groups, and how do laws with differential effect come to be written and implemented?
- Why do the patterns and types of illegal behavior differ by gender group?
- How does the gender of people who break the law influence their treatment by police, prosecutors, courts, and correctional programs?

More broadly, theory has tried to explain the influence of the division of resources and opportunities according to people's gender and beliefs about gender on crime and justice. Theories to provide answers to these questions have been developed primarily in the disciplines of psychology, sociology, and history, as well as in the interdisciplinary fields of criminal justice and criminology and of women's studies. Much of the work has contributed to what is called **feminist theory**,¹ which is actually not one but several theories that consider the disadvantages and oppression faced by girls and women and that emphasize research that will reduce this oppression. The primary objective of this book is to draw widely from the fields of social science and to present promising and innovative contemporary theories relevant to gender, crime, and justice.

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The theories that are developed within the various disciplines emphasize different **levels of explanation**. At the *macro* level, explanatory factors include widespread economic conditions and arrangements, public health and illness, type of government and legal system, heritage, and culture. At an *intermediate* level, organizational, community, and family characteristics explain illegal behavior and responses to it. At the *micro* level, human behavior and social life are affected by people's interactions and their ideas and characteristics. Either working within a discipline or integrating across disciplines, many theorists have explained how context, individual interactions, and individual characteristics come together to explain crime and justice. Culture, national policies, and economic conditions can influence both the nature of communities and organizations and the behavior and experiences of individuals. Reciprocally, individual actions and characteristics influence the nature of communities, organizations, and social conditions. Also, influences at one level can either enhance or dampen influences at other levels. For example, individual characteristics can have greater effects in certain community or organizational contexts. Chapter 2 will discuss gender and the law, and the remaining chapters of this book are organized to provide an exposure to theory that is useful in showing macro-, intermediate-, and microlevel influences on victimization, on crime, and on responses to both victimization and crime.

The selection of theory to be presented is based on several criteria pertinent to determining the validity and utility of an explanation. Not all theories presented in the book meet all criteria, but each advances knowledge by meeting some of the criteria. The criteria are that (a) empirical evidence supports the theory; (b) research supporting the theoretical explanation is contemporaneous; (c) the theory situates human behavior in some realistic setting; (d) the theory considers the intersections between gender, race, ethnicity, and social class; and (e) the theory recognizes that people have agency. Theories that recognize patterns of globalization, specifically the influence of population movements and the economic and other interdependencies between nations, also are highlighted. Aside from meeting criteria for good theory, some explanations in the remaining chapters of the book touch on selected postmodern themes, including the complexity of causation and the influence of discourse on human actions.

Working back and forth between theoretical explanations and *empirical evidence* is integral to developing social science theory. Research is a part of the theory development process, and in a sense, unless researchers haphazardly select variables to include in their study, they all are theorists. They are trying to develop or improve explanations of social phenomena.

The criticality of *contemporaneous* research to support theory stems from the pace of reform and change that is occurring on a global scale. Although new theoretical explanations are not necessarily better than old ones, changes in contemporary society provide reason to carefully examine old theories and to update or alter them in response to current conditions. Social movements have redefined violence against women, legislators have changed the behaviors that are criminalized, and justice system employees have been trained and confronted regarding their ideas about gender and race. New groups have immigrated to the United States and to



Consistent with the idea of intersections, people identify themselves as holding a number of statuses, including their racial group membership, sexual orientation, political orientation, and others.

other countries, and economies have grown stronger or weaker. How people think things through, how they develop and justify decisions, and the contexts in which they live and interact can change. Theory developed in prior decades may or may not still be valid.

The criticality of *situated* explanations stems from the recognition that context makes a difference. The problem is compounded in a country like the United States, which has very different mixes of indigenous and immigrant racial, and ethnic groups in different regions, and which has decentralized systems of justice, social services, and health care. Throughout this book, care is taken to specify the setting to which research applies, and to try to tease out the influence of that setting on the phenomena that the theory explains.

Intersections is an important concept in feminist theory, and therefore in many of the theories considered in the book. Gender can have a powerful influence on one's personhood and one's location within a broad social structure, but race, social class, and other status markers also have a significant influence. Bell hooks's *Ain't I a Woman* (1981) is a milestone in recognizing and stamping into collective memory the invalidity of a sole focus on gender. Hooks wrote about the attempted

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systematic exclusion of herself and other black women from the human race, accomplished by arguments to keep women out of politics because all women were frail and delicate. Hooks pointed to the evidence that women like herself had fully contradicted this imagery, in part because of the hard labor and the severe living conditions imposed on slaves. The problem of understanding the realities of the lives of women who differ in their combinations of age, color, class, ethnicity, and sexual orientation pervades both legal decisions and contemporary theory.

Two court cases related to discrimination illustrate the importance of intersections and the inadequacy of laws to address discrimination against people who are multiply disadvantaged (Crenshaw, 1989). Five black women sued General Motors on the basis that they were disadvantaged when the people with the least seniority were laid off. They argued that General Motors did not hire black women until 1964, making it impossible for a black woman to have achieved much seniority. The court ruled against them, reasoning that they were not disadvantaged due to sex, because white women had been hired, and they were not disadvantaged due to race, because black men had been hired.² In a second case, a black woman alleged that her employer, Hughes Helicopter, discriminated in making promotions.³ The court again ruled against the plaintiff, on the basis that statistics on all women in the company (most of whom were white) were inconsistent with sex discrimination. The two cases illustrate that the laws against discrimination do not recognize that people with two or more characteristics that may result in discrimination can have experiences different from people with any one of the characteristics. The laws as implemented did not recognize the influence of intersections.

Similarly, many theories have not taken into account that all females or all males do not have similar resource levels or experiences and are not viewed by other people in the same way. Bias and prejudice against lesbian women, for example, may be different from bias against gay men. Also, biases and prejudices against people in a minority group may be different depending on whether those people are female or male. In many cases, there is inadequate empirical research to look at intersections, with the result that theory is erroneously set forth as though it applies to more people than is the case.

Agency is a person's capacity to act in a self-directed and purposeful way. When people come together and challenge stereotypes, exert pressures to have legislation enacted or repealed, press for reform of the criminal justice system, or take steps to reshape a broad cultural context and structural arrangements, they are acting with agency. When people who experience criminal victimization interact with police and prosecutors and make decisions about how much they will cooperate with justice system personnel, they also are self-directed and purposeful. Incarcerated women who have prison jobs for which they deliver HIV/AIDS education to other people and incarcerated women who seek, use, or reject correctional services similarly have agency.

People vary considerably in the constraints on their agency, and observations about a person's agency tell us not only about that individual but also about her or his access to resources and freedom to act as desired. People with little power or experience may be limited to passive resistance and muffled expression of their feelings, and those with more influence can bring about desired changes, either in their

own lives, as part of an organization, or even throughout society. Although no groups or individuals can totally control their actions and life courses, very few people, if any, give up individually and collectively to the extent that they do not try to exert influence at all, at least by expressing themselves or by engaging in silent protest.

The concept of agency keeps the human spirit in social science. Some social science theories ignore agency and portray people as pawns that are moved about by external forces or internal pressures and traits. Theorists have sometimes depicted all women offenders as victims who have been led astray by their male partners, and who therefore have no agency (Maher, 1997). Crime victims similarly are sometimes described as completely helpless and needy. Individuals who work in the justice system differ from each other in the labels they attach to victims and offenders, victims and offenders sometimes resist labels placed on them, people work to change social arrangements, and justice system workers vary in their interpretation and application of legal statutes. Therefore, for victims, offenders, and people who work in the criminal justice system, it is misleading to overemphasize lack of agency.

Agency is not static or an all-or-nothing characteristic. It varies depending on the situation and the context. People have different levels of agency in particular places, at particular times, and in particular situations. Some people, for example those who are incarcerated or who have very limited financial resources, may have limited agency at most times and places.

Empowerment is the process of increasing agency. Social movements try to empower groups of people. The women's and the gay and lesbian rights movements have specifically tried to empower people who are victimized by gender-related crimes. Similarly, gender-responsive correctional programs for women were developed to empower them. Empowerment can be achieved by increasing people's financial and other material resources, lending the power of the courts to their cases, meeting needs that include but are not restricted to mental health, and promoting insight and understanding. Given the growth in the law and its intrusions into family and organizational life in the United States, a tough question is whether existing laws increase empowerment across gender, racial, ethnic, and cultural groups, or whether instead particular laws take away individual choice and direction, at least for some people and groups.

Globalization, which refers to the impact of cross-national economic dependencies, multinational firms, and multiple cultures on urban, metropolitan, town, and rural settings, makes it essential to get beyond a singular focus on the United States. Culturally rooted ideas about masculinity and femininity are related to expectations regarding appropriate behaviors and to differential job opportunities and immigration patterns for women and men (Freeman, 2001, p. 1011). One result of gender inequalities is that women and children are trafficked from poor countries and regions of countries and forced into sex work. Prostitutes at tourist destinations around the world come from economically unstable or destitute areas. Another result of gender inequity and the movement of people between countries is that abuse within marriage can result when a couple's exposure to new ideas about how husbands and wives should act erupts into conflict. Both international sexual exploitation and domestic conflict require creative policy and programs in

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In the United States and many other countries, the population is increasingly diverse in racial and ethnic characteristics.

order to promote justice for individuals who are economically disadvantaged or who are immigrants in a country where they do not understand the justice system or do not have resources to handle conflicts effectively.

