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Invisible and Incarcerated: Women in a Male-Dominated U.S. Prison System

By

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ABSTRACT

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This paper investigates how the contemporary U.S. penal system impacts women, given that female imprisonment rates have skyrocketed over the last several decades. Notably, the U.S. has increased the rate of female incarceration at double the rate of male incarceration. However, female prisoners have been rendered largely invisible under the umbrella of the criminal justice system, in both scholarly discourse and policy. Drawing on the broad characteristics and trends that encapsulate the female prison population, it is examined that women face unique challenges within the system. Pathways of crime illustrate the interlocking nature of poverty, abuse, mental illness, and drug abuse in relation to female criminality. It is noted that, in an era defined by the war on drugs and tough-on-crime policy, the “criminalization” of women’s survival strategies has become a main symptom of female imprisonment. Through analyzing policy, it is evident that the criminal justice system often discounts the societal and institutional forces that influence female criminality. Instead, policies have adopted a perspective that is predominantly male-oriented, given the lack of research and literature on women in prison. Consequently, this so-called “gender-neutral” framework has not succeeded in its attempt to equalize the male and female prison populations. In designing policy and legislation to prevent crime, it is necessary to grasp the context in which female offending and imprisonment originates. The aim of this paper is to demonstrate how the use of mass incarceration as a method of control over female criminality has been largely inappropriate when contextual evidence is considered, and overall, ineffective at ridding society of lawlessness.

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1 Introduction

As a response to the momentous injustice of mass incarceration in the U.S., we have diverted much of our attention to the prison industrial complex in recent years. This is a system that has increasingly criminalized those who are marginalized by poverty, prejudice, and inept lawmaking. The individuals held in prisons around the U.S., constitute some of the country's most vulnerable and disadvantaged citizens by the current structure of society. It is evident that, "when we talk about crime in America, and when we talk about prisons, we are talking about power and powerlessness".¹ Yet, in characterizing this powerless bracket of society and America's burgeoning prison complex, we have largely defined it as a "male" problem. Under the scope of a male-dominated prison system, incarcerated women have by and large, remained invisible. In essence, women in prison have been relegated to a second-tier status not only in relation to those in free society, but in relation to their male counterparts within the system. The incarceration of women, when exposed, is not only indicative of the unique abuses that women face, but sheds light on the inappropriateness and overuse of prison. Despite this, women still suffer under the harsh "law and order" rhetoric that continues to pervade our politics and criminal justice system. As this tendency to mass incarcerate illustrates, we appear shockingly complacent with the current system of corrections. It is evident that the U.S. Criminal Justice System has operated upon structural frameworks that, still today, maintain powerlessness.

¹ Kathryn Watterson, *Women in Prison: Inside the Concrete Womb* (Northeastern, 1996), 19.

Acknowledgement of the incarceration of women is therefore, incredibly important to the fabric of a society that continues to be influenced by patriarchal values. When we adopt a perspective of the criminal justice system that places women at the forefront, we are provided with an even broader and deeper lens into the failures of an already broken system.

America's obsession with crime and punishment is not only reserved for legislation and policy, but it appears in our everyday media as well. Imagery of crime, prisons, and criminals bombard our news sources and fill our television screens. Yet, we are immensely separated from the reality of prison. In this visual realm, it is easy to equate the criminal to a monster and take for granted the grave misuse of power at play. Although these prisoners are deemed criminals, it seems we often forget that these prisoners are humans too. What is important to understand is that prisoners are not only stripped of their freedom, but they are punished in ways related to gender, race, livelihood, and the structural fabric of society. With a focus on women and their demographics, it is clear that punishment often fails to fit the crime. The substantial need to address the failures of prison and focus more heavily on incarcerated women can only be understood if there is an acknowledgement that prisoners are a part of humanity. These prisoners must not only be seen as prisoners, but instead within the context of their lives before and after imprisonment. In adopting this mindset, it becomes apparent that we must highlight the overarching trends that characterize female prisoners, in order to understand the women that imprison our criminal justice system.

Shedding light on women in prison is powerful in revealing just how much the prison system has failed. In the last several decades, the female prison population has risen rapidly, and for predominantly nonviolent offenses. Yet, we have continued to largely ignore the consequences of female mass incarceration. The focus on incarceration within scholarly work

has failed on several levels to recognize women in a way that successfully pushes for policy reform. The question that needs to be asked, what does it mean for incarcerated women when they are ignored? When acknowledged, it becomes evident that incarcerated women face specific abuses and challenges in relation to their invisibility as women. Policies and laws which have followed a “tough on crime” approach, affect women in ways that are not always obvious at first glance. However, it becomes evident that these policies have been based on frameworks that ignore female criminality and gender differences. Factors such as sexual abuse, mental illness, drug addiction, poverty, motherhood, and poor health, are all characteristics that emerge when we study the populations of female offenders. This illustrates that when punishment is imposed on these women, we are punishing some of society’s most marginalized individuals. Given their roles within familial and societal units, women face different challenges than men, and often their pathways to crime are different. Additionally, once they have entered prison, women have experienced inferior conditions and rehabilitative efforts in comparison to their male counterparts. Women face unique challenges in terms of solitary confinement, reproductive health needs, pregnancy, and motherhood, yet these challenges are not always understood. When prison policy adopts a “gender neutral” or male-dominated framework, as it largely has, women are not given the tools necessary to succeed in society once reintegrated. A more comprehensive look at imprisonment, one that includes women, illustrates that sentencing, punishment and treatment for women has been largely inappropriate. Overall, when we learn about women it can be understood why prisons are ineffective at controlling crime, and rather ironically, a force in producing more crime. In essence, the ways that prison and policies have harmed women sheds light on the fundamental failures of using prison, as it is today, as the primary solution to coping with criminal activity.

