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Feminist Thinking about Crime and Criminal Justice

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The central questions asked by feminist scholars concern the place of sex/gender relations in the shaping of crime, justice, and criminology. Until recently, feminist perspectives were absent from criminology and criminal justice textbooks. With the second wave of the Women’s Movement in the 1970s, scholars taking feminist perspectives started out by challenging the male-centeredness of the field in explaining crime and justice. Initially there was an attempt by those who have come to be known as “liberal feminists” to describe the different roles of men and women in crime and criminal justice, and to point out that the differences in their involvement in crime and justice reflected differences in their opportunities. There was also a concern to make women visible as active subjects, rather than passive victims of male oppression. As a result of omitting women and gender, criminological theorizing about crime, both women’s and men’s, was seen as fundamentally flawed.

By the mid-1980s feminists drawing on critical social theory and a structural analysis of class and patriarchy, pointed out that women (and men) were subject to gendered power relations. In capturing the variety of approaches in the mid-80s, Meda Chesney-Lind and I described differences between liberal feminism, radical feminism, Marxist feminism, and socialist feminism, showing how each differently conceptualized gender relations and strategies for social change (Daly and Chesney-Lind, 1988).

Major shifts occurred in feminist thinking during the 1990s: greater emphasis was placed on differences among women, representations of women and gender, and different epistemologies in knowledge production. This became particularly important for feminists influenced by post-structural, post-colonial, postmodern, and critical race theories, each of which draws attention to the discursive power of criminological and legal texts in representing sex/gender and women. This led to two developments. First, there emerged a proliferation of ways to relate sex/gender to crime and justice system practices, which have been collectively, though reluctantly, called “feminist criminologies.” (Daly, 2001). Second, there was recognition that criminology may be an unhelpful starting point from which to analyze how gender shapes crime and justice. For example, Carol Smart (1990a) rejected the idea of a “feminist criminology” because she saw very little that criminology could offer feminist scholarship, and she questioned the value of the criminological enterprise more generally. Other feminist scholars have seen the value in developing “gender aware criminologies” (Gelsthorpe, 1997).

Feminist scholars are more likely to begin with theories of sex/gender, applying these to crime and criminal justice, than to begin with theories of crime from mainstream criminology. Among the central questions asked are how does sex/gender structures women’s and men’s identities and actions and how, as active agents, do men and women produce the structures that shape them? Approached in this way feminist scholars are concerned with: (1) the intersections of class, race, and gender; (2) sex/gender as an accomplishment or a production--referred to as “doing gender;” and (3) sexual difference and the relation it has both to gender and the institutionalization of cultural and structural categories--referred to as “sexed bodies” (Daly, 1997). There is relatively less interest by feminist scholars in developing general theories of

crime, and greater interest in building theories about women's lawbreaking and victimization, the gendered qualities of crime and victimization, and the discursive power of dominant discourses (criminological and legal). Feminist modes of inquiry have become increasingly reflexive, and there are different epistemologies in producing feminist knowledge: empiricist, standpoint, and postmodern (Smart, 1990a; Daly, 1997).

Class-race-gender

This mode of feminist inquiry, which in the US emerged from the struggles of black women in the Civil Rights Movement, refers to the interrelationship between multiple inequalities that structure identities and actions (Daly, 1997; Simpson, 1991; Daly and Maher, 1998). The emphasis on multiple inequalities expands to include other hierarchies of power that are based on a variety of differences such as age and dis/ability. These inequalities are seen as an intersecting and interlocking matrix, which excludes and subordinates some, while including and privileging others. Such exclusions are not deterministic, but actively produced as men and women evoke the various dimensions of embodied structures through their relations and actions.