Because of the concentration of wealth and resources in the United States, it has been able to have quite a bit of effect on other nations. The U.S. government has promulgated policies of criminalization and incarceration of drug offenders worldwide, with the result that there has been an influx of women into U.S. prisons for trafficking. Women also have been incarcerated at an increasing rate in their home countries. The U.S. government also has affected women and girls worldwide by refusing to fund overseas agencies that provide information or services related to abortion.

Although the interdependencies and mixtures of people and ideas from different nations and cultures are a fact of life, it is greatly beyond the scope of this book to provide a systematic assessment of gender, crime, and justice worldwide. It would be a daunting if not impossible task, given the number of understudied and undertheorized parts of the world and the limited access to literature and languages relevant to many countries and subgroups within those countries. Also, there are markedly different systems of law in different countries, with roots in different

traditions and unique features that have developed because of mixing and adapting of more than one system of law (Fairchild & Dammer, 2001, pp. 42–63). Throughout the book, though, there are examples that illustrate similarities and differences in the interplay of gender, crime, and justice in the United States and other countries, or between cultural, immigrant, indigenous, and ethnic groups within a country. These examples provide reminders that the United States is not representative of a very large part of the world either geographically or in population, and that many countries, like the United States, have a very diverse population. A number of the examples are taken from Australia, New Zealand, Great Britain, and Canada, countries that have both legal and scholarly traditions that are similar to those in the United States. Other examples compare the United States and other countries on the status of women and the related causes of gender-related crime and victimization, and on responses to crime and victimization. Comparison highlights the ways in which the United States is unique and can lead to questions about the justness of unique features. Alternatively, comparison can show commonality in the influence of gender.

Postmodern Themes

One contribution of what is called postmodernism in social science is the consideration of themes that have not been highlighted in prior theories, at least to the extent they are highlighted in postmodern theories. **Postmodern themes** are the impact of the media on shaping different versions of reality, the themes of war and inequity that dominate global politics, and the emergence and power of multinational firms. In relation to crime, postmodern theorists spotlight the U.S. practice of incarcerating large numbers of people who have been defined as dispensable and irredeemable. They also stress the influence of what they call *discourses* on how people in the criminal justice system act.

Discourses are collections of ideas, concepts, explanations, and categorizations that are communicated in bodies of writing and discussion. Discourses can influence social life. Three particular types of discourse are important to understanding the interconnections of gender, crime, and justice. First, there is discourse within formal social control agencies such as police departments, prosecutors' offices, courtrooms, and victim assistance programs. Communication often crosses organizational boundaries, for example when prosecutor, judge, legal defense, and probation officials are present in a courtroom setting. The discourse of criminal justice officials tell us about how they perceive and reason about the events of alleged crime and victimization. Discourse also makes certain actions seem reasonable, fair, and just, and makes others seem out of the question.

As a second type, the discourses of medical, legal, social science, and other experts can alter how people are understood, treated, and managed. For example, according to psychological discourse, a woman who has murdered her husband after he beat her might be viewed as failing to use more appropriate coping responses or as precipitating the beating due to her own psychological problems. Contradictory discourse would emphasize that the greater power and threat of the abusive husband

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led to murder in self-defense. The psychological discourse suggests the victim's guilt and the need for punishment, and the contradictory discourse suggests that the victim is not guilty, but that there is need to empower potential victims. Alternative discourses have contradictory influences not only on how individuals are treated by the justice system, but also on criminal justice policy and laws.

A third type of discourse occurs in a larger political arena when various interest groups and representatives from particular agencies, along with members of the general public, talk and write about what should and what should not be considered criminal, and how victims and offenders should be understood and treated. Political discourse tells us about the thinking of social activists and citizens who advocate for or who resist change, and it influences people to support particular responses to crime and victimization.

Discourse can be analyzed to reveal the ideas that go into a person's thinking and reasoning. Although there is not an invariable connection between discourse and action, discourse certainly is connected to action. The connection may be after the fact, for example when a person draws on discourse to provide a justification for action. It can also precede and influence or allow certain responses to people considered to be criminal, delinquent, or victims. Thus, discourse is relevant to understanding gender, crime, and justice.

Remaining Contents of Chapter 1

The next section of this chapter provides definitions of key terms relevant to gender and to crime and justice. Much of the contemporary theory and research summarized in this book, and indeed the development of the key theoretical concepts defined below, is a response and a corrective to problematic work that went before. Therefore, this chapter also includes a review of historical and problematic theory, followed by a section on historical and problematic policies and practices in the justice system. Misleading and flawed theories are presented as a backdrop against which to assess contemporary work that is presented in subsequent chapters. Prior policies and practices have perpetuated gender-related injustice, in some cases because they rest on misleading theories. Finally, this chapter considers how empirical evidence can be used to advance theory. In essence, this last section departs from the focus on theories about crime or responses to it, and it considers whether and how it is possible to develop valid theory about social life.

Key Terms Related to Gender, Crime, and Justice

Gender

Macrolevel Conceptualization of Gender

Consistent with the recognition that theory identifies macro to micro influences on social life and behavior, gender can be conceptualized at different levels. At the

macro level—that is, within the global system, a country, or a society—whether people are women or men, girls or boys, affects social and economic status and opportunities and expectations in relation to education, work, family, and leisure. Specifically, there are gender differences in monetary and other resources, in power, and in access to different kinds of jobs. The patterns of differences are referred to with different terms, including *gender organization*, the *sex gender system*, *gender arrangements*, and *gender stratification*. **Patriarchy** is a gender arrangement that is characterized by males' domination of females. There is not one universal form of gender organization that exists through all cultures or historical periods, and within a historical period or a particular setting, gender inequalities are not experienced to the same extent by all groups and individuals (Aker, 1989). Gender organization varies from relatively egalitarian systems to hierarchies marked by extreme inequality, and it has differential effects on people depending on social class, race, ethnicity, and other characteristics.

The notion of gender organization was absent from most social science writing and research until recent decades, though it is currently a central concept in the theoretical work of a number of people. Feminist theorists have focused on patriarchy and how it influences social arrangements, thoughts, and behaviors of both females and males (Heimer & DeCoster, 1999, p. 282; also see Ferree & Hess, 1987; Lorber, 1994). There is a strong presence of feminist theorists in criminology, though still some criminologists do theorize about social structure, context, and identity without attention to gender.

A person's **social location** is her or his place within existing social arrangements, including the existing gender organization. Therefore, social location is related to gender as well as other statuses that differentiate people's access to resources and opportunities.

Individual-Level Conceptualization of Gender

Sex is a physical, biological characteristic, with a more or less fixed state (less when people have genitals that are ambiguous or when they undergo sex-change operations or drug therapies). *Gender* at the individual level involves a dynamic process of definition of appropriate characteristics and actions associated with being feminine or masculine (Kessler & McKenna, 1978; C. West & Zimmerman, 1987). Beliefs about masculinity and femininity differ between cultural, national, religious, social class, and other groups (Anderson, 1988; Vance, 1984). One person's beliefs about gender can vary over the course of her or his life, too. Ideas about gender depend heavily on interactions with other people, but they also are influenced by education, experience, and self-reflection.

Beliefs about characteristics and behaviors considered to be masculine or feminine are referred to as **gender ideologies** or **gender definitions**. Ideologies consist of images, concepts, and assumptions (Patai & Koertge, 1994). A person's gender ideology is her or his image and assumptions about manhood, womanhood, and marital roles of men and women (Hochschild & Manchung, 1989). A person's gender ideology is not fixed, and with experience and reflection it can change over

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a person's life course (Mac An Ghaill, 1994). Gender ideologies tend to emphasize differences rather than similarities. Gender ideologies are important because they affect beliefs about inappropriate and appropriate behavior and expectations about how people should act.

Some beliefs about gender are reflected in **gender stereotypes**. In the United States, majority race women are stereotyped as weak, overly emotional, and child-like; black women are stereotyped as promiscuous, dominant, and aggressive; and gay men are stereotyped as sexual predators or as promiscuous. Stereotypes are oversimplified opinions, prejudiced attitudes, and uncritical judgments about groups of people. They often are directed at groups whose members have less power and advantage than others in at least some of life's arenas.

Both gender ideologies and gender stereotypes influence the actions and reactions of people. At the level of the individual, they are incorporated into a sense of self and motivate people to act in a certain way. Neither gender ideologies nor gender stereotypes are accepted uncritically by all people, and thus individual identities, behaviors, and reactions are unique. At the core of human behavior, however, is a sense of self and self-direction, and some notion of gender is a key part of each person's sense of self. **Gender identity** is a person's sense of self as a person of a certain gender.

Gendered Aspects of Social Life

Some theorists write about the *gendered self*, *gendered interactions*, the *gendered organization*, or *gendered law*. What they mean is that the self, people interacting with each other, organizations, and the law cannot be understood adequately without considering gender arrangements and ideologies. It is possible, however, to be so attuned to the importance of gender in understanding some phenomenon that one's thinking becomes reductionist, that is, it explains all of social life as a result of gender. As already noted, often it is the combined effect of different statuses, the intersections, that are important (Anderson & Hill Collins, 1998, p. 3). Also, gender is not consistently a salient influence on every aspect of social life, and a sole focus on gender would obscure the importance of those other influences that are salient. However, for most of the history of criminological theory and research, the neglect of gender, not its overemphasis, has been a shortcoming (Daly & Chesney-Lind, 1988).

