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Emma Burgess Roy
American University Washington College of Law

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DECONSTRUCTING THE CRIMELESS GENDER: WOMEN'S PRISON GANGS

Emma Burgess Roy

INTRODUCTION

There is a myth surrounding women and crime. Women, often stereotyped as frail, fragile, or otherwise “weak,” are viewed as incapable of crime.1 Even when women’s criminality is acknowledged, responsibility for the crime committed is often mitigated.2 In the current social narrative, predation and deviance become strictly male endeavors.3 In reality women do commit crimes, and they do so to the tune of twenty two percent of all crimes annually.4 When women commit crime, the social narrative understands these acts as one of three things: abnormal, coerced, or desperate. This narrative removes the female criminal from an actor in her crimes, to a passive participant; sometimes nearly described as a victim of her own crimes. This view of women’s criminality is both dangerous and inaccurate, as will be explained in this Article.

To recognize women as powerful in positive instances, society must also own the negative behavior of which women are capable. Feminist discourse often seeks to make space for women as role models and leaders, without recognizing or fully analyzing the full range of behaviors and activities of which women are capable.5 A concept of women that excludes crime or other bad acts is simply incomplete. To establish a feminist ideology that represents and works toward real equality, the current purification of women’s action within the social narrative must be critiqued.

This Article explores women’s criminality by examining the prevailing social narratives that function to reduce female culpability and agency. It does so by using women’s prisons as a locus of analysis for criminal behavior, which necessarily lacks significant male influence, other than the specific influence of male guards. Part I of this Article discusses the history of women as criminals, and the way the aforementioned societal narratives were employed to reduce women’s responsibility for their crimes. Part II of this Article discusses traditional gang

1 Note the term women is inclusive all individuals that identify as women, however, some of the social narratives discussed in this paper may not equally apply to trans* women who are often disadvantaged by transphobia and so do not always receive the same treatment regarding criminal activity that this Article grapples with.
organization, including an overview of gang activity as it relates to both men and women. Part III of this Article employs feminist and legal theory to analyze women’s criminality within the correctional environment. Part IV of this Article discusses the impact that disregarding female crime has had on the arrests and prosecution of women, and the way in which regarding the propensity to commit crime as genderless can, and should, change these phenomena.

I. WOMEN, CRIME, AND CULPABILITY

Women have a long history of being held less than fully culpable for criminal acts they commit. This discussion of diminished responsibility occurs in one of three ways. First, woman criminals are abnormal; similar to the treatment of many women in early female correctional facilities, which treated all women that committed crime as ill and tainted. Second, woman criminals are coerced or under the control of their male criminal partners. Third, woman criminals are desperate, as with women who strike back to kill their longtime abusers. The discussion of “desperate” women treats them as singular criminals, who would not act if not for the extreme circumstances that they have endured.

These three social narratives are damaging in that they lessen women’s criminal culpability. This limitation applies not only to women who are actively criminal, but is part of a broader societal discussion that lessens how women can be seen as powerful, or actors in their own right. The failure to recognize women as criminals illustrates how women are marginalized in society through agency exclusion, even within the context of their own actions. If modern feminism is to succeed by recasting women as actors in business, politics, etc., it must necessarily also embrace women as actors in the more sinister areas of their behavior as well. Recognizing female responsibility for criminal acts—breaking away from the perpetrator-victim and male-female false dichotomy that exists within the current social narrative in this way is a feminist act that empowers women though it draws attention to their misdeeds. The first step in breaking down this false and institutionalized dichotomy is by analyzing the effectiveness of the three aforementioned narratives; the primary three ways in which female acts are retooled as submissive and non-threatening.

A. Female Criminals as “Abnormal”

The first way in which female perpetrators are repurposed narratively is through categorization as abnormal. In early criminal cases this seems to mean non-gender-normative, as committing a crime was unfeminine and indicative of a “taint” that needed to be isolated. This concept of female criminals removes them not just from actors within their own crimes,

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7 Cf. Tammy Anderson et al., Neither Villain Nor Victim: Empowerment and Agency Among Women Substance Abusers (2008).