The production and reproduction of these multiple and intertwined dimensions of inequality take the form of a fluid social structure that is contingent rather than fixed. Using this kind of analysis, some feminist criminologists have examined crime from a variety of positions within the structural matrix. For example Lisa Maher (1997) studied women drug users in New York City drug markets in the late 1980s and early 1990s, analyzing their circumstances as offenders, mothers, wives, and victims, and how these articulated with race and ethnicity. By moving within and between these structures of inequality, Maher shows the complex intermeshing of exclusions that structured women's life-worlds, identities, and courses of action

at the height of the crack cocaine drug market. She reveals how the enforcement of gender and racial divisions in the informal street drug economy limited women's economic opportunities, placed them at disadvantage to men, and channeled them into sex work. Rather than viewing the women as pathologically addicted "crack mothers," Maher reveals them to be active agents, working in the informal economy, although restricted by the combined effects of gender and the racialized power structure of the street. One of the ways in which women resisted their limited opportunities and the denigration of sex work was "viccing" their clients, or robbing them. This illustrates the concept of "blurred boundaries," whereby women are both victims of crime and offenders (Daly and Maher, 1998). Indeed, for some feminist scholars, women's crime is viewed as resistance to victimization or as the criminalization of resistance (Campbell, 1993; Chesney-Lind, 1997). However, Maher's method of analysis offers a more complex reading of the interplay of victimization and volition. Although "viccing" gave women some degree of control and momentary power over the conditions of their work, it also rendered them even more vulnerable to further victimization.

Doing Gender

This feminist mode of inquiry focuses on the situations, social practices, and interactions that socially construct gender and a gendered world. West and Zimmerman (1987: 129) describe gender as a "situated accomplishment," which emerges as both "an outcome of and rationale for . . . social arrangements" and "a means of legitimating [a] fundamental division . . . of society." They point out that the routine practices and recurring accomplishments create differences between men and women that "essentialize sexual natures" (p. 138). This social constructionist argument was then extended to include the accomplishment of both race and class, as in "doing

race” and “doing class,” and ultimately in the concept of “doing difference” (West and Fenstermaker, 1995). From this perspective, interactive encounters become experiences that are raced, classed, and gendered, meaning that action is not engaged without being framed by these interactive dimensions, nor interpreted without being subjected to these lenses. Some critics argued that a social constructionist mode of inquiry focused overly much on simple situated performances, ignoring the significance and impact of power and oppression (Collins et al, 1995).

In applying the concept of “doing gender” to crime, James Messerschmidt (1993) draws on Giddens’ (1984) structuration theory, which sees structure as both enabling and constraining and as produced by interaction yet preceded by the interaction that continues to produce it as a mutually constitutive outcome. For Messerschmidt, crime is seen as one set of resources and embodied practices that enable men to accomplish masculinity, and it may be particularly invoked when other resources for this accomplishment are absent. From this perspective, crime is both the outcome of and the resources for its own social accomplishment. As I have argued (Daly 1997: 37), the difficulty with this application is that it refocuses our attention on boys and men and differentiates them from all that is feminine. Its terms are specific to men and crime in that we would be unlikely to imagine that women’s crime is a resource for doing femininity, as a means to create differences from boys and men. However, there is some value in this approach for explaining one kind of site for the production of masculinities, but not all crime could be explained in these terms. Other scholars have used a “doing gender” framework to examine gender in the criminal justice system (Martin and Jurik, 1996).

Sexed Bodies

Drawing largely from Foucault's analysis of the male body as a site of disciplinary practices, this third mode of feminist inquiry focuses on sexual difference and the relationship of sex and gender as corporeal and cultural categories. Moira Gatens (1996, reprinting from a 1983 article) argued early on that we should view male and female bodies not as neutral, but "sexed" or embodied. She challenged the strong distinction typically drawn between "sex" (the biological categories of male and female) and "gender" (the social categories of masculinity and femininity). For Gatens, such a distinction assumes that the mind is a blank slate, ready to be re-socialized, and that there is no connection between the female body and femininity (or the male body and masculinity). This denies sex-specific corporeality, and the ability to see differences in how male and female bodies live out both masculine and feminine behaviour and experiences. Gatens aims to bring a materiality to the social and cultural construction of the body, and she proposes that gender is best viewed as "the way in which power takes hold of and constructs bodies in particular ways ... both as their target and as their vehicle of expression" (Gatens, 1996:70).

Within this mode of enquiry, Elizabeth Grotz (1994) calls for a rethinking of our ideas about the body, rejecting those that see it as a real material natural entity with a pre-social existence; at the same time, she also rejects the view that it is socially, culturally or otherwise constructed, without any intrinsic material existence. She argues that either one of these oppositional representations are part of the constitution of bodies and help construct our view of bodies. Thus, she argues against both sex as an essentialist category and gender as a constructionist category; rather, we should understand the interrelationship between these polarized positions.