Review of the Literature:

One of the most pressing issues for female incarceration has, and continues to be the lack of scholarly attention and research on female prisoners. The gap in the literature that exists can be seen through recent publications that have failed to recognize female prisoners. Under the topic of the mass incarceration of African Americans, scholarly activists such as Michelle Alexander and Ava Duvernay have focused their efforts entirely on men.² The work of these two authors has been influential in aiding our understanding of the criminal justice system within the last several years. Yet, the omission of women here signifies the larger inattention on women. Additionally, the literature has failed in many ways to adopt a perspective that is mindful of gender differences. The work of Lisa Guenther is an example of how the analysis of punishment mainly focuses on the implications of punishment for men.³ It is often overlooked that punishment, such as solitary confinement, may have different effects on women. According to an ACLU report, “although the negative psychological impacts of solitary confinement are well known, the unique harms and dangers of subjecting women prisoners to this practice have rarely been examined or considered in evaluating the need for reforms in law or policy”.⁴ A lack of research on women in prison means that policymakers are less apt to implement gender-specific reforms to punishment.

There is another gap in the literature in terms of when studies and publications were carried out and published. In studying female incarceration, government and official publications

² Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (The New Press, 2012).; *13th*, dir. Ava Duvernay, Netflix, October 2016.

³ Lisa Guenther, *Solitary Confinement: Social Death and Its Afterlives* (University of Minnesota Press, 2013).

⁴ "Worse Than Second-Class: Solitary Confinement of Women in the United States," American Civil Liberties Union, April 2004.

are a crucial source of information. However, government studies concerning women within the U.S. Criminal Justice System are largely dated to the 1990s and early 2000s. One example that follows this trend is the factsheet on Women Offenders, published by The Court Services and Offender Supervision Agency for the District of Columbia (CSOSA). The 2016 publication lists factual evidence concerning female offenders, however, all the statistics presented are derived from Bureau of Justice Statistics (BJS) studies that occurred before 2006.⁵ Furthermore, the statistics on physical and sexual abuse, drug use, and women with children came from a BJS report published in 1999.⁶ This report is one of the most recent BJS publications available on female offenders and prior incidents of sexual abuse. This indicates that 18 years later, the government still continues to use studies from the 1990s to illustrate trends in female incarceration. More recent government publications on prior sexual and physical abuse have included estimates based off old studies. Additionally, much of the recent literature and analysis on sexual assault prior to incarceration still continues to rely on statistics from 15 to 20 years ago. Despite an increased awareness about these issues around the time these publications first came out, there have not been new, large-scale studies conducted. Furthermore, the data has been unclear about the prevalence of sexual abuse committed against female prisoners within prison facilities in recent years. Required by the 2003 Prison Rape Elimination Act, the BJS must carry out a “comprehensive statistical review and analysis of the incidence and effects of prison rape”.⁷ Despite the call for a comprehensive report, in the 2015 PREA Data Collection Activities

⁵ U.S., Court Services and Offender Supervision Agency (CSOSA), *Statistics on women Offenders*. (D.C., 2016).

⁶ U.S., Bureau of Justice Statistics, Office of Justice Programs, *Special Report: Women Offenders*, by Lawrence A. Greenfeld and Tracy L. Snell, NCJ 175688, 1999.

⁷ U.S., Bureau of Justice Statistics, Office of Justice Programs, *PREA Data Collection Activities, 2015*, NCJ 248824, 2015.

publication, there is no mention of adult female inmates in terms of the incidence and effects of prison rape.⁸ This illustrates a larger trend of ignoring gender differences within the prison system. A shortcoming necessary to acknowledge, is that some of the evidence presented in this paper relies on outdated governmental sources due to the lack of alternatives. However, in providing evidence from smaller studies or independent sources that support the existing data, we are able to draw realistic conclusions.

Despite the relative lack of research on women in the criminal justice system, there have been contributions that focus solely on women and supplement our knowledge of female incarceration. Some of the sources mentioned throughout this paper include the works of Kathryn Watterson, Susan L. Miller, Kathleen Ferraro, L. Mara Dodge and the multi-authored, *Health Issues Among Incarcerated Women*.⁹ These books provide extensive insight into the world of female incarceration; covering demographics of female prisoners, violence, motherhood, female criminality, conditions of prison, implications of gender, appropriateness of punishment, case studies and the list goes on. Yet, these sources, similar to the majority of governmental sources on female incarceration, were all published between the years 1996 and 2006. This illustrates again that there was an understanding in the late 1990s and early 2000s, that women faced unique challenges within the criminal justice system. What becomes apparent when more recent literature and research is analyzed, is that these works can be applied, a decade or more later, to female prisoners in today's world. Ultimately, this literature shows is that

⁸ U.S., Bureau of Justice Statistics, *PREA Data Collection Activities*.