9 Rebecca Onion, The Pen: Inmates at America’s Oldest Women’s Prison Are Writing A History Of It—and Exploding The Myth Of Its Benevolent Founders, The Slate (Mar. 22, 2015) http://www.slate.com/articles/news_and_politics/history/2015/03/indiana_women_s_prison_a_revisionist_history.html ([T]heir approach was invasive and personally constricive—the institution focused on reintegrating prisoners into Victorian gender roles, training them (as the prison’s 1876 annual report put it) to “occupy the position assigned to them by God, viz., wives, mothers, and educators of children.”).
but also from gender all together. Women that fall under the label of “abnormal” for their societal treatment are essentially ostracized. Their behavior runs against how women are understood, so that they either are treated as adopting a perverted masculinity, or as unknowably “other.”

This scope of abnormality is not inclusive of women found to be actually insane, or otherwise psychologically abnormal. This is an important distinction to make, because though psychological conditions can be implicated in or complicated by gender this is not contemplated within this Article’s category of abnormal. The abnormality herein is imposed completely by society, exterior to the individual subject to that categorization or narrative marginalization.

A good example of this narrative category is Amelia Dryer. Amelia Dryer lived during the mid-nineteenth century and operated what can only be described as a baby farm. She took babies from families, which could not financially afford to raise those children, and promised to care for or “rehone” them for a small fee. Instead of doing either of these things, Dryer took the fees which families paid her to care for their children but then allowed the children to die. Sometimes the children died from negligence, other times from outright murder. Dryer’s behavior flew directly in the face of narrow and gendered concepts of nurturing and maternal femininity. Instead, she was in fact a depraved criminal that placed profit above care, and in doing so the media and historical coverage that details her cleaves away at her gender, and categorizes her as abnormal. This behavioral recasting occurred because her acts were inconceivable in light of expectations of gender norms. Were Dryer a man, her acts would maintain their depravity but the narrative surrounding them would likely be condemned in a different fashion.

The best way to remedy this disempowering narrative is to broaden concepts of gender. One reason this label of abnormality is powerful and damaging is because it treats societal conceptions of femininity and masculinity as both static and natural. If we broaden our concept of gender to include a variety of expressions on a spectrum of behavior that would have more to do with an individual than an ideal, we broaden the roles that people can take on. Adopting this modern and frankly necessary concept of gendered behavior would

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10 Id.
11 Id. Note that for the purposes of this Article the narrative of “abnormality” is not conflated with actual mental illness. Here, the narrative of abnormal is imposed by society to explain behavior as non-gender normative.
12 Mara Bovsun, Angel Maker’ Amelia Dryer Snared Out The Lives of 400 Babies in Britain, New York Daily News (June 1, 2013) http://www.nydailynews.com/news/justice-story/amelia-dyer-killed-400-babies-late-1800s-article-1,1360132 (stating that “[A] woman who had made a 30-year career of murdering babies. Her real name was Amelia Dyer and she was what was euphemistically known as an “angel maker.” For a modest fee, Dyer took in babies whose mothers could not or would not care for them. Some of these women assumed that she would find new homes for the children or raise them herself. More often, though, the mothers disappeared, without a question or care about the fate of their inconvenient offspring.”).

13 Id.
14 Id.
15 Id.
16 Id. (stating that “She confessed but her lawyers tried to save her life with an insanity defense, citing her opium addiction and her history of time in mental hospitals. The jury took less than five minutes to declare her sane, guilty, and worthy of the ultimate penalty. The angel maker spent her last days writing a voluminous account of her crimes, and offered no last words as the hangman put the noose around her neck on June 10, 1896.”).
This concept of the coerced woman may include these women but often is used broadly on all women, regardless of the actual relationship between the partners. Further, the concept of the coerced woman, as it occurs within this social narrative, is highly heteronormative. Actual coercion that may occur in these relationships need not be romantic or heterosexual. This concept can be implicitly considered fabricated coercion or coercion by narrative and should be contemplated separately from the relationship it tries to represent.

The horrors surrounding the scandal in the U.S. Army’s former Iraqi prison, Abu Ghraib, illustrate a good example of female criminals cast into the coerced narrative position. In April 2004, the abuses at this prison location became public through a 60 Minutes II reporting segment that sparked international controversy. One reason why so many people became so rapidly and viscerally outraged was photographic evidence of the abuse and torture that occurred at the site. Particularly startling to some were the photos of “a young female soldier holding a naked Iraqi man on the end of a leash . . . giving a thumbs up and pointing at naked Iraqi men as they [were forced to] masturbate[].” That young female soldier was the now infamous Lynndie England, then a Unit-

wholly deconstruct the abnormality label to female criminality.