Crime and Justice

Crime is activity that is prohibited by criminal law and that makes the offender liable to punishment under that law. Because laws can vary and can be applied with some discretion, certain actions may differentially be classified as crime or not crime. *Justice* requires fairly addressing conflicts and inequities between people. Justice is served when people who are victimized are in some ways protected from additional victimization and compensated for their suffering, and the perpetrators are fairly punished. The term **criminal justice** refers to the laws that define and

prohibit criminal behavior as well as the police, court, and corrections agencies that implement the laws. *Criminal justice* is not necessarily just. For example, Amnesty International (Amnesty International, 1999), a human rights watchdog group, and the U.S. General Accounting Office (General Accounting Office, 1999) have documented the sexual abuse of women in prisons in several countries, including the United States. Historically, the lynching of black men in the United States was based on false claims that they had raped white women (Davis, 1978). There are sentencing practices and courtroom dramas that provide powerful examples of how gender disadvantages some people while it advantages others. Laws themselves may unjustly criminalize behaviors, and in some cases the result is that a particular group experiences disproportionately harsh punishment. Laws and the criminal justice agencies that implement them also can fail to protect and compensate crime victims. A great deal of theory is designed to explain when and why laws are just in their form and application, and to document how justice is or is not delivered in spite of the law.

Early Theoretical Work

Many of the advances in theory considered in this book resulted from creative refashioning or outright rejection and replacement of prior theoretical work that did not even consider gender, that ignored women and girls, or that incorporated and perpetuated gender stereotypes. Several excellent articles and books (Belknap, 2001; Leonard, 1982; Naffine, 1987; Scraton, 1990; Smart, 1976) have criticized and analyzed the failures of prior theory about criminology and criminal justice. Dorie Klein's 1973 classic article established that many traditional theories about the causes of crime and delinquency incorporated and disseminated sexist stereotypes about girls and women. In 1988, Daly and Chesney-Lind reviewed the state of criminological knowledge, and they concluded that despite a burst of research attention to women and girls, theory about gender organization was quite limited, and criminology as a field of study had not fully incorporated the understandings that were coming out of feminist theory developed in other disciplines. More recently, Belknap's (Belknap, 2001) book-length assessment of both historical and contemporary theory and research pointed to the invisibility of women and girls both in the justice system and in the theories about them and in policies and procedures that would result in addressing their needs and promoting their empowerment. To provide a point for comparison with theories and practices described in the next chapters, some of the inadequacies of prior work are described.

Theories to Explain Victimization

Wife Abuse

Until the 1970s, scholars who studied crime in the United States paid little or no attention to female victims of abuse by their husbands (Klein, 1973; Rasche, 1974).

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From 1939 to 1969, for example, the indexes of the *Journal of Marriage and the Family* did not contain any references to spousal violence (Schechter, 1982). However, by the end of the 1970s in the United States, there was an emerging body of literature on wife abuse. With the growth of the professions of psychoanalysis and social work in the 1980s, Freudian theory directed attention to a host of problems that were cast as manifestations of wife abuse victims' psychological disturbance (R. E. Dobash & Dobash, 1992). For example, a book based on the author's clinical practice, *Sweet Suffering: Woman as Victim* (Shainess, 1984), explained women's victimization as the result of their own masochism. According to the book, some women who grew up in abusive homes learned that their pain and suffering was normal, and therefore they became masochistic and sought out abusive relationships. Other therapeutically oriented explanations were that abused women suffered from a very varied set of personality problems that made them susceptible to violence; these problems included "reserve and caution in emotional expression, low ego strength, inability to cope, shyness and difficulty in self-expression, self destructiveness, skill deficits, problems communicating with others . . . and poor 'locus of control'" (R. E. Dobash & Dobash, 1992, p. 225). The early psychological theories were deficient because they did not provide valid documentation that abused women indeed suffered from psychological problems more than did other women, indicators of these problems were suspect, and there was no evidence that these problems were causally linked to some dynamic that would lead women to seek abusive partners or incite their partners to be abusive.

Early theories about wife abuse also claimed that women stayed in abusive relationships because of their personal failings and weakness (Loseke & Cahil, 1984). L.E.A. Walker (1984) transported the concept of **learned helplessness** from research on rats that responded to electric shocks with passive, helpless behavior. She postulated that abused women, like the rats, gave up and became helpless to the point that they could not stop the abuse or leave the relationship. Over time, the learned helplessness explanation for staying in an abusive relationship became an explanation for being in an abusive relationship in the first place (R. E. Dobash & Dobash, 1992). The range of women's characteristics that were set forth as reasons for their preferences for abusive men included "rigid sex role socialization, . . . a benign, paternalistic, 'Dresden doll' kind of upbringing, and early slavish characteristics" (R. E. Dobash & Dobash, 1992, p. 225). Abused women's characteristics were presented as exasperating to police and therapists, because a condition called **battered women's syndrome** (L.E.A. Walker, 1984) prevented women from leaving abusive relationships. The abused woman's fear of being beaten again rendered her incapable of resisting. Early theory to explain wife abuse ignored the centrality of the abusive male in perpetrating violence. It was reductionist in its sole emphasis on women's state of mind as the reason for being battered and staying in an abusive relationship, and because it ignored cultural, financial, and safety considerations that could explain why rational women would not leave an abusive relationship.

Family conflict theory offered yet another explanation for women's abuse. According to family conflict theory, a man hitting his wife or her hitting him are manifestations of discordant relationships and poor approaches to handling conflict. Family conflict theory was supported by 1975 and 1985 survey findings that in

married and cohabitating couples, men and women were equally violent, and indeed men were somewhat more likely to be victims of the most severe incidents of violence (Steinmetz & Lucca, 1988; Straus, 1980; Straus & Gelles, 1990). The data to support family conflict theory consisted of counts of reported instances of hitting, throwing objects, and completing other physically and emotionally aggressive sorts of acts against one's partner. The approach to documenting abuse is invalid, because it does not show whether acts are equally injurious, whether one party is afraid of the other, whether violence by one person is escalating, or whether acts are in self-defense. Family conflict theory and the research that supported it are misleading because they examine acts outside the context of other family dynamics, including whether there is an imbalance of power (Loseke & Cahil, 1984; Pleck, 1987).

One limitation of early theories to explain intimate partner violence is that they rested on the assumption that any incident was part of a similar pattern of abuse. Johnson and Ferraro (2000) examined prior research and identified five types of domestically violent relationships. *Common couple violence* involves one or two incidents but no pattern of abuse and rarely sexual or emotional abuse. *Intimate terrorism* is one tactic in a pattern of control and manipulation, and it is often accompanied by emotional abuse. *Violent resistance* involves violence in self-defense, and in many cases it is a one-time event. *Mutual violent combat* involves each partner using manipulative or controlling violence against the other, though often the male is more active against the female. Finally, there are instances of *dysphoric-borderline violence* by batterers who are very needy and dependent and who strike out to keep their partners with them. The early theories of intimate partner violence did not rest on detailed data on the dynamics and the patterns of abuse.

Rape

Early social science theories also fell far short of adequately explaining rape. One theory, referred to as **victim precipitation** theory, rested on the premise that the psychological makeup of rape victims differentiated them from other women (Amir, 1971), and therefore the victims' psychology precipitated rape. According to victim precipitation theory, the victim's abnormal psychology resulted in unusual behavior—for example, acceptance of a ride in a car or entering an apartment alone with a man—and this behavior could easily be misinterpreted by men to signal willingness to have sexual intercourse. In some cases, according to the theory, the abnormal women actually did agree to sexual activity, but later claimed rape. The theory accepted the rapists' judgments of "She was asking for it" or "She did not resist strongly enough," along with their rationalizations, "Her behavior was provocative" or "She changed her mind too late," and used them for a causal explanation of rape (Schwendinger & Schwendinger, 1983, p. 66). An elaboration of the victim precipitation theory of rape is that rape occurs because the victim failed to confront the rapist's assumption of the right to dominate and, furthermore, failed to communicate that she did not want to have sexual intercourse (Goode, 1969). Victim precipitation theory places responsibility for rape on the victim, suggesting that she acted in a way that was contrary to expectations for the appropriate behavior

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of a woman, with the result that she incited the violence against herself or left her desires open to misinterpretation (Smart, 1976, p. 100).

Some psychoanalytic theory located the cause of rape in the psyche of the offending male rather than in the psyche of the victim. The key idea was that men who committed rape were psychologically disturbed, and as a result they acted with hatred and aggression toward women. For example, one theory provided the explanation that mother-dominated black families stimulated homosexual tendencies in male children, and the resulting problems of masculinity and sexual identity led them to rape women (Amir, 1971, p. 73). A central part of the logic is that when women's status creates men's sexual anxieties, men will be driven to violence. A key criticism of the psychoanalytic theories is that the "emphasis on irrational and unconscious personality processes implicitly minimizes" the influence of society-wide beliefs that support men's sexual violence against women (Schwendinger & Schwendinger, 1983, p. 74). Also, there is no evidence that homosexual tendencies or mother-dominated family structures are connected to rape.