⁹ Watterson, *Inside the Concrete Womb*; Ronald L. Braithwaite, Kimberly Jacob Arriola, and Cassandra Newkirk, *Health Issues Among Incarcerated Women* (New Brunswick, NJ: Rutgers University Press, 2006).; Susan L. Miller, *Victims as Offenders: The Paradox of Women's Violence in Relationships* (New Brunswick: Rutgers University Press, 2005); Kathleen J. Ferraro, *Neither Angels nor Demons: Women, Crime, and Victimization* (Boston: Northeastern University Press, 2006).; Mara. Dodge, *Whores and Thieves of the Worst Kind: A Study of Women, Crime, and Prisons, 1835-2000* (DeKalb: Northern Illinois University Press, 2006).

despite the acknowledgement of incarcerated women in the 2000s, there has not been considerable change within the criminal justice system. It appears that the literature and official publications have not caught up to the realities of female incarceration today. In a sense, the focus on female imprisonment has slowed, proving to be quite problematic.

Overview of Objective

Building on male-dominated arguments and literature that focuses on women, this paper attempts to identify the ways in which we should be looking at incarceration and specifically, female incarceration. The underlying argument that is presented is one that advocates for a gender-conscious analysis across all avenues of criminal justice. More necessary, however, is an approach that recognizes the context of female offending and imprisonment. Given the invisibility of women within this topic, it is clear that the female prison population deserves more attention. It is not only important to understand the imprisonment of women within correctional facilities, but it is also vital that we understand how women are affected prior to imprisonment. In designing policy and legislation to prevent crime, it is necessary to grasp the circumstance in which criminal behavior originates. It is here that we recognize why context is crucial. If policy fails to recognize the different factors that characterize the female imprisoned population, we will be ineffective at preventing female criminality, determining appropriate punishment, and successfully rehabilitating these women. Applying a feminist perspective to the policies and legislation that control crime and imprison Americans, it becomes evident that this approach has been male-dominated. While difficult to discern the ways that policymakers brush over gender differences when studying the male prison population, this reality becomes readily apparent when looking at female prisoners. In fact, we are able to realize that the basis of the whole approach to prison, was never representative of women or intended for their application. Instead,

women simply had to adopt policies from an existing male fabric. Overall, a feminist perspective illustrates the ways in which punishment, as prison's main objective, is ineffective. Additionally, a focus on female imprisonment and the role of gender within the criminal justice system provides a better understanding on how the system has failed men as well.

Background

Although prison is often seen as a way of protecting society from its most dangerous, the vast number of non-violent prisoners illustrates that prison does much more than imprison the most dangerous. Instead, the criminal justice system operates as a system of social control, critical to the maintenance of power. The dichotomy between those who control crime and those who are imprisoned is evidence that the criminal justice system is a institution that thrives on inequality. It is evident that the criminal justice system has disproportionately targeted and imprisoned African Americans. If we acknowledge race in playing a role in this inequality, then is is also pertinent that we consider gender as well. When we additionally acknowledge women and the demographics of female prisoners under this argument, it becomes clear that the U.S. imprisons those with relatively little power. For women, this has meant those who are marginalized, poor, discriminated against, mentally ill, and drug addicted. Furthermore, it is demonstrated that Black women face the double burden of racism and sexism, which has undeniably relegated them to a more marginalized status. While the analysis of female prisoners paints a picture of the powerless, the next question that warrants attention is; who is in power? Examining the realities of the U.S. Criminal Justice System illustrates that those with power and money have a way of escaping the grasp of prison. "Detailed reports show that business and white-collar crimes cause more financial loss, injury, and death than any other crimes in

America”.¹⁰ However, these are not the crimes that permeate our country’s criminal justice system. The perpetrators of these crimes often walk free. Instead, a large majority of prisoners in the U.S. are poor, while women in prison represent a population that is even deeper entrenched in poverty. This is suggestive of the ways in which sexism plays a role in the criminal justice system. It is clear that within other realms of society, that women are not still represented on an equal playing field. Sexism pervades our society in terms of politics where men still continue to dictate the majority of our laws, along with media representations and wage gap standards. Given the structural inequalities of society, it isn’t surprising that we have ignored sexism and how it affects women in prison. This is another way we fail to look at sexism.

Despite our current desensitization to imprisoning a large number of citizens, the notion of mass incarceration in the U.S. has not always existed. The term “mass imprisonment” was coined by David Garland in 2000, in an effort to explain the trend of imprisonment between 1975 and the late 1990’s.¹¹ As a result of drug laws, and “tough on crime” policy, imprisonment rates skyrocketed throughout this time period. The deliberate strategy of mass incarceration was not to rehabilitate, but to raise imprisonment rates. The notion of mass incarceration was largely popularized by Angela Davis’s activism and publication, *Are Prisons Obsolete?*¹² As a feminist scholar who challenged prison’s appropriateness and legitimacy as an institution that legitimized racism, she also acknowledged that women were part of this equation. Given that Davis’s book was published in 2003 is indication that scholars were well aware of the role women played in the serious nature of mass incarceration. Yet the development of our understanding around mass

¹⁰ Watterson, *Inside the Concrete Womb*.