B. Female Criminals as “Coerced”

An additional concept, which surrounds the acts of female criminals and lessens the responsibility of the female actor, is the theory of coercion. This concept of female criminality places the blame for acts of female wrongdoing with the male partner in the crime, or if there is no such partner, as the direct result of a man’s otherwise coercive influence. This narrative of female criminal actors diminishes their responsibility by shifting the ability to commit wrong solely to men, and finding that corruption or coercion of a woman by a man must have occurred for this behavior to take place.

There can be, however, coercive aspects in partnered crime, and women are sometimes subject to the men they are in a relationship with. Women can be subject to the criminality of the men in their lives, as when women are implicated in a drug charges because they occurred in a residence shared with a partner.

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17 Note that in situations where there is no male partner the language of narratives that fall into this category is still used but the “controlling” party is not coded as masculine through language and other writing choices and so can still be analyzed using the same framework.

18 Cf. Lesley Wischmann, The Killing Spree That Transfixed A Nation: Charles Starkweather and Caril Fugate, 1958 Wyoming State Historical Society http://www.wyohistory.org/essays/killing-spree-charles-starkweather-and-caril-fugate (detailing the relationship between Caril Fugate, a fourteen year old girl, and Charles Starkweather, a prolific serial killer—though Carl only participated after Starkweather threatened her life and those of her family, and brutally killed a neighbor in front of her as proof that this was a legitimate threat, she was convicted and served 18 years in prison. In fact before kidnapping Fugate and forcing her to accompany him, Starkweather had already killed her entire immediate family).

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20 Erik Ortiz, Gay Connecticut Couple Accused of Raping Adopted Children Will Face Trial, NEW YORK DAILY NEWS (April 7, 2013) available at http://www.nydailynews.com/news/crime/gay-conn-couple-accused-rape-face-trial-article-1.1310010 (stating that “George Harasz, 49, and Douglas Wirth, 45, of Glastonbury, withdrew a deal with prosecutors that would have given them suspended prison sentences and probation, according to reports. The surprise move comes as new allegations by three more adopted children surfaced Friday.”).

21 Id.


23 Id. at 8.

24 Id.

25 Id.
ed States Army specialist who appears in many of the most graphic torture and abuse photos made public following the Abu Ghrai b scandal. A later investigation found that Charles Graner, then a Corporal in the Army and England’s boyfriend, was the ringleader and orchestrator of some of the worst acts.

Notably, England was not assigned to the prison location but rather intentionally and repeatedly came to join in, going out of her way and far beyond her duty to be present at the prison and participate in the abuse. Much of the evidence points to England as a ringleader, much like Graner, and at least an equal instigator with other abuse participants. England, however, stated during prosecution she was subordinate to Graner, only participated because of his influence, and posed in the pictures because she feared she would otherwise “lose him” as a romantic partner. England’s case was complicated because she was pregnant at the time with Charles Graner’s child. Regardless of whether this was England’s actual reasons for participating in the Abu Ghrai b abuse, or a way to leverage the implicitly understood “acceptable” way to participate in crime, it worked to her advantage. Ultimately, England received three years in prison compared to the higher average sentence for the other individuals prosecuted in the Abu Ghrai b scandal, and the ten years to which Graner was ultimately sentenced.

The concept of the coerced woman as an unwitting or unwilling criminal strikes against concepts of female power and self-determination. Further, how this narrative is conveyed and functions also implicitly expresses that women cannot be equals in any relationship with men and must become subject to them during male-female partnership. This conflation of relationship with coercion casts all male-female partnerships as always already containing the victim-perpetrator dynamic. This concept of gender relationships is damaging to both men and women. To dismantle the societal narrative of the coerced female criminal, we must create a more egalitarian concept of gender relationships, in any partnered relationship, and do so in a way not bound by heteronormative or gender normative pre-conceptions of relationship dynamics.

C. Female Criminals as “Desperate”

Finally, when neither of the other societal narratives can be employed, female criminals are treated as fueled by desperation in their crimes. This narrative of female crime involves women who kill their abusers, women who strike out in jealous rages, and women who commit any other reactionary and often violent crime. To discredit these women