Some psychological theories have not considered the unconscious but still have emphasized the offender's abnormal personality as the cause of rape (Groth & Burgess, 1977). For example, one explanation was that men who committed rape had personality disorders. A personality disorder is indicated by inflexible and maladaptive patterns of perceiving people and situations, relating to them, and thinking about oneself and the environment. These patterns of thinking and behaving may harm other people and may not even meet an individual's own needs in the long run. Attributing rape to offenders' psychological makeup did correct the problem of blaming rape victims for being attacked; however, a primary criticism of psychological explanations of offenders' behavior is that there would need to be considerable undiagnosed psychological disturbance throughout the population in order to account for the prevalence of rape within marriage, rape in the context of a dating relationship, and rape by acquaintances. This assumption is untenable.

Incest

Early social science theories to explain incest echoed familiar themes. Although Freud initially accepted women's descriptions of incest as valid, he later believed they were fantasies. He reasoned that the fantasies were sparked by neurotic mothers who, because they were not sexually satisfied by their husbands, were overly tender and overly anxious in their interactions with their children. The mothers' behavior awakened sexual precocity, which led to the children's fantasies about being subjected to incestuous acts (Freud, 1966, p. 38). Subsequent to Freud's work, theories based on numerous pieces of research with small samples of women who were undergoing therapy posited that mothers colluded with their husbands to allow incest to continue (Wattenberg, 1985). The typical family context, in which women had little influence over husbands who were committing incest, was ignored by these theories.

Family systems theory also was extended to explain incest. The idea was that incest occurred when families became dysfunctional, for example when the mother was ill and could not carry out her typical activities to support the family. Mothers

were sometimes described as providing the primary impetus for incest when they withdrew emotionally and sexually from their husbands (Gavey, Florence, Pezaro, & Tan, 1990; Gutheil & Avery, 1977, p. 113; Swanson & Biaggio, 1985). Each family member was seen as having a part in causing incestuous behavior. The implication of this theory is that women and children are responsible for incest within the family, and that if they can improve the functioning of the family, the incest will stop (Butler, 1982, p. 325). Again, the assumption is that each family member has equal power to control the family and, therefore, each has equal responsibility for incest. As with all of the earliest theories about girls' and women's victimization, victims and/or their mothers explain men's violence, and women (in this case, mothers) are blamed for not fitting *gender role stereotypes*, which are exaggerated oversimplified beliefs about appropriate behavior for females and for males.

Except for theories that linked men's psychological disturbance to rape, the victim's or her mother's psychological inadequacies or inability to perform expected roles were seen as the primary causes of violence against women. The idea that men who rape were disturbed because of their mothers' behaviors similarly gave women the ultimate responsibility for the victimization of other women and girls. Notably absent is any indication that beliefs of men and activities of fathers are central in promoting victimization of women and girls. Also absent is any recognition of how macrolevel influences might result in violence against women.

Theories to Explain the Behavior of Offenders

The first theoretical developments relevant to offenders also were limited in their treatment of the sex and gender concepts. By the 1980s, numerous studies had been published on the delinquency of boys, and no apology was offered for omitting girls from the theories or the samples. In the years of relative neglect of females who broke the law, there were some exceptions, but these exceptions did not produce well-founded theories. In a critical essay that exposed questionable assumptions that theorists made about the inherent nature of women, Klein (1973) identified theorists who had had a major impact on thinking about women's criminality (Freud, 1933; Lombroso, 1920; Pollak, 1950; Thomas, 1923) or who represented the contemporary work at the time she was writing (Cowie, Cowie, & Slater, 1968; Konopka, 1966; Vedder & Sommerville, 1970). Her analysis showed that prior theorists had categorized girls and women as good women who are "normal" and bad women who are criminals. Normalcy depended on whether the girl fulfilled traditional gender roles (Klein, 1973, p. 4). The division of women into good and bad based on fulfilling traditional gender roles is sometimes referred to as the *madonna/whore duality* (Feinman, 1986, p. 4).

Psychological theories to explain why girls and women broke the law were based on assumptions about universal psychological traits, and crime was viewed as "a *perversion of or rebellion against* [females'] *natural feminine roles*" (Klein, 1973, p. 5). Most theories that linked gangs to delinquency portrayed girls as auxiliaries to the central male members, and/or they emphasized the sexual availability and activities of the girls. In some cases, girls were described as promiscuous when male gang

members pressured or forced them into sexual activity (Chesney-Lind & Hagedorn, 1999). Early theories also ignored the family and community context, the larger social structure that might contribute to lawbreaking, and diversity in **gender role prescriptions** for different racial and ethnic groups (Rice, 1990). They were flawed because they emphasized girls' and women's sexuality and femininity (or lack thereof) as explanations for their illegal behavior, and they therefore assumed that desistance from illegal behavior depended on the women's and girls' assumption of traditional roles of females and curtailment of sexual activity outside marriage.

Beginning in the 1960s and increasing through the 1970s, some theories about delinquent girls departed from the pattern of providing psychological or biological explanations. However, girls usually were given much less attention than were boys, and they were portrayed as relatively dull and passive, even when they were delinquent. In contrast, boy delinquents were portrayed as being active and exciting (Belknap, 2001). An exception was a study of a Chicana gang in East Los Angeles, which had considerable independence even though it was an auxiliary to a male group. The girls were loyal to each other, made decisions democratically, and provided each other both with practical help, including protection, and with the emotional support that normally comes from close family or friends (Quicker, 1999). With few such rare exceptions, however, scholarly attention to gangs through the 1970s paid little or no attention to the everyday lives of girls and women.

In contrast to the tendency to ignore or pay short shrift to girls' and women's illegal activity were two books published in the mid-1970s, *Sisters in Crime* (Adler, 1975) and *Women and Crime* (Simon, 1975). These books advanced the **liberation thesis**: The women's movement had loosened gender role prescriptions, and as a result women were becoming more like men in their penchant for competition and therefore in their criminality. Adler specified that women's violent crime rate would be affected. Simon opined that only the property crime rate would increase. Both theories have been criticized because there is no empirical evidence or sound theoretical rationale to support the notion that holding a feminist ideology, whether this means believing in gender equality or wanting to rearrange the distribution of resources in society, increases women's competitiveness. There was evidence neither that the women's movement had provided women with tremendously increased opportunities by 1975 nor that women wanted to behave more like men in various spheres of life, including criminal activity (Naffine, 1987). Other serious problems with the theories were that they assumed that criminal activity was masculine, women's rates of violence had not increased, and women's increased rates of property crimes were better explained by financial troubles than by emancipation (Naffine, 1987, p. 88). Finally, the women who were most involved in the Feminist Movement were not the women who were contributing to increased rates of property crime, and property offenders usually were not among the ranks of feminists.

The historical examples of flawed theory to explain girls' and women's criminality demonstrate the importance of grounding theory in information on the details and the realities of women's individual characteristics and lives, in the immediate contexts in which they find themselves, and in some larger social structure. The shortcomings of prior theory also call attention to the need to consider diversity

among girls and women. The early theories did not pay attention to immigrant group differences or to racial group differences, but instead presented girls and women as unrelated to any particular context and as having rather homogeneous identities.

Injustices in Prior Policies and Practices

Policies and practices in the criminal justice system have perpetuated a number of different sorts of injustices. In some cases, the flawed theories and expert discourses that incorporated them supported and provided rationale for injustices.

Policies and Practices Pertaining to Victims

Wife Abuse

In the British common law tradition that has influenced U.S. law, women were defined as men's property, so wife battering was not taken seriously, and rape in marriage was considered to be an oxymoron (Klein, 1982; Weis & Borges, 1977). Neither abuse nor rape by a spouse was defined as a crime. The remnants of the view that the state should not intervene in any but the most egregious forms of men's abuse of their wives existed in criminal justice system practices in the United States in the 19th and 20th centuries. Although legislators repealed the ruling in 1894, a Mississippi Supreme Court ruling from 1824 held that wife beating was legal as long as it was not extreme, and this ruling set a precedent (*Bradley v. State*; 1 Miss. (1 Walker) 156, 158 (1824)). States varied in their laws and in implementation of the laws, but in some periods and places violence against a female spouse was legal or tolerated.

Most police officers in the United States (and elsewhere) believed that they should not be involved in personal affairs of the family, and thus violence between family members typically was treated as a private matter (Belknap, 1990, 2001). When police went to a home where there had been domestic violence, a common tactic was to try to calm people down and leave as quickly as possible (Petersilia, 1993). An early study compared police encounters with the parties involved in domestic violence to encounters with people involved in other kinds of disputes (Oppenlander, 1982). Dispatchers describing a call to police were less likely to depict domestic cases as assaults, though when police arrived on the scene of a domestic assault, they more often found upset and agitated people than in other dispute cases. Although police officers were more likely to make an arrest in domestic than in other types of disputes, the severity of the assaults suggested that even more arrests were warranted. The officers seemed to be "victim aversive"; that is, they spent more time in private discussion with the male offenders than in questioning and offering assistance to the victims. In the United States, this type of police non-intervention into acquaintance and intimate partner rape fueled the Feminist Movement to push for more police and prosecutor involvement in domestic violence cases.

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In the 1980s, police tended to interact with men whose partners had called the police to complain of domestic violence, but not to interact with the complainants.