¹¹ Jonathan S. Simon, "Mass Incarceration: From Social Policy to Social Problem," *The Oxford Handbook of Sentencing and Corrections*, 2012.

¹² Angela Y. Davis, *Are Prisons Obsolete?* (New York: Seven Stories, 2003).

incarceration since its origin has almost forgotten altogether that women are mass incarcerated in the U.S. Due to the focus on male prisoners, many would argue that women are not mass incarcerated, failing to recognize that more women are imprisoned in the U.S. than anywhere else in the world.¹³ In fact, it is shocking that no country comes even close, especially given America's status as one of the most democratic and free nations in the world. Even China, ranking second in the incarceration of women, has less than half the amount of incarcerated women as the U.S. despite its population being much larger.¹⁴ Given the apparent ignorance that women are not part of the problem of mass incarceration, it is evident that, "the mass incarceration of women is a relatively new phenomenon".¹⁵

Within the topic of mass incarceration, it has been largely publicized that the U.S. incarcerates more people than anywhere else in the world and at the highest rate of imprisonment. In 2015, it was estimated that a whopping 6,741,400 people were incarcerated or supervised under the correctional system in the U.S.¹⁶ Breaking that number down, the Bureau of Justice Statistics reports that roughly 4.6 million were on probation or parole, and 2.17 million were held in prisons and jails.¹⁷ Furthermore, of those incarcerated, 1.53 million were serving time in prisons.¹⁸ These numbers illustrate that there is a serious need within U.S. policy to reform the criminal justice system.

¹³ Roy Walmsley, 2015, *World Female Imprisonment List*, 3rd ed, Institute for Criminal Policy Research,

¹⁴ Walmsley, *World Female Imprisonment List*.

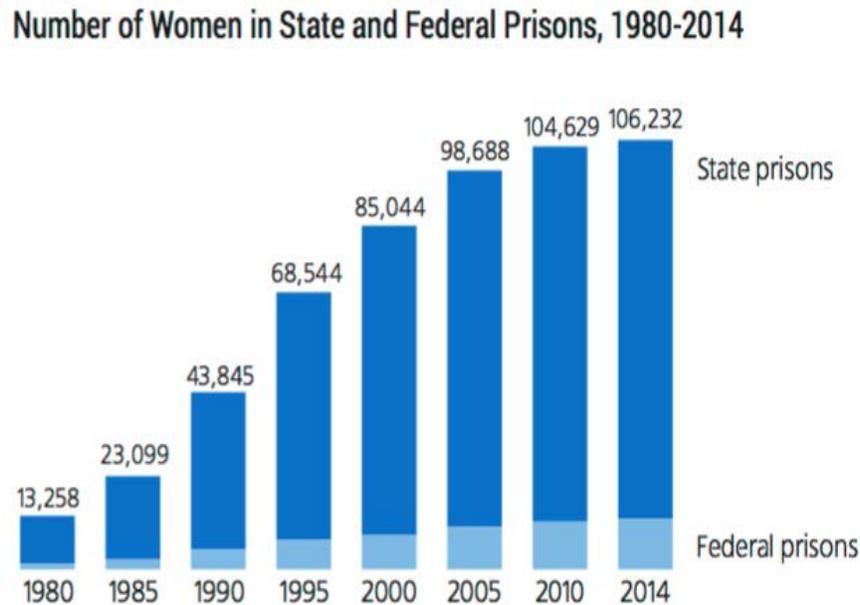
¹⁵ Nicole Hahn Rafter, "Gender, Prisons, and Prison History," *Social Science History* 9, no. 3 (1985).

¹⁶ U.S., Bureau of Justice Statistics, Office of Justice Programs, *Correctional Populations in the United States, 2015*, by Danielle Kaeble and Lauren Glaze, NCJ 250374, 2016.

¹⁷ U.S., Bureau of Justice Statistics, *Correctional Populations*, by Kaeble and Glaze.

¹⁸ U.S., Bureau of Justice Statistics, Office of Justice Programs, *Prisoners in 2015*, by E. Anne Carson and Elizabeth Anderson, 2016.

Figure 1



Sources: Bureau of Justice Statistics *Prisoner Series*; Bureau of Justice Statistics *Prison and Jail Inmates at Midyear Series*; Hester, T. (1987). *Correctional Populations in the United States, 1985*. Washington, DC: Bureau of Justice Statistics.