26 Id.
27 Id.
28 Id.
29 Id. at 25 (RULE OF 5)
30 Rumsfeld Knew, Stern (Mar. 17, 2008) http://www.stern.de/politik/ausland/lynnie-england-rumsfeld-knew-614356.html?nv=ct_ch (stating that “At the time I thought, I love this man [Graner], I trust this man with my life, okay... Graner and Frederick tried to convince me to get into the picture with this guy. I didn’t want to, but they were really persistent about it. At the time I didn’t think that it was something that needed to be documented but I followed Graner. I did everything he wanted me to do. I didn’t want to lose him.”).
31 See Graveline, supra note 22, at 24 (detailing further the relationship between Graner and England. The two were engaged but Graner left England and later married another woman involved in the Abu Ghrai b prison abuse scandal. At the time of the judicial oversight of the incident—England was pregnant with Graner’s child).
32 Id.
33 Id.
34 See generally Brenda V. Smith, supra note 3.
35 Id.
36 See supra note 2 (parenthetical needs to be explanatory. The first lines of this case article read: “She stood
as desperate, they are coded as radical, erratic, and most of all emotional. This concept serves to both diminish the abuse against which a woman is fighting, while also undermining that individual’s decision-making process.

A case in which a female reactionary-criminal, responsive to outside forces and acting against them, was cast as the desperate female criminal is the case of Barbara Sheehan. Sheehan killed her abusive husband when he was, allegedly, directly threatening her life. Sheehan immediately spoke out about the abuse, and her two adult children corroborated that she had been the victim of ongoing and serious abuse throughout her relationship with their father. Sheehan stated that she felt she was in a kill or be killed situation, which her defense attorney claimed was only compounded by the relationship-long trauma she experienced. Despite Sheehan’s legitimate claims of abuse as a mitigating factor regarding her self-defense, articles, media analysis, and even prosecutors on her case focused entirely on her emotion. Although emotion is a factor for the victim/survivor in a situation of obvious trauma and abuse, the facts of the situation should be of tantamount importance to everyone else.

Instead, in most news articles about Sheehan, her emotional state is described in more detail than the killing or the abuse that prompted it. How Sheehan’s case is discussed indicates the narrative around women who commit abuse responsive crimes. Though tragic in result, Sheehan was taking action, action to save her own life. Sheehan is very clear in public statements she was acting to save her own life, and that the indictment and prosecution functioned as an institutional re-victimization. This places her as a criminal actor who has moved beyond mere reaction and who now has real agency relating to her case, helping to elevate it to the national stage as a domestic violence issue. Sheehan’s courtroom emotions represent the reactions any human on trial might have and are not dissimilar to those which male perpetrators display. She is coded, however, as emotional to subordinate her within the narrative surrounding her own case, and fit her into the acceptable concept of who women are and how they commit crimes.

The essential function of this concept of female criminality is to undermine the decision making process of the female criminal and re-characterize women as irrational and emotional, in line with negative gender stereotypes otherwise applied to women. This narrative treatment diminishes the role that the opposing force plays in such an act. Reactionary criminals, narratively cast as desperate, are pushing back against what is affecting them, affecting

outside the courthouse, emotionally spent but resolute, on trial for killing her husband — an act that she does not dispute. But there were extenuating circumstances, she said, and sometimes killing someone is not the same as committing murder.” Note that Sheehan here is only described in relationship to her emotional state, and is referenced by female pronoun rather than name. These writing choices are indicia of her narrative diminution as desperate.”.  

37 Id.  
38 Id.  
39 Id. (detailing incidents of abuse, for example an incident in which her husband threw a pot of boiling water on her).  
40 Id.  
41 Id.  
42 Id. (“Ms. Sheehan, a churchgoing mother of two who wears sober gray suits, has cut a striking figure during the trial. Sometimes she can be seen stoically scribbling

notes during witness testimony; other times she sobs openly and clasps her hands as if in prayer. On Wednesday, she bolted from the courtroom on the verge of fainting after the prosecution showed the jury graphic autopsy photos of Mr. Sheehan’s wounds.”). (RULE OF 5!!!!!!)

43 Id.  
44 Id.  
45 Id.  
46 Id.
them so strongly that they act out in means beyond a legal measure. As highlighted above, this force can be abusive, and refocusing the narrative around the responsive force can draw attention away from and diminish abusive acts. This concept of female criminality both undermines the logical processes of the woman as the actor, but also refocuses attention away from other societal negatives, which may act as mitigating factors in the criminal action itself.

In order to rectify these stark and troubling characterizations that strip women of their agency, we must create an alternate discourse surrounding such crimes. Instead of analyzing merely the actions taken by the women coded as desperate, attorneys, academics, and the media need to also look at the force that creates that desperation. Was Sheehan a desperate criminal or a woman acting out to protect her own life? Certainly looking to the content of her actions, and the abuse that catalyzed those actions, would be more fruitful than an analysis of her emotional state. In order to dismantle this social narrative diverting women's culpability, we must retrain ourselves to focus on the actor, their context, and action, rather than the frenzy which we may impute to those actions.