Research conducted in the 1980s showed that police officers endorsed stereotypes of African American culture and families as being characterized by violence (Edwards, 1989). African American women were viewed as providing provocation for abuse and being more accepting of it than European American women. The myth that African American families are matriarchal, and that therefore women in them have control over men, resulted in criminal justice professionals' lower levels of activity to protect African American women (P. H. Collins, 1990; Hampton, 1987). There is contradictory evidence in other jurisdictions that police handle abuse in upper-class, white families informally (D. A. Smith & Klein, 1984). In the United States, it was only in the last part of the 20th century that domestic violence came to be seen as a crime that, like other crimes, should be treated as an offense against the state. Similarly, not until late in the 20th century was there growing attention to the problem of racially and class biased responses.

The application of early theories in some cases made responses to domestic violence less just. In the field of mental health, wife beating was seen as the result of victim provocation or instigation (D. Martin, 1982, p. 273). Battered women's syndrome and learned helplessness theory were used as a defense in the U.S. courts to explain why abused women would kill offenders. Although this defense saved some women from harsh sentences, the ideas that all abused women had innate incapacities; that by virtue of staying with abusive husbands, they were psychologically abnormal; and that their killing a husband was not self-defense, but a manifestation of this disorder, ultimately did a disservice to many women (R. E. Dobash & Dobash, 1992, p. 229). Also, the assumption that battered women suffered from learned helplessness has been the basis for the argument that children should be taken from their abused mothers because the mothers cannot and will not protect them (Williams, 2003, p. 528). The theories and the defense stances they supported

shifted attention away from the danger that the woman was in, to her psychological deficiencies and her inability to be a fit mother, and women's own reasoning and feelings about abuse were not heard in court.

After social movement activists achieved some success in drawing attention to the harm done by domestic violence and the need for battered women's shelters in the 1970s, family violence theorists provided a new rationale for diverting attention and resources to conflict resolution approaches that could be used by police and the courts (R. E. Dobash & Dobash, 1992). Similarly, specialists in alcohol abuse promoted the idea that neurotic wives contributed to their own abuse by encouraging their husbands' drinking, which then resulted in abuse (Klein, 1982, p. 101). This explanation served the interests of alcoholism treatment programs by delineating a new group of clients to treat. In some places, there was a temporary reversion to treating violence in the family as a private matter to be handled by counseling all the family members, or as an alcohol problem supported by family dynamics, rather than as a criminal assault to be handled through apprehension and punishment. The early theories to explain the abuse of women by intimate partners focused on marital relationships and individual- and family-level influences, to the exclusion of broader community and sociological factors that might occur both within and outside marriage.

Rape

English common law defined rape as "carnal knowledge of a woman forcibly and against her will" and specified that married women could not be raped by their spouse within the constraints of the law (Fusilli, 2002, p. 603). The victim's physical resistance to the forced sexual activity of intercourse was necessary for a rape to occur, and this was indicated by her use of a level of force commensurate with the force being used against her. Corroboration that the rape had occurred was important. Strict rules were established to guard against false accusations by women claiming men had raped them (Schulhofer, 1998, pp. 18–19). The vestiges of English law persisted in U.S. law and beliefs about sexual assault (Posner & Silbaugh, 1996), and although laws have been reformed, beliefs have not been fully changed.

Numerous examples in the literature point to the dismissive or hostile treatment of rape victims. The most negative treatment has been directed against black victims. Historically, courts in the United States have instructed juries that black women should be assumed to be unchaste, and therefore suspect as true rape victims (Crenshaw, 1989, p. 158). In more recent times, there is evidence of unsupportive responses to rape victims, and these responses are not restricted to women of color. In 1975, California Supreme Court justices found that when a man misunderstands the intentions of a woman claiming rape, "his actions are legal as long as he 'reasonably and genuinely' believes that she desires intercourse" (Schwendinger & Schwendinger, 1983, p. 69; *People v. Mayberry*, 15 Cal. 3rd 143). Based on the possibility that women claiming rape might have invited sexual intercourse, police routinely questioned rape victims about their sexual history, the clothes they were wearing at the time of the incident, and their actions, in an effort

to determine whether they had invited the rape (M. French, 1977, pp. 607–620; Holmstrom & Burgess, 1978, pp. 221–222; Rafter & Stanko, 1982, p. 9). The criminal justice system was not the only perpetrator of injustice. Between 1880 and 1960, the medical profession's literature highlighted the importance of physicians' care in their examinations of girls and women claiming rape, because women and children were prone to making false accusations (Mills, 1982). Also, in the 1950s, political liberals criticized laws against rape as ignoring that women who were raped shared predisposing characteristics (Freedman, 1987, p. 102). Based on the assumption that women potentially were responsible for their rapes, legislators and those with influence on them pressed for laws that would solidify requirements of corroboration of rape charges by witnesses, investigation of victims' prior sexual behavior, and proof of complete sexual penetration. In each of these examples, as was true for victim precipitation theory, the victim was held responsible for her rape by virtue of not having clearly signaled a lack of desire to have intercourse or because of her tendency to desire sexual involvement, and then later claim rape.

The psychological theories that placed the cause of rape in the minds of offenders also created injustices. In the United States during the 1930s, psychologists became more interested in male sexual deviants, whom they viewed as inadequately masculine effeminate homosexuals or as hypermasculine sexual psychopaths (Freedman, 1987, p. 89). Homosexuals were suspected and investigated as potential child molesters, and sexual psychopath laws were passed to allow sex offenders to be sent to secure hospital settings for indefinite periods. The new sexual psychopath laws were used differently for white and black offenders. White men predominated in the group of offenders convicted of sexual relations with children, and they were sent for hospital treatment. Black men were overrepresented among those convicted of rape, and they were sent to prisons or were executed. The result was the treatment of white sex offenders as mentally ill, and the treatment of black offenders as violent (Freedman, 1987, p. 98). The racial inequity could result in two sorts of injustice: for black offenders not diagnosed as psychopaths, lengthy confinement in prisons or execution; and for white offenders, sometimes lengthy confinement for those who served indeterminate periods, or questionable interventions (castration or electroshock therapy). Beginning in the 1970s, sexual psychopath laws were challenged and repealed. A major difficulty was that the term *sexual psychopath* was vague and the condition was not objectively defined. The psychological and psychiatric theories that shaped thinking about crime and justice resulted in many unfair practices for decades during the 20th century.

Incest

Theories proposing that incest victims fantasized the incidents made victims invisible and denied their experience. Theories that located the cause of incest in family dynamics presented the victim as partly responsible for the victimization, which is questionable given the tremendous power imbalance between parent and child. Therapies buttressed by family systems theory diverted attention away from holding the offender responsible for his actions and keeping the child out of harm's way, and blamed victim and wives for the offender's acts.

Policies and Practices Pertaining to Offenders

Control of Sexually Active Girls

Both early and contemporary studies of delinquency show that parents exert more controls over girls than over boys (Cernkovich, 1987, p. 307; Simmons & Blyth, 1987; Thrasher, 1927, p. 228). For example, boys in junior high school are allowed more often than their female peers to go places without parental permission, go out after dark, and stay home alone (Simmons & Blyth, 1987, pp. 73–74). Historically, a major reason for the greater control of girls has been to limit their sexual activity (Chesney-Lind, 1989; Gorham, 1978; Odem, 1995; Schlossman & Wallach, 1978).

The United States' long history of using the criminal law to control girls' and young women's sexual behavior is consistent with the importance that has been attached to girls' virginity. During the Progressive Era (1896–1920), high levels of concern about divorce, illegitimate birth, and prostitution spilled over to a more general condemnation of immoral behavior and a specific concern about sexually active girls. Typical of the times, social workers at Hull House in Chicago, which offered neighborhood-based social services to assist immigrants adapting to their new country, acted as “guardians of virtue” by trying to discourage working-class young women's sexuality (L. S. Abrams, 2000). As working-class women moved into the paid labor force, there was a punitive response to female independence and sexuality (Schlossman & Wallach, 1978; also see Rafter, 1990; Rosen, 1982). This response was manifested in the institutionalization of girls and women deemed to be feeble-minded and in danger of immoral behavior, specifically out-of-wedlock sex and reproduction. Institutionalization would both protect the unwed girls and women and prevent the birth of what were assumed to be mentally deficient offspring (Hahn, 1980).

After the Progressive Era and into the 1980s, concern with promiscuity and pregnancy superseded the emphasis on preventing the birth of deficient children, with the result that girls continued to be institutionalized when they were suspected of being sexually active (Conway & Bogdan, 1977; Datesman & Scarpitti, 1980, p. 168; Odem, 1995; Sarri, 1976). In the 1970s, police were more likely to release a girl than a boy who had committed a delinquent act, but were more likely to arrest a girl than a boy for sexual activity (Milton, Pierce, Lyons, & Hippenstead, 1977, p. 7). An early study of juvenile courts found that for criminal offenses, girls were treated more leniently than were boys, but for status offenses, many of which involved sexual behavior or risk of being sexually active (for example, being run-away), girls were treated more harshly (Datesman & Scarpitti, 1977).⁴ Girls were punished more severely for actual and expected sexual behavior than were boys for violent acts and serious property crimes, sometimes even more severely than were with long criminal histories (Chesney-Lind, 1977; Cohn, 1970; Terry, 1970). As a result of the criminalization of girls' sexual activity, a much higher proportion of girls than of boys was institutionalized for status offenses such as running away, being out of control, or being in need of supervision (Gibbons, 1970, p. 16; Selo, 1976). Black girls were especially likely to be put on probation and were repeatedly

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incarcerated for suspected or known sexual activity (Chesney-Lind, 1973, p. 58). Not only were status offender girls more likely to be incarcerated, but they also were incarcerated for a longer period than were boys who had committed delinquent acts (Gibbons, 1970, p. 16). The perception that girls needed controls to prevent or stop their sexual activity for their own protection motivated court intervention and incarceration.