Looking at the context of female incarceration over the last several decades, it is clear that the female prison population has expanded significantly. With only 13,258 women in prison in 1980, the female prison population is now eight times larger, amounting to 106,232.¹⁹ The graph illustrates that women have been largely affected by America’s strategy to mass incarcerate. To put this number in a greater context and illustrate the extent to which the U.S. imprisons women; “only 5% of the world’s female population lives in the U.S., but the U.S. accounts for nearly 30% of the world’s incarcerated women”.²⁰ As the graph illustrates, the majority of these female prisoners are held in state rather than federal prisons. The difference between state and federal

¹⁹ Figure 1

²⁰ Aleks Kajstura and Russ Immarigeon, "States of Women's Incarceration: The Global Context," Prison Policy Initiative, 2015.

prison populations indicates that states are given a great degree of freedom over the imprisonment of their residents. It is important to understand these differences when looking at state versus federal policy concerning incarceration. Additionally, certain states imprison women more than others. Strikingly, 25 state jurisdictions have a higher rate of female incarceration than the U.S. as a whole.²¹ “Overall, with the exception of Thailand and the U.S. itself, the top 44 jurisdictions throughout the world with the highest rate of incarcerating women are individual American states”.²² These statistics serve as a sobering acknowledgment that women in the U.S. criminal justice system are disproportionately incarcerated compared to the rest of the world.

Outline of Topics Discussed

Overall, this paper attempts to provide an overview of female incarceration and the issues facing the female population today. Included in this is an analysis of the way legislation and prison influences female offenders prior to incarceration, during incarceration, and after incarceration. The aim of this paper is to demonstrate how the use of mass incarceration as a method of control over female criminality has been largely inappropriate when contextual evidence is considered, and overall, ineffective at ridding society of lawlessness. Rather than encompassing the entire female correctional population, the majority of the analysis presented focuses on the prison population. However, the argument can, to some extent, be applied to the populations of women in jails and on probation or parole. Additionally, some of the underlying arguments presented in this paper can be applied to male prisoners, as well as the overall prison population.

²¹Kajstura and Immarigeon, "States of Women's Incarceration."

²² Ibid.

Chapter 2 illustrates how women are ignored under the umbrella of the criminal justice system, both in scholarly discourse and policy. It is noted that the discussion has largely centered around male prisoners and more specifically, African American male prisoners. This chapter covers prominent authors and activists that have drawn attention to the issue of mass incarceration, but left women out of their analyses. The argument presented highlights why the experiences of women should be included in these discussions; for women are not unaffected by institutional racism, solitary confinement and draconian drug laws. Later, the chapter moves on to further explain why it is important to focus our attention on women within the criminal justice system. Here it is highlighted that women are incarcerated at a growing rate, despite no increase in crime, for largely nonviolent, drug and property crimes. In order to understand the growth in the female prison population, the war on drugs is analyzed. In order to demonstrate differences in crime rates, the chapter also explains how male and females are distinctly motivated to commit crimes. Overall, the chapter attempts to illustrate how female prisoners are ignored and why there is cause for concern.

Chapter 3 draws attention to the unique experiences of women prior to incarceration that helps answer the question; who are we punishing? This chapter highlights the broad characteristics and trends that encapsulate the female prison population. As a result, it changes the way we see the female prisoner; appearing first and foremost as a human, rather than a criminal. It becomes evident that many women face serious challenges prior to offending. In examining the experiences women face prior to incarceration, we are given a better look into female pathways of crime. This chapter demonstrates that female prisoners face some of the same challenges as male prisoners prior to offending, however, they face gendered obstacles as

well. Additionally, the chapter examines how criminal justice policy and “tough on crime” approaches impact women specifically.

Chapter 4 highlights the current framework dictating prison policy and reveals how it fails to recognize gender-specific challenges for women. A “gender-neutral” framework has not succeeded in its attempt to equalize the male and female prison populations. Given the research laid out in the previous chapters, this chapter deals with the abuses women face while they are within prison facilities. The argument maintains that for women, the reality of punishment has been largely inappropriate in the context of their crimes, their lives prior to incarceration, and their gender-specific needs. Additionally, the chapter incorporates the ways in which policy has disadvantaged women after they are released into the community. Looking to alternative solutions, it is clear that female prisons and prisons in general would greatly benefit from improved rehabilitative efforts.

The Conclusion reiterates the overall argument supported in each chapter and ties together the evidence regarding female prisoners to illustrate how prison has failed women. Furthermore, it uses the ideas presented in this paper to criticize the criminal justice system and argue that prison is not a suitable solution, not only for women, but for all prisoners in the U.S.

2 Prison's Invisible Gender

When we conjure images of prisoners in America, we typically see men—more specifically, Black men.²³ There has been immense focus, throughout the news and popular media outlets, on the mass incarceration of males in the United States and especially African American males. This focus on men is not unfounded, considering that males make up a large majority of the prison population, however, it has rendered women and their experiences in prison invisible. Although the mass incarceration of men in the U.S. is a pressing issue that deserves attention, the topic of incarcerated women has been largely omitted in the discussion surrounding the flawed correctional system. Even feminist scholars who have been the most vocal and successful in bringing attention to America's burgeoning and racist prison system, have tended to focus on men. Activists such as Ava Duvernay, Michelle Alexander, and Lisa Guenther, who have helped in opening our eyes to the failures of prison, have largely ignored the experiences of women in their critiques. What is puzzling about their omission of women is that these three critics are feminist scholars who tend to lean to the left. The work of these three activists and their focus on male prisoners is exemplary of the broader gap in the literature when it comes to female incarceration. Many of the prominent publications about the U.S. correctional system explore issues from a male perspective and therefore, often leave women out of the conversation. Although male-focused critiques provide valuable insights into the system's failures, they do not