Notable gangs that fall under this category include street gangs such as Mara Salvatrucha 13 (MS-13), more traditionally structured organized crime such as La Costa Nostra, and prison gangs such as the Aryan Brotherhood. There are some considerable crossovers because as the Department of Justice (DOJ) notes, "prison gangs are also self-perpetuating criminal entities that can continue their operations outside the confines of the penal system."

These organizations bring individuals together to further goals often violent and always criminal.

II. BACKGROUND

A. Traditional Gang Organization and Criminal Activity

A traditional gang is an organization of three or more individuals who come together with a common criminal purpose and commit crimes in furtherance of that enterprise. See the Department of Justice, About Violent Gangs, http://www.justice.gov/criminal/oecgs/gangs/ (stating that “(1) an association of three or more individuals;..."

(2) whose members collectively identify themselves by adopting a group identity which they use to create an atmosphere of fear or intimidation frequently by employing one or more of the following: a common name, slogan, identifying sign, symbol, tattoo or other physical marking, style or color of clothing, hairstyle, hand sign or graffiti; (3) the association’s purpose, in part, is to engage in criminal activity and the association uses violence or intimidation to further its criminal objectives; (4) its members engage in criminal activity . . . ; (5) with the intent to enhance or preserve the association’s power, reputation, or economic resources.”). The Department of Justice, Prison Gangs, https://www.justice.gov/criminal-oecgs/gallery/prison-gangs (stating that “The Aryan Brotherhood, also known as the AB, was originally ruled by consensus but is now a highly structured entity with two factions, one located within the California Department of Corrections (CDC) and the other within the Federal Bureau of Prisons (BOP). The majority of the members of the AB are Caucasian males, and the gang is primarily active in the Southwestern and Pacific regions of the U.S. The main source of income for the AB is derived from the distribution of cocaine, heroin, marijuana and methamphetamine within the prison systems as well as on the street.”).

47 Id.

48 Id.

49 Id.

50 Id.

51 Id.
Gangs range from loosely to highly structured and are usually comprised of younger members. A gang is best described as a self-formed association of peers, bound by mutual interests, with identifiable leadership, well-developed lines of authority, and other organizational features, who act in concert to achieve a purpose or purposes which include the conduct of illegal activity and control over a particular territory, facility, or type of enterprise.52

With prison gangs, the particular area over which the group seeks control is the prison facilities, and the prison membership is limited to the population of the prison itself. Just as in street gangs, however, peer association in a prison gang typically means shared aspects of identity as members of the same racial or ethnic group, as in the Aryan Brotherhood an exclusively white gang.53

Many gangs, specifically street gangs, are comprised mainly of men—and in fact these gangs are analyzed as a site of hyper-masculinity.54 Indeed, the gang is considered to be a monster of men’s creation.55 This may not be the case. Female participation in street gangs began as a collateral enterprise to all male gangs, but progressed to broader membership.56 Unfortunately, however, female gangs “maintain many of the sexist roles they filled historically” and women in gangs “maintain a level of subordination that outweighs any progress.”57

As such, a criminal street gang is a group of individuals with common signs and identifiers that join together to further a criminal purpose. These groups occur both inside and outside of prison. As aforementioned, gangs are traditionally considered the beast of men, but female participation in such organizations has been on the rise for a number of years. Even in street gangs in which women have a high amount of participation—women’s position in the gang reflect their position in society, subordinate to men and subject to sexism. The conditions and analysis, however, are different in the context of women’s prisons and prison gangs.

B. Women’s Criminality in the Correctional Environment

Women’s prisons are historically different from men’s prisons, and originally served to separate and later to reform female criminals.58 As women’s prisons developed, they became more similar in administration and policy to men’s prisons—maintaining some unique differences in culture and programming.59 Among these similarities was the advent of prison gangs in all female institutions.

The appearance and membership of women in criminal gangs is not novel or unique to the prison context.