The harsh treatment of female status offenders had serious ramifications for girls who were being sexually abused in their homes. A high proportion of sexual and other child abuse is concentrated on girls, many of whom use the survival strategy of running away from home. Parents or guardians, who are sometimes the abusers, were able to enlist the courts' help to force the girls to return home. The statutes meant to protect girls in fact "criminalized their survival strategies" (Chesney-Lind, 1989, p. 24) and supported their return to the homes where they were at risk for continued victimization. The questionable efficacy of mixing status offenders with youth who had committed serious property and violent offenses, coupled with the overrepresentation of female status offenders in institutions, resulted in federal efforts to encourage states to deinstitutionalize status offenders and to house them in separate facilities. In the aftermath of this reform, there are lingering concerns that girls are charged with delinquency offenses that result in more controls not just because of those offenses, but because they are sexually active. Alternatively, girls who are sexually active may be channeled into mental health settings with strict controls, but their psychiatric label will not reflect decision makers' and parents' concerns about their sexual activity. Unfortunately, there is a limited contemporary research to confirm or discredit concerns that the historical legacy of using the justice system to control sexually active girls is currently widespread.

Regulation and Criminalization of Prostitution

At various periods and places, prostitution has been regulated or criminalized. Regulation has focused on handling prostitution as a public health issue, and the emphasis typically is on ensuring that women who engage in prostitution are not spreading infection through sexually transmitted diseases. For example, Britain in 1864 passed the Contagious Diseases Act to curb the spread of venereal diseases to members of the British army and navy who frequented ports (Vicinus, 1973; Walkowitz, 1980). Members of a special enforcement unit and registered doctors could obtain an order from a justice of the peace to physically examine suspected prostitutes to determine whether they were infected with disease. Healthy women would be registered and provided with a certificate. Infected women were confined in hospitals and forced to accept treatment. Women activists and selected politicians vigorously opposed the law on the grounds that there was not evidence to support the need for the intervention, forced medical examination and detention interfered with civil liberties and were conducted in a cruel and callous manner, and prostitution is a vice that involved trafficking in women, and therefore should not be tolerated by the state but should be criminalized. Women activists argued that it was not fair to punish only the women, whom they saw as the victims of vice,

and not to punish men. As a result of opposition, the Contagious Diseases Act was repealed in 1869.

In the United States, federal and local laws have criminalized prostitution. At the federal level, the Mann Act, which was passed in 1910, forbade the interstate and international transportation of women for immoral purposes. By 1915, most states had passed laws against profiting from the earnings of people involved in prostitution. Although the early laws focused on people who profited from prostitution, later laws were passed against soliciting for the purpose of engaging a person in paying for sex, and practices of arrest, prosecution, and punishment focused increasingly on the people who engaged in sex for money, in particular the sellers. Police departments vary, however, and some do give considerable attention to arresting customers and people who do not engage in prostitution directly, but who organize or profit from it.

Sentencing

The literature on sentencing has for some time drawn attention to the possibility that women are treated less severely than men by the courts because of chivalrous feelings of judges or because of their paternalism. Chivalry refers to ancient practices of being polite and caring toward women, and it is something of a stretch to assume that chivalry has been transported into courtrooms of the 20th and 21st centuries. Paternalism, which places men in control of meeting the needs of women assumed to be too childlike and unintelligent to manage their own lives, more accurately characterized women's treatment, and the result was not always leniency (Moulds, 1980). Paternalistic attitudes often resulted in long sentences for women. Prior to 1970, the law allowed differential sentencing for women (President's Commission on the Status of Women, 1963). The basis for differential sentencing was the belief that women were more responsive to rehabilitation and would benefit from indeterminate sentences that could be continued for many years (Temin, 1980). During the 1960s and 1970s, civil and women's rights activists, as well as federal task forces established to respond to the injustices that activists highlighted, exerted pressure to eliminate sex-based discrimination in sentencing (Feinman, 1985). The blatant practices of legislatively prescribed differential sentencing of women no longer continue in the United States.

Gender Bias in Correctional Programs

During the mid-20th century, when girls in the United States were institutionalized at a high rate for sexual activity, programming less adequately met their needs than did programming for boys, who typically were institutionalized for more serious lawbreaking. Despite the courts' concern with sexuality, programs did not offer sex or contraceptive education, and in fact some programs required that girls stop taking birth control medication (Chesney-Lind, 1973, p. 160). Girls also had fewer recreational options and poorer medical and dental care than did boys. When girls were provided with vocational programming, the emphasis was on traditional female occupations, such as cosmetology (Gibbons, 1970, p. 16). Girls spent most

of their time watching television or in idleness, and their mail and their behavior were much more closely monitored than were the mail and behavior of the more seriously delinquent male offenders who were institutionalized (Chesney-Lind, 1973; Milton, Pierce, Lyons, & Hippenstead, 1997). Stereotypes of girls as passive, in need of tight controls, and restricted to traditionally female occupations permeated and were reproduced in the regimes of institutionalization.

There is much documentation that once women were committed to correctional programs, they also were groomed to fit into activities and jobs that were severely constrained by gender stereotypes. During the Progressive Era in the United States, prison reformers' recognition of environmental, social, and economic explanations of women's lawbreaking suggested correctional approaches that could meet women's needs and, of particular importance, led to the establishment of separate prisons for women (Freedman, 1981). Separate facilities for women provided them with each other's companionship and reduced exposure to sexual exploitation, but the separation also created a context in which it was simple to institute sex-stereotypic programs, such as housekeeping, and to treat women more like children than adults. Likewise in Great Britain, in the 1800s, women's prisons stood out from men's facilities in their different regimes—for instance, the much closer surveillance and control of female inmates that was accomplished by a network of refuges, asylums, reformatories, and shelters (R. P. Dobash, Dobash, & Gutteridge, 1986). Later, in the United States, when women were prepared for a greater variety of jobs in the workforce, the emphasis was on cosmetology, homemaking skills, and clerical work (Feinman, 1973; Glick & Neto, 1977). A court order issued in 1979 in the state of Michigan challenged and tried to correct the unequal access that women had to job training and other forms of education (*Glover v. Johnson*, 1979). The federal court's supervision of the Michigan Department of Corrections for this case ended in 2000, and there are concerns about reversion to less equitable availability of programs to women offenders; however, between 1979 and 2000, many programs, including preparation for work in the areas that are not traditionally associated with being a woman (e.g., the building trades) were made available. The case had an effect on other states, which tried to avoid lawsuits by providing more than the most stereotypical programming for women offenders. In most states, however, a majority of women are not exposed to work opportunities and training that challenges traditional stereotypes of women's work.

Advances in Theory

The overview of previously developed theory and its connection to responses to crime victims and offenders reveals how theoretical explanations have provided rationales for unjust practices. The flaws in prior theory and general improvements in social science explanations of social life have given impetus to the development of theories that represent a considerable advance over old knowledge.

Theory can be developed and improved in several different ways. One way is to discover new concepts that help to describe social reality and explain why people break the law, how people respond to crime and victimization, why laws are enacted

or changed, and how laws are implemented. Another is to discover or confirm how concepts are connected to each other. Often, the reason that something occurs or a person embarks on a particular action or path is not easily predicted and is not linear in the sense that one condition always precedes and causes a particular outcome. Different circumstances and individual characteristics can have the same outcome, and the same circumstances and characteristics can have different outcomes. Some contemporary theories try to explain these alternative ways that social life unfolds. A third way that theory develops is through challenges to assumptions and the replacement of questionable assumptions with those that are tenable. Finally, explanations can be improved by integrating different theories and by developing more complex explanations that take into account different levels of influence and different contexts.

Concept development has been crucial to improving theory about gender, crime, and justice, because key aspects of life that are relevant to gender were not conceptualized at all in prior theories. It was not long ago, for example, that there was no name for sexual harassment:

Women had to be experiencing and disliking work relationships before it was possible for sexual harassment to be invented. How frighteningly uncertain women must have been before they could know or say or “recognize,” and therefore confidently *have* that experience. (Cain, 1989, p. 15)

Many of the oppressions and painful experiences felt by women and girls were not part of social science theory, and therefore they had to be discovered through observation, interviews, and self-reflection.