²³ We see the black man as the prisoner both due to racism, and due to media attention on black men in prison.

shed light on the specific experiences of female prisoners. The question that begs exploration is: why have female prisoners been obscured in scholastic critiques of the U.S. Criminal Justice System? During a time when women are increasingly being incarcerated for largely non-violent crimes, it is especially important to recognize women in the analysis of mass incarceration. Women have become invisible in conversations about the failures of the system and prison reform, thus perpetuating the obscurity into which women prisoners are already cast.

Often the biggest reason for ignoring incarcerated women, as seen in DuVernay's, Alexander's, and Guenther's work, is that men are imprisoned more than women. Although it is difficult to determine the exact number of individuals under the authority of the U.S. correctional system, the incarcerated male population in prison is roughly twelve times larger than the female population. It was estimated in 2014 that there were 1,448,564 men and 112,961 women in both state and federal prisons, constituting 92.7% and 7.2% respectively.²⁴ Since this number only represents inmates in prison, it is important to note that the percentage of women increases when jail populations are included. When we add the population of inmates in local jails, women make up 9.6% of the estimated 2.2 million people incarcerated in the U.S., with men making up 90.3%.²⁵ Nevertheless, in either population, women constitute the minority. Since a much smaller number of women are incarcerated, it would seem that female incarceration is not a serious issue that needs attention. However, the reason women are incarcerated less frequently is that women do not commit as much crime as men. As simple as this point may sound, it illustrates that the number of incarcerated individuals in any demographic category should not be

²⁴ U.S., Bureau of Justice Statistics, Office of Justice Programs, *Prisoners in 2014*, by Ann Carson, NCJ 248955 (2015).

²⁵ U.S., Bureau of Justice Statistics, *Prisoners in 2014*, by Ann Carson.

looked at without relative context. According to Darrell Steffensmeier and Emilie Allan in their study on gender and crime, “women are always and everywhere less likely than men to commit criminal acts”.²⁶ Since women are exceedingly less likely to commit crime, it is therefore valid that women are incarcerated at a much lower rate than men. Reported by the IZA World of Labor in 2014, “female prisoners make up less than 10% of the prison population in industrial countries”.²⁷ Although the United States sets the bar among developed countries with the highest percentage of female prisoners, all industrialized countries have a much lower number of women in prison relative to men. When looked at within the context of the world, it is justified that the U.S. has incarcerated significantly more males than females. Most importantly, the relative size of the female prison population in comparison to the male population should not be an indicator of significance. Taken within the contexts of their own crime rates, men and women are both incarcerated at a high rate within the U.S. If male and female prison populations are not considered separate entities, attention to prison failures and attempts at reform will, more often than not, center around male prisoners due to the populations sheer size.

Although women commit less crime and are therefore incarcerated at a lower number, this in no way makes female incarceration and the experience of female prisoners any less important. Angela Davis notes that, “important aspects of the operation of state punishment are missed if it is assumed that women are marginal and thus undeserving of attention”.²⁸ When this perspective is embraced, it becomes even more concerning that women prisoners continue to be overshadowed in prominent literature and discussion. In examining this literature, with a feminist

²⁶ Darrell Steffensmeier and Emilie Allan, “Gender and Crime: Toward a Gendered Theory of Female Offending,” *Annual Review of Sociology* 22 (1996): 459.

²⁷ Nadia Campaniello, “Women in Crime,” IZA World of Labor, November 2014, 1.

²⁸ Davis, *Are Prisons Obsolete?*

viewpoint in mind, it becomes clear that the tendency for men to overshadow women in discussion about prison is often taken for granted. Attention on male prisoners in the media and literature has shaped the way we think about prison and therefore, the omission of women seems natural. Yet, when we look closer at influential publications such as *13th*, *The New Jim Crow*, and *Solitary Confinement: Social Death and Its Afterlives*, the lack of commentary about women seems odd given that the topics discussed also affect women. Although these works are important in striving toward criminal justice reform, they illustrate our willingness to accept the omission of female prisoners.

In the 2016 documentary, *13th*, the director, Ava DuVernay, casts a light on how the amendment that abolished slavery has led to the mass incarceration of a disproportionate number of Black males in the United States. Although the Thirteenth Amendment abolished slavery in 1865, it contains a loophole which has maintained the enslavement of African Americans in the U.S. through convict leasing, Jim Crow laws, and mass incarceration. The amendment simultaneously abolishes and legalizes slavery, allowing those convicted of a felony to be punishable by slavery or involuntary servitude. Ava DuVernay's film powerfully displays how this amendment, along with other institutional measures, has disproportionately targeted African Americans and led to mass incarceration, shedding light on the racial hegemony ingrained in America's correctional bureaucracy. DuVernay's portrayal of the U.S. Criminal Justice System is an important acknowledgment and potentially influential piece in attempting to eradicate racial inequality and correctional system injustice. However, the film fails to discuss women as having a role within this important issue. Dan Berger, an assistant professor at the University of Washington Bothell, points out that *13th* fails to explore, "some of the most robust avenues for understanding mass incarceration", arguing that the absence of attention on women's