53 Id.
55 Id.
56 See supra Part IV.
58 Id.
59 Onion supra note 9.
60 Id.
Female participation in gangs is not a new phenomenon. In fact, “girls have been a part of gangs since the earliest accounts from New York in the early 1800s.” However, throughout the latter half of the twentieth century, female gang activity has seen the sharpest increase in participation, especially in comparison to boys. For example, a study found that there had been a, “50 percent increase in serious crimes by teenage girls between 1968 and 1974, compared to a 10 percent increase for boys.” In addition, arrests of girls under 18 for violent crimes rose 393 percent between 1960 and 1978, compared to 82 percent for boys.” Also, compared to 1950, “youth gangs of the 1980’s and 1990’s are more numerous, more prevalent, and more violent than in the 1950’s, probably more than at any time in the country’s history.”

This female gang membership is not exclusive to street gangs. In fact, some exist in a variety of environments of confinement, including “juvenile institutions, prisons, or drug treatment centers” and more recently immigration detention facilities. Female gang membership, as among males, tends to be a youth endeavor and require a “formal initiation ceremony . . . which usually takes the form of a prearranged fistfight between the prospect and an established member. The function of this ‘jumping in’ is to prove publicly the new girl’s ability to fight . . . she must demonstrate her ‘heart’ or courage.” There are differences, however, because as mentioned earlier a female gang usually comes into being as an extension of an already existing male gang but are more democratically led.

Ultimately, the center of gang life is criminality, and that criminality—especially in prison—demands violence. Women participants in gangs are equally involved with violence and in fact “violence . . . plays a role in the lives of female gang members once they join a gang,” because “female involvement in violent activity is on the rise” in fact girls are often involved in fist or even knife fights.

Female gang participation is gendered. As male gang membership is a function of macho role placement on men and hyper-masculinity, female participation in gangs is also influenced by outside gender narratives. “Many girls who do not have a loving home or support structure seek it outside of the home in hopes that the gang will be their surrogate family” and “this is exemplified in the observation that, “gang members refer to one another as ‘sisters’ or ‘homegirls’ and to the gangs as a ‘family’ which conjure the sense of belonging and identification” and this “sense of a familial relationship may also serve to increase loyalty among its members. As . . . intense in-group loyalty is particularly important to gang members.”

Additionally, specifically in the prison context the focus on male criminals—both in study but also in housing and rehabilitation ef-
forts, leads girls in the criminal justice system to feel abandoned completely.\(^6^7\) Women usually get attention only when they are “very bad or profoundly evil.”\(^6^8\) In fact, the response of criminologists has been astounding, and girl gangs are analyzed as feminist—as though these girls are breaking the glass ceiling of the criminal world.\(^6^9\)

Gone are the days when girls were strictly sidekicks for male gang members, around merely to provide sex and money and run guns and drugs. Now girls also do shooting[s] . . . the new members, often as young as twelve, are the most violent . . . Ironic, as it is, just as women are becoming more powerful in business and government, they same thing is happening in gangs.\(^7^0\)

This analysis leads to questioning of the aforementioned social narratives.\(^7^1\) Are girl gang members just rebelling against the patriarchy and gender stereotyping that prevented them from achieving the level of violence they desired? Are girls in gangs simply seeking family and support when this is a system, which they sorely lack? Do incarcerated women specifically seek to form gangs as a reaction to the male focused criminal justice system? The answers to these questions are, to an extent, both yes and no.

Women form gangs because women and men are not dissimilar from one another in their desire to commit crimes or enact violence. The reasons that women chose violence and gangs to become part of their social life may vary—and could indeed result from unmoored families,\(^7^2\) (footnote in the middle of a sentence?) lack of institutional oversight,\(^7^3\) or long time repression based on gender.\(^7^4\) The traditional analysis, however, suffers from the same shortcomings as the social narratives, i.e., they do not give women enough credit or agency recognition. Instead of focusing on the gender of the person who is part of a gang, or who has committed a violent act the narrative and analysis should look at the crime committed.

The social narratives that seek to mitigate the culpability of women in their own crimes—that women are abnormal, coerced or desperate—all function to look at the gender of a perpetrator. These narratives hone in on gender and essentially attempt to correct the “wrongness” of a woman committing a violent crime, by explaining the act in a different light or context. The explanation of female gangs as fundamentally different than male gangs, functions in the same way. The difference between a


\(^7^1\) Steven Cohen, Cali’s Gang Crisis Represents ‘Total Failure of Social Institutions’: Cali Ombudsman, COLUM. REPORTS (Nov. 2, 2013), http://colombiareports.com/cal.i-gang-crisis-represents-total-failure-social-institutions-cali-ombudsman/ (stating that “The numbers obviously matter,” said Santamaria — who added that his office does its best to record and present social statistics, and has encouraged the city to do more on that front — “but Cali does not have a gang problem. It does not have a drug problem. It does not have a poverty problem. All these things exist, but the true problem is so much deeper than that. What you have here is a total failure of social institutions to protect the citizens of Cali and provide them with opportunities to learn, grow and prosper.”).

male and female gang is no larger than the difference between two male street gangs with different ethnic or cultural backgrounds. Yet, the focus remains on gender. This comes from the same places as the social narrative, and feeds into a kind of meta-narrative: the girl gang.