A theorist can make a contribution by drawing on knowledge that is outside the narrow confines of a particular discipline, in the case of the topics of this book, by *transgressing criminology* (Cain, 1990). For example, some theorists were able to understand how girls and women were controlled in the justice system only when they had a broader picture of how gender ideologies led to the control of women in the playground, in the family, and at work. (Cain, 1990, p. 7). Girls can be policed in everyday life by greater sanctioning in their families than is experienced by boys, by language that focuses on their sexuality, by an emphasis on marriage, and by precarious employment prospects (Cain, 1989). Taken together, the monitoring and pressuring of girls and women to behave in a certain way and fulfill certain roles limits their choices and opportunities. Similarly, before women are incarcerated, many have been imprisoned in more symbolic ways by social conditions in their communities, family circumstances, and abuse in their intimate relationships (Richie, 1996; Weston-Henriques & Jones-Brown, 2000, p. 272). Finally, just as girls and women are often judged and punished according to whether they fulfill expectations about whether they adequately conform to gender role expectations, so are gay, lesbian, and bisexual individuals sometimes judged and punished for this reason. Because oppression based on sexual orientation can result from gender stereotypes and ideologies, throughout this book, information on people who are not heterosexual is included to expand the scope of explanations. Awareness of forms of social control that are used outside the criminal justice system alerts us to look for the effects

of similar gender ideologies in police, court, and correctional institutions (H. Allen, 1987; Eaton, 1986; Worrall, 1989), just as awareness of the applicability of explanations to diverse groups helps us to understand a greater span of human behavior.

Ways of Knowing About Gender, Crime, and Justice

Given so many examples of erroneous theories that have resulted in policy and program applications that perpetuate injustices, it is not unexpected that many scholars have asked what went wrong in the collection of empirical evidence intended to reflect and explain reality. *Epistemology* is the study of how knowledge can be obtained, what knowledge is, and the relationship between the knower and what can be known (Guba & Lincoln, 1994). A central question is whether researchers distort reality through their predispositions to think that certain things are important and their filtering of information through their senses. Research on gender, crime, and justice has been carried out using alternative epistemological approaches, and there is debate about whether different approaches can contribute to useful and valid knowledge.

Positivist approaches assume that there is a reality external to individual observers (including researchers) and that various methods are available to gather reasonably accurate information on this reality. The experiment, in which similar individuals are exposed to different treatments and then the results are compared, is one type of positivist research. Surveys, interviews, or observations also can be conducted to measure variables, and evidence that these variables are associated or occur in a particular sequence serves as supporting evidence for causal relationships. One direction that positivist theory development has taken is to test complex models that depict causal relationships between many different variables for which measurement is timed to reflect the time ordering of causes and effects.

Knowledge developed in the positivist tradition has been criticized for assuming that measured variables and the relationships between them accurately reflect social reality or complex causal processes. If a judge's race is related to her or his tendency to commit offenders to probation rather than to prison, what does this tell us? It would be more useful to understand how people's different life experiences lead them to reason about offenders, and how those life experiences are connected to racial inequities, and then to link certain types of reasoning to decision outcomes. When positivist research focuses on the relationships between variables that are not clearly linked back to a useful theoretical explanation, it is criticized as being *variable-driven research* or *empiricist*, which means there is measurement with no theoretical rationale or meaning.

The positivist approaches to building knowledge rely on deductive reasoning. Prior theory establishes the potentially causative variables that should be measured and the outcomes that are worth studying. A criticism of the positivist approach is that because so much of the early social science was developed by white, middle-class men to explain the lives of males, important dimensions of the lives and the social worlds of people differing in gender, race, and ethnicity might not even be considered in a theory, and thus will not be studied in research.

Many individuals who study gender try to develop feminist theory, which focuses on the oppression and inequality of people because of their gender. One purpose of their theoretical work is to produce research results that are useful in reducing gender-related disadvantage. Scholars who work in the feminist traditions use many different epistemological stances and related methods of research, and many of them integrate across different theories and methods. Some of them do take a positivist approach that is referred to as **feminist empiricism** (Harding, 1990, Kruttschnitt, 1996). Feminist empiricism, and indeed all theory and research carried out within the positivist tradition, is most useful when it has been grounded in observation as well as in prior theory (Eichler, 1988). A grounding in observation ensures that the variables that are measured are salient in the lives of people and groups being studied. Many positivists, including feminists, assume that there is an objective reality. However, the researcher interprets that reality through political, cultural, economic, ethnic, and gender-related values, and therefore there are alternative interpretations of the same empirical reality (Guba & Lincoln, 1994).

Because of the shortcomings of positivist research, some social scientists work within alternative frameworks. *Constructionist* theorists highlight the process of human interaction that results in defining and labeling people, for example as believable victims, nonvictims claiming to have been victimized, sexually promiscuous girls, or offenders. At a more macro level, they look at the claims that groups and individuals make that result in the definition of certain patterns of behavior as social problems. Violence against women and hate crimes have been highlighted recently as social problems in the United States. The theory is that the various labels that are assigned to people in statistical reports, in the juvenile and criminal justice systems, and in the political arena are constructed; therefore, they are not necessarily an accurate reflection of social life. Some labels are the outcome of a process of thinking and interacting within a particular context. Official crime statistics are the outcome of record keeping and data manipulation. The constructionist theorists shifted attention toward how some people come to be labeled as delinquent or as criminal, and they have revealed how assumptions and ideologies pertaining to gender, race, and class affect labeling. Qualitative descriptions of the process of creating constructions of the self and of other people are seen as the most valid approach to developing knowledge. In the constructionist perspective, and in other epistemological approaches, measurement that is endemic to positivist research can also be viewed as producing constructions of reality rather than accurate reflections of it.

Research on Mexican American women in Detroit during the 1990s illustrates how data collection methods differ in the realities that they reveal.⁵ Consistent with a positivist approach, women responded to several standard questions used in prior research. The questions asked women to report on the number of times that they and their husbands had been aggressive toward each other—for example, hit or slapped each other—during the last year. Questions were grouped into three areas: *expression of anger and rage* (for example, insults, doing things to spite a spouse, smashing things), *assault* (including behaviors like hitting, shoving, and kicking), and *attack* (beating, choking, forced sex, threatening with a knife or gun). A case example shows the erroneous picture created by the quantitative measure that is

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produced by adding up the number of times in the last year that the different incidents happened.

Equal fighting back and forth is suggested by the quantitative measure, though on each scale, the woman has a slightly higher score, indicating more aggression toward the husband than from him. For the last year, the woman reports more serious assault against the husband and none by him. In contrast, more descriptive information reveals that the primary issue for the couple is extreme control by the husband:

[The most serious incident was] when he gave me a black eye and broke all of my furniture in the house, because a guy from work dropped me off from work. [He was trying to get me to] admit that I was cheating on him [because] just imagining me with another guy makes him act this way. [What makes things better?] Just being home with him so that he can get it out of his mind that I'm cheating on him.

In the example, the wife felt she had effectively limited the violence against herself by curtailing her own freedoms. Even though the quantitative measures suggest she is engaged in fighting back and forth with her husband on fairly equal grounds, she is in fact closely controlled by her husband, and her own acts are primarily responses to his extreme aggression toward and control of her. The qualitative descriptive information provides a very different picture than do the numbers.

Advocating for the use of detailed and rich qualitative description of behaviors and context, some social scientists argue that it is possible to avoid distorting the objects of study by starting with what is called a *grounded theory perspective* (Strauss & Corbin, 1990). A study of rape crisis programs used the grounded theory approach (R. Campbell & Ahrens, 1998). The research began with collaboration with personnel from innovative rape crisis programs. The researchers interviewed multiple types of service providers (e.g., police officers, nurses, rape victim advocates) who worked in innovative rape crisis programs across multiple communities throughout the United States. These community workers were asked to describe their programs in their own words, and the descriptive narratives were used to develop typologies of innovative programs, to describe each type of program in detail, and to guide the construction of an exploratory model articulating why these programs are beneficial to rape survivors (R. Campbell and Ahrens, 1998, p. 542). The study of rape services is somewhat unusual, because based on the grounded theory approach, the researcher developed a quantitative score reflecting the types of programs that were helpful to victims. Most people who use the grounded theory approach do not go on to use resulting findings as the input into quantitative research. However, they do develop concepts and explanations based on qualitative data.

Like constructionist theory and grounded theory approaches, *standpoint feminist theory* (Harding, 1990) questions whether positivistic science can contribute to valid social science knowledge and offers an alternative. According to standpoint feminism, the limitations of positivist research result because gender, race, class, and other status markers affect researchers' and subjects' perceptions of reality. If

the researcher is in a different social location from the people being studied, she or he cannot accurately understand their reality. In the standpoint perspective, distortions in social science knowledge initially came about because white men conducted most of the research, and they did not have access to information about other groups. These groups would not open up their worlds to the dominant group, and the male researchers did not consider that their own standpoint might not afford them a full picture (Harstock, 1987; D. E. Smith, 1987). A solution is to carry out research that allows active participation of the people who are being studied, so they can shape theoretical explanations. Research from a standpoint perspective would not constrain subjects to answering preset questions with preset response possibilities. An objective of this sort of research is often described as *hearing women's (and others') own voices*. The researcher also would reflect on and write about steps taken to sift through and reflect multiple standpoints.