incarceration is “the loudest silence” in the film.²⁹ The only time that the topic of female incarceration appears in the film is with the story of Sharanda Jones, an African American woman who was convicted for a first-time, nonviolent drug offense and sentenced to life without possibility of parole. Although a story similar to this is not uncommon among incarcerated Black women, the film does not use this story to address and convey the unequal and unjust imprisonment of African American women. The inclusion of her story largely acts as support to show the destruction that mandatory minimum sentence laws and the war on drugs have had on African Americans in general. Incarcerated women are, for the most part, invisible in DuVernay’s analysis of how race plays a role in incarceration, even though African American women are incarcerated at a higher rate than women of any other race.

One potential justification for omitting women in *13th* could be that the film’s objective is to specifically illustrate the severity of the nation’s propensity to incarcerate African American males. Given the sheer size of the incarcerated male population, the mass incarceration of African American males and the subsequent lack of responsive action is the most obvious failure of the U.S. Criminal Justice System. However, a large focus of *13th* is on racial inequality and the real or symbolized enslavement of African Americans, neither of which leave women unaffected. Black women in the U.S. have never been secure against the oppression and hyper-criminality also experienced by their male counterparts. The film conceals the unique experiences of Black women who have been subjugated, like Black men, throughout slavery, Jim Crow and the war on drugs. Subsequently, DuVernay’s film fails to recognize that Black women, in addition to Black men, have been disproportionately targeted and marginalized through the

²⁹ Dan Berger, "Mass Incarceration and Its Mystification: A Review of The 13th," AAIHS, October 22, 2016.

U.S. correctional system under the same conditions of racial discrimination. Most importantly, DuVernay is not alone in turning a blind eye to women within the topic of mass incarceration.

In the 2010 New York Times Bestseller, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, the author, Michelle Alexander, similarly omits the topic of women in her book. Her argument centers on the history of racial discrimination in the U.S. that has led to the rebirth of a racial caste through mass incarceration. In Alexander's words, "we have not ended racial caste in America; we have merely redesigned it".³⁰ Her account of how mass incarceration has demoted an unreasonably high number of African American's to a second-class status is powerful and undoubtedly worthy of attention. Yet again, the struggles of women are not part of this discussion. Alexander's omission of women is interesting given that the trends of female incarceration support her argument. In recent years, Black women have held the highest rate of incarceration at 109 per 100,000 Black females, more than double the rate of White females at 53 per 100,000.³¹ This means that Black women, like Black men, are disproportionately stripped of the right to vote and are legally susceptible to discrimination or denial of employment, jury duty, housing, education, and public benefits such as food stamps. Additionally, Black women are targeted by the war on drugs more often than White women, which illustrates the similar racial trends of incarceration between African American males and females. In failing to include women, *The New Jim Crow* disregards that Black women have been subject to slavery and Jim Crow laws, undermining the distinct experiences that female slaves and Black women have had throughout history.

³⁰ Alexander, *New Jim Crow*, 2.

³¹ U.S., Bureau of Justice Statistics, *Correctional Populations*, by Kaeble and Glaze.

In the first chapter, Alexander briefly acknowledges that women have unique experiences and suffer some of the worst disadvantages within the criminal justice system, however, she overtly states her decision to leave the topic of women out of her book. The deliberate omission of women is founded on the purpose of the book, which Alexander states is to, “stimulate a much-needed conversation about the role of the criminal justice system and perpetuating racial hierarchy in the United States”.³² However, using this statement as a justification for omitting women suggests that women are unaffected by the racial hierarchy within the U.S. and the criminal justice system. This topic is not in any way limited to Black men simply because mass incarceration affects a greater number of men than women. In fact, Black women are incarcerated at a higher rate than White and Hispanic women, mimicking the same, highly publicized trend that is occurring among Black males in the United States. Despite what Alexander’s statement implies, racial hierarchy in America disproportionately affects African American women within the correctional system, as well as in greater society.

Although women are not discussed in *The New Jim Crow*, Michelle Alexander has acknowledged her own complicity in leaving women invisible in debates about mass incarceration. On October 18th, 2016, as part of the Faith in America discussions at Union Theological Seminary, Michelle Alexander spoke and helped moderate a discussion called “Invisible Woman: The Experience of Women and Girls in the Era of Mass Incarceration”. Alexander states, “I’m aware that time and time again, precisely the same kinds of justifications and rationalizations I articulated for not focusing on the experience of women, are trotted out

³² Alexander, *New Jim Crow*, 16.

again and again as a justification for not talking about women”.³³ In her speech she expresses that it is important to reflect on what is lost when we erase women in our analysis of the criminal justice system and prison reform. Alexander also asks the audience to consider how criminal justice reform would change when the experiences of women become a main focus. Overall, the acknowledgment of her own negligence is significant because it highlights that incarcerated women continue to remain invisible despite the awareness of their marginalization.