The social narratives that make the acts of women dependent on men are disproven by the mere existence of female gangs in all female institutions. Deprived almost completely of male influence how would such violent organization flourish? That is simple, here—as in many other contexts—the male influence is irrelevant. Women form gangs for a variety of interesting and complex reasons, which merit further study, but these reasons are largely not dependent on men. In fact, the female prison gang proves that such violence and criminality can occur without male influence.

Ultimately, the social narratives—as well as the more ambiguous meta-narrative shrouding girls in gangs—are functions of gender stereotypes. In order to better understand and reform female criminals, they should be recognized simply as criminals and judged by their actions, as unexpectedly terrible or deprave as they may be. Violence is not a gendered phenomenon and so the way we understand violence also should not be.

III. Violence as Feminine, A Case Study in Social Narratives

As gangs are particularized groups with certain ascertainable goals necessarily centered on violence, what does it mean that female gang participation both inside and outside of prison has risen markedly in the last few decades? What does it mean that this violence continues to occur, and even escalates, within the prison context—a context that is by nature immune to the aforementioned societal narratives? Perhaps violence is wedded not to maleness, but to criminality; and the differences we note between men and women are located with the observer rather than the perpetrator.

The Bureau of Justice Statistics (BJS) data betrays this reality. Though women are less likely to commit a violent crime, the rate at which women do commit crime overall is on a marked rise as women represent more and more of the criminal cases in this country. This overall increase in women’s criminal activity and convictions naturally indicate that over time an increasing number of women are becoming involved in violent crime. Furthermore, the nature of women’s violent crime is unique because women are more likely to attack strangers and commit more serious acts of violence—i.e., the difference between aggravated assault and homicide.

Considering this data, it seems evident that women are violent in their criminal acts, and are violent at an increasing rate. This issue, however, is not addressed due to the afore-

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76 See, e.g., The National Criminal Justice Reference Service, In the Spotlight: Women and Girls in the Justice System, https://www.ncjrs.gov/spotlight/wgcjs/summary.html ("Female criminal behavior has been commonly perceived as a less serious problem than male criminal behavior. Historically, women have been more likely to commit minor offenses and have made up only a small proportion of the offender population. Although women remain a relatively small number of all prisoners, these facts have concealed a trend in the rising percentage of female offenders, their participation in violent crime.").
77 See Greenfeld & Snell, supra note 75 at 3.
78 Id. at 4 (stating that "[t]he estimated rate for murder offending by women in 1998 was 1.3 per 100,000 & about 1 murderer for every 77,000 women" which is lower than the male rate but still noticeable high relative to their representation both in the criminal context generally and in the area of violent crime specifically).
79 See, e.g., id.
mentioned social narratives.\textsuperscript{80} Take for example a \textit{New York Times} article that remarks that women in prison are less dangerous, pointing the specific cases of Angela and Sandra.\textsuperscript{81} Both Angela and Sandra are incarcerated for violent crimes, but they are described as “especially striking in this dreary prison— their unscarred skin, animated eyes” marking them as special and untainted.\textsuperscript{82}

The author speaks about these women in a particular way, purifying their experience so they may be re-feminized for the purpose of the articles narrative. For example, the author notes that Sandra is incarcerated for second-degree murder, a serious and violent crime, but that “she was manipulated by her estranged father” to participate, i.e. coerced.\textsuperscript{83} Angela is given the same treatment, because though she tried to rob a 15-year-old girl and later tried to intimidate a witness from testifying against her, she was acting “stupid and impulsive” due to her emotional state regarding her personal and romantic life.\textsuperscript{84} This violence-dismissive treatment is especially striking in light of the revelation that Angela spent years of her incarceration fighting, was often punitively placed in solitary confinement.\textsuperscript{85} Despite this evidence, which should be an indication of women’s violence complicated fixed notions of gendered behavior, the author persists with sexually-hyper-typical commentary such as: “\textit{r}arely do men become intimate with their keepers. Many women share their lives with officers shift after shift after shift. Men either honor orders or defy them. Women ask why.”\textsuperscript{86}

This article, and all the other which are so like it, indicate the schism between research and reality and social narratives, and why re-analysis is so necessary.