Standpoint theory is complicated by the recognition that each person's unique standpoint is affected not just by gender but also by race, age, ethnicity, and myriad other status markers. What is the accurate standpoint, and what is the researcher's role in developing knowledge that is fragmented by the many different standpoints of subjects and researcher(s)? Comack (1993) struggled with this question when she analyzed data from interviews on women's experience of abuse and their criminality. She described her resolution of the dilemma posed by multiple standpoints:

It was when I was in the process of doing the research with the women in the prison that I realized how similar it was to quilt making. Each of the women I spoke with has been involved in constructing her own quilt piece. This work has involved the naming of her abuse and her own analysis of the ways in which abuse is situated within her biography. My role in this project was like that of a co-ordinator. By sewing the pieces together, patterns became visible in the ways in which the women have been rebuilding their lives over and around the abuse. Thus, while the heart of *Women in Trouble* is the voices of the women in the prison—their standpoint—the structure and design of the work represent my attempt to come to know and to make sense of the lives of all of the women who contributed their pieces to the quilt. (p. 300)

Comack's adaptation of the standpoint perspective recognized that study subjects' viewpoints are critical for obtaining insight into social life, but that the researcher must in the end look for patterns and exceptions in an effort to offer some explanation. Because the researcher's standpoint includes an awareness of social forces that individuals do not usually think about, she or he is in a unique position to incorporate the historical, community, organizational, and national context into a theoretical explanation (Cain, 1990; Gorlick, 1991).

Postmodern feminism is another epistemological stance. Many postmodernists, including those who focus on gender and crime, are highly critical of positivist, constructionist, and even standpoint methods for advancing knowledge. They emphasize that these methods oversimplify how and why things happen, because they impose incomplete models of causation that do not capture nonlinear ways in which certain things come about. Like constructionist and standpoint theorists,

they caution that pre-given categories can be misleading, and they note that categories in which people are placed are constructions. The notion that the phenomena that social scientists study are in a constant state of being constructed and therefore being changed (Smart, 1995, p. 8) can lead to the conclusion that no patterns or causal relationships can really be known. Taken to the extreme, some feminist postmodernists see the world as endless stories or texts, many of which support current oppressive arrangements for gender, race, and other groups (Oleson, 1994). However, other feminist researchers have taken ideas from postmodernist theory into account but have not gone to the point of saying that there can be no knowledge of cause-and-effect relationships. Their empirical work focuses on understanding the language people use to construct their realities, and on examining how discourses influence social life.

This book presents advances in understanding that rely on research that uses a variety of epistemological orientations. Readers who do not consider some epistemological approaches to be valid may give less weight to theories that are supported by particular types of research. Postmodern identification of discourses and other previously neglected aspects of social life have opened up new themes for study, and their challenges to simple ways of understanding causality redirect attention to the importance of qualitative research. A look at research by postmodern theorists who study gender, crime, and justice suggests that within this perspective, there are analytical tools that connect empirical data to theory, and their work will be included in the book.

Ways of Thinking About Gender, Crime, and Justice

Much of the research presented in this book is informed by and adds to one or more general perspectives about inequities related to gender that are developed in social science and other fields of study. These general perspectives are called strains or branches of feminist theory (Daly & Chesney-Lind, 1988; Tong, 1998). No simple scheme can capture the variants within each strain of feminist theory or the full range of strains. However, there is some utility in being familiar with key perspectives and their implications for the sorts of social change that could increase justice.

Radical feminism stresses that the domination of women, the oldest and most widespread oppression in the world, is rooted in men's needs to control women's sexuality and their potential to reproduce.⁶ Change would require overthrowing the existing social structure and obliterating gender differences. According to **liberal feminism**, gender differences in socialization result in oppression. If women are socialized differently and laws are equitable for females and are applied fairly, the oppression will be reduced or abated. The key is to give females and males equal access to education, opportunities, and resources. **Socialist feminism** highlights the ways that people are oppressed both because of gender and because of social class; thus, working-class and lower-class females are most disadvantaged. Change requires new gender arrangements and a move away from capitalism toward either socialism or communism. Different from the other feminist perspectives that focus on social structure (e.g., gender and class arrangements), **psychoanalytical and**

gender feminism highlights the unique psychological makeup of females that orients them to need to love and be loved in close relationships with other people. Critical of the other feminist perspectives, **multicultural feminism** and **global feminism** reject the idea that the idea of woman is invariant and stress that women who are privileged because of their race or class cannot speak for other groups. Multicultural feminism is centered on the idea of intersections; even in the same country, experiences of gender-related oppressions are altered by race, class, sexual orientation, age, and myriad other differences. Global feminism clarifies that gender oppression is heavily influenced by economic and political conditions that characterize First World, Third World, colonialist, and colonized countries. These and other variants of feminist perspectives (Tong, 1998) suggest which structural, social, and cultural changes will result in justice for females affected by crime, either by virtue of being involved in criminal activity or by being victimized. The perspectives can provoke thinking about the types of change that would be necessary to improve justice in relation to gender and crime.

In the next chapter of this book, “Gender and the Law,” and in subsequent chapters, there is discussion of efforts to change laws and how they are implemented in order to improve justice. This approach to ensuring justice is preferred by people who adhere to the liberal feminist perspective; better laws and better implementation are seen as primary ways to reduce gender oppression. A question that readers of this book can ask about each topic covered is whether the legal approach brings justice, or whether more fundamental alterations in gender arrangements and in class, race, and other structures are needed.

Organization of the Chapters

The second chapter of this book focuses on gender and the law. The law provides an important framework both for understanding why certain people come into contact with the justice system as either victims or offenders and for understanding the responses of the system. Contemporary law is a result not just of tradition, but also of social movement activities and backlash against those activities, both of which are described later in the book. Also, communities, criminal justice organizations, and individual belief systems affect how laws are implemented. These influences also are considered in later chapters of the book.

Consistent with the problematic nature of categories emphasized by various epistemologies, a theme that cuts across chapters and promotes consideration of what it takes to produce justice is the artificiality in distinguishing between crime victim and crime offender. Some offenders also are victims, and gender has influenced both their illegal activities and their victimization. Both people who are labeled as victims and those who are labeled as offenders can be victimized by and in the criminal justice system, or alternatively, both can be accorded justice by that system and by other agencies.

For some group of girls and women, a proportion that is higher than for men, victimization precedes, and sometimes explains, their delinquent or criminal activity. By no means do all women follow this pathway, and not all gender-related

victimization triggers illegal activity. However, there is some utility in starting with a look at victimization, then moving to a consideration of the responses of the justice system. Both victimization and justice system responses (or lack of responses) can be part of the explanation of why a subset of individuals breaks the law. For that group, the placement of the chapters on victimization and responses to it before the chapter on causes of offending mirrors the time ordering of events leading up to delinquent or criminal activity. Chapter 3 includes theories that describe and explain victimization that is concentrated on either girls, women, or people who are gay or lesbian. Chapter 4 presents theories that explain the influence of social movements on responses to victims, and Chapter 5 concentrates on the effects of community and organizational contexts, and of interactions and individual differences on responses to victims. Chapter 6 is focused on how gender is implicated in the etiology of illegal behavior, and Chapter 7 considers the effect of gender on responses to illegal behavior. Taken together, the chapters present the macrolevel, intermediate, and individual-level explanations of patterns of victimization and crime and responses to these phenomena. The concluding chapter, Chapter 8, provides an assessment of contemporary theory against the criteria set forth in this opening chapter, and it reflects on the state of knowledge and the needs for future research.

Throughout the book, the emphasis is on the experiences of the gender groups that have been most neglected by prior theory or that have experienced injustice because of their gender. Females, including those who are lesbian and bisexual, and gay men are therefore the victims who are discussed. Discussion of males' criminality against these groups is included in the chapter on victimization. In Chapter 6, when the focus shifts to offending behavior, theories are presented that postulate that gender is an influence on both males' and females' lawbreaking.

The theories presented in the book do not constitute an integrated, multilevel theory. They vary in the level of influence considered, in their attention to women's own voices, in their inclusion of the intersections concept, and in assumptions about agency. For each topic, when there is research available, passages are taken from research that exposes study subjects' own rendering of their situation and themselves. Also, to some extent the theories are consistent with each other. They provide some improvement over prior work reviewed in this first chapter, and they suggest bases for actions that would improve the situation of people who are disadvantaged by gender organization at the times and in the places where they are situated.

Key Terms

Agency	Feminist empiricism
Battered women's syndrome	Feminist theory
Criminal justice	Gender—individual level conceptualization
Discourse	Gender—macrolevel conceptualization (including gender
Empowerment	

organization, gender arrangements, the sex gender system, and gender stratification)	Liberation thesis
Gender definitions	Madonna/whore duality
Gender identity	Multicultural feminism
Gender ideologies	Patriarchy
Gender role prescriptions	Postmodern themes
Gender stereotypes	Psychoanalytical and gender feminism
Global feminism	Radical feminism
Globalization	Sex
Learned helplessness	Social location
Levels of explanation	Socialist feminism
Liberal feminism	Victim precipitation

Review and Discussion

1. Several early flawed theories are presented in this chapter. Using the criteria of contemporary empirical research, consideration of context and intersections, and recognition of people's agency, critique specific early theories that attempted to explain wife abuse, rape, incest, victim behavior, and girls' and women's criminality.
2. What levels of explanation were identified as causes of crime and victimization in specific early theories reviewed in this chapter?
3. What are the different ways that discourses are relevant to understanding crime and justice?
4. Given that historically unjust practices were supported by theories of the time, how could one guard against contemporary theories supporting unjust practices?
5. Explain the different perspectives on whether empirical research can validly reflect social reality. What is your own assessment of the validity of different approaches to connecting empirical research to theory?
6. What are the criticisms of different types of empirical data used to support theory, and what are some safeguards that can be used to ensure that empirical data reflect social reality with some accuracy?