Both Michelle Alexander of *The New Jim Crow* and Ava DuVernay in *13th* leave us with the idea that women are not part of the problem of mass incarceration. More importantly, their work suggests that the institutionalization of racism within the criminal justice system does not affect women per se. It seems that incarcerated Black women are an insignificant portion of the imprisoned population when we compare it to the number of incarcerated Black men. However, the problem with this perspective is that it fails to understand that, in general, there are significantly more men in prison than women, regardless of race. Relatively speaking, both male and female African Americans have faced some of the highest rates of incarceration within their respective gender populations. *13th* and *The New Jim Crow* are effective in that they shed light on the way in which the White supremacist values of our predecessors are inherent in our country’s institutions. However, White supremacy is not the only underlying issue within the criminal justice system. Paralleling Duvernay and Alexander’s explanation that America is a country founded on slavery and racism, is the reality that patriarchal values and the subjugation of women are also upheld in the constitution. Systems of patriarchy within the U.S. have played a role in the way prisons have been designed, operated and studied. As illustrated by works like

³³ Michelle Alexander, "Invisible Woman: The Experience of Women and Girls in the Era of Mass Incarceration." (speech, Faith in America, New York, New York, October 18, 2016).

13th and *The New Jim Crow*, patriarchal values appear to govern the way in which incarceration and prison reform is discussed and perceived. It is significant that primarily Black women are forgotten in these conversations because it reinforces the way in which Black women are continually marginalized, not only due to their race, but their gender as well. Only in studying female prisoners can the double-edged sword of patriarchy and racism become more apparent. Although different arguments exist for whether identity benefits or disadvantages the female prisoner, neither stance can be argued if we are not educated about the experiences these prisoners face. There is no doubt that sexism continues to exist structurally within our institutions and within greater society, however, it is concerning that the discussion of prison tends to focus primarily on the issues men face. With both the forces of race and gender playing a role in the criminal justice system, it is crucial that female incarceration is a topic worthy of attention. It is important to reveal the experiences of female prisoners of all races to understand race and patriarchy as interlocking systems of injustice. Better knowledge of these experiences will allow us to explore the origins of injustice so that prison reform can move in a direction that is conscious of both gender and racial differences.

Women are also invisible in analyses that highlight how prisoners are punished and that help us understand the need for prison reform. Lisa Guenther, in her 2013 book *Solitary Confinement: Social Death and Its Afterlives*, recounts the evolution of punishment, focusing on the more recent development and destructiveness of supermax prisons and solitary confinement; calling it a form of living death. Guenther touches on the criminalization of race and the ways in which African American's face disadvantages, but largely leaves women out of her analysis. She states in the introduction, "most of my sources in this book are men, and many are white men

whose relative privilege still makes a difference, even in spaces of civil and social death”.³⁴ Although her description of solitary confinement could be generalized to include women, her argument fails to address how women might be affected differently by solitary confinement. Guenther’s evaluation of punishment demonstrates the way in which solitary confinement deprives prisoners of a connection with reality, sending many into a state of psychological torture. Although we often think of solitary confinement as reserved for the most violent and unspeakable crimes, Guenther reveals that this is largely not the case. It is difficult to produce exact numbers, but the Bureau of Justice reports that 81,622 prisoners were contained in some type of restricted housing in 2005.³⁵ A prisoner in solitary confinement can go years without human contact, often producing a destruction of one’s sense of self. Anthony Graves, a man who spent at least 10 years in solitary confinement being punished for a crime he did not commit, expresses that, “Solitary confinement does one thing, it breaks a man’s will to live and he ends up deteriorating. He’s never the same person again”.³⁶ The shocking reaction that many have to descriptions of solitary confinement is evidence that the public is largely unaware of its horrors, yet we typically support it as a form of punishment. Recognizing that women are left invisible in Guenther’s book is important, because her argument is not only about the failures of punishment, but about prison’s most invisible form of punishment.

When subject to solitary confinement, it is significant to acknowledge that women experience things differently than men as a result of unique psychological and societal influences. Stephanie Covington, in her journal article, “The Relational Theory of Women’s

³⁴ Lisa Guenther, *Solitary Confinement: Social Death and Its Afterlives* (University of Minnesota Press, 2013), xiv.

³⁵ Guenther, *Solitary Confinement: Social Death and Its Afterlives*, 162.

³⁶ Guenther, *Solitary Confinement: Social Death and Its Afterlives*, 164.

Psychological Development: Implications for the Criminal Justice System”, acknowledges that women mature into autonomous individuals differently than men.³⁷ While separation is emphasized for male development, women develop a sense of self and self-worth through building connections with others. As Guenther writes, “prisoners in solitary confinement are, by definition, excluded from the looping effects of social interaction; they are isolated in their cells, with no one to see or to look back at them, no one to touch or to receive their touch”.³⁸ Yet, based on numerous studies, Covington maintains that, “connection” is a basic human need, and that this need is especially strong in women”.³⁹ Solitary confinement completely disregards this reality, arguably bringing punishment to a new level for women. More significantly, Guenther