\section*{IV. Suggested Remedies}

In light of this discussion of female criminality, several measures might help to work against these damaging narratives. First, to combat the effect of these narratives there needs to be further discussion of women as criminals and bad actors. This conversation about women is necessary to critique feminism, a discourse which itself already has many blind spots.\textsuperscript{87} This critique will help both men and women and move toward a concept of the individual, regardless of gender, as complete

\textsuperscript{80} \textit{See supra} Part I.

\textsuperscript{81} Adrian Nicole LeBlanc, \textit{A Woman Behind Bars Is Not a Dangerous Man}, The N.Y. Times Magazine (June 2, 1996), http://www.nytimes.com/1996/06/02/magazine/a-woman-behind-bars-is-not-a-dangerous-man.html?

\textsuperscript{82} \textit{Id.}

\textsuperscript{83} \textit{Id.} (“In 1992, after pleading guilty to second-degree murder, Sandra was sentenced to 15 years to life. She was 20 years old. She says she manipulated her estranged father, Danny Reloja, into killing the man she says raped her when she was 18. “If I wouldn’t have held a vendetta, I wouldn’t be in prison,” Sandra often says. “Because I could have let that go and lived on in my life.” Her father, convicted of the murder, is serving 29 years to life. They no longer correspond, and Sandra says her family has disowned her. She has not received a visit in at least a year.”).

\textsuperscript{84} \textit{Id.} (“Angela is serving five years for second-degree robbery and threatening a witness. She demanded money from a woman at a bus stop in San Diego the night of her 19th birthday, a “stupid and impulsive” response to the realization that her Navy boyfriend, the father of the baby she was carrying, stood her up."

\textsuperscript{85} \textit{Id.} (detailing Angela’s rocky years, including her lengthy disciplinary history including a history, which “to date, Angela’s write-ups run more than 70 pages -- for assaultive behavior, starting a fire, destroying state property (her prison-issued clothes), resisting staff members and at least one suicide attempt. She has thrown objects at the guard tower while exercising in the restricted exercise cage. She has been shot at by the guards twice, with rubber rounds out of a .37-caliber rifle, for refusing to stop fighting.”).

\textsuperscript{86} \textit{Id.}

\textsuperscript{87} \textit{See supra} Part I.
emotional beings with unique reasoning and cause for action. Hopefully, this discourse can reach beyond merely criminal law, as the problem here is deeply tied to broad social conceptions of gender and power.

Just talking about the problem will not accomplish all of the work, however, as the issue itself will require further study. This calls for dissecting the issue, delving into how women commit crime, why, and the way it is discussed in the media and other settings. This further study and research is necessary in order understand further, and to fight the prevalent social narratives with factual rejoinders.

Utilizing the fruits of this analysis and research, the social narratives that diminish female culpability and therefore the agency of female criminals can be dismantled. Should the early stages of prosecution exclude gender pronouns or any reference to gender? Should prosecutors be encouraged to frame issues not in a gendered context but in another way, which makes sense within the larger factual background? Is there a way to prevent women from leveraging the implicit but well-known social narratives surrounding gender to benefit themselves, especially during sentencing? These are all determinations that will help in working to end these social narratives.

Discuss, dissect, and dismantle. These are the steps to take to work against and ultimately end the social narratives discussed in this Article.

CONCLUSION

The essential function of these concepts of female criminality is to diminish the responsibility, which can be attributed to women for their crimes, and therefore the seriousness with which female criminals, and women, can be treated. For feminism to succeed as a movement in pursuit of genuine equality, it must both elevate women in their successes and hold them accountable in their disgraces. One way in which this can be accomplished is by dismantling the complex social narratives that surround women in the criminal context, narratives that undermine female criminal culpability and undermine women themselves. By viewing all criminal actors, regardless of gender through the same lens both justice and equality will be more readily within our grasp.
ABOUT THE AUTHOR

J.D. Candidate, 2016, American University
Washington College of Law; B.A., 2013,
University of Maine. During law school Emma
worked for Professor Brenda V. Smith at
The Project on Addressing Prison Rape and
developed a strong interest in criminal justice.
This Article stems majorly from that work.