Carol Smart, a pioneering feminist critic of criminological theory (Smart, 1976), has more recently taken a “sexed bodies” approach in analyzing how law and legal practices construct “commonsense perceptions of difference” (Smart, 1990b). By examining the crime of rape and rape trials, she shows how human subjects are constructed differently and can be transformed through differing discursive frames of reference. For example the representation of the sexed woman, as the eternal victim in feminist discourse, is transformed into a deserving victim, a victimized sexed body, in legal discourse. Thus, Smart suggests that feminist discourse is unable to challenge the representation of women in rape law because it is forced to collude with the greater power of legal discourse in abstracting these differences (1990b). In a later work, Smart (1995) describes law as both a gendering practice and a sexing practice, which work alongside each other, perpetuating both the feminine woman and the biological woman.

As I have argued (Daly, 1997), there is both value and problems with the sexed bodies mode of feminist inquiry. For example, it enables us to explore and understand how crime is differently experienced by male/female bodies, and masculine/feminine subjects. It calls attention to the fact of sexual difference and sex-specific corporeality, with significant consequences for research, policy, and knowledge production itself. A problem with sexed bodies is that it may draw us back to viewing the world through a lens of sexual difference alone, and it may foreground sex and gender over other divisions such as race, ethnicity, and class.

Challenges and Prospects for Feminist Contributions to Criminology

Although some feminist scholars call for abandoning criminology as a starting point for analyses of crime and victimization, feminist inquiry will continue to make significant contributions to a criminological field, which was once dominated by male concepts, theories,

and assumptions. Feminist scholars' exposure of these limitations has brought about criticisms from some mainstream criminologists, who believe that feminist thinking is politically driven rather than neutral (Pinnick, Koertge, and Almeder 2003). Such critique is weakened with the realization that all theories, including mainstream criminological theories, are value-laden. As Jody Miller (2003: 22) says, "the outright rejection of feminist criminology as 'too political' holds little ground as a legitimate critique." She points out that some of the most important critiques of feminist criminology have come from debates among feminists. Indeed, there have been major shifts over time in feminist thought, illustrated by the three modes of feminist inquiry discussed above: a shift from gender alone to a more inclusive consideration of class-race-gender, a shift from material structures alone to socially constructed forms of doing gender, and a shift from the mind-body dualism toward a more sophisticated understanding of the relationship between sexual and gender difference, in sexed bodies. Where does feminist contributions to crime and criminal justice go from here?

In 1998, I outlined four ways in which criminology was building theories of gender and crime, utilizing feminist and non-feminist perspectives (Daly, 1998: 94-99):

Gender Ratio of Crime: What is the nature of, and what explains gender differences in lawbreaking and arrests for crime? This area is by far the most developed, as criminologists (largely, but not exclusively, non-feminist) attempt to explain why boys and men are more involved in crime, but there are these other areas as well.

Gendered Pathways: What is the nature of, and what explains the character of girls'/women's and boys'/men's pathways to lawbreaking?

Gendered Crime: What are the contexts and qualities of boys' men's and girls'/women's illegal acts? What is the social organization of particular offenses?

Gendered Lives: How does gender organize the ways in which men and women survive, take care of themselves and others, and find shelter and food? How does gender structure thinkable courses of action and identities?

Feminist researchers may address these areas with a focus on class, racial-ethnic, or other sources of variability; or they may take a “doing gender” or “sexed bodies” approach. However, field expansion comes from two sources: one that begins with theories of crime (mainstream), and the other, with theories of sex/gender (feminist). This creates different types of knowledge about women, gender, and crime. For example, some wish to devise a “gender-neutral” theory of crime, which at the same time takes a “gendered” approach (Steffensmeier and Allan, 1996). Gender-neutral theories of crime are, for me and other feminist scholars, unthinkable; and it is difficult to see the logic of a gender-neutral theory that purports also to be gendered (Daly 1998: 100). Better to utilize feminist perspectives, which explicitly address the profound significance of sex/gender (along with other social relations) in shaping human existence, human behavior, social institutions, and society. As feminist contributions to scholarship on crime and criminal justice continue to expand, we can look forward to significant contributions that critically engage and challenge the criminological imagination.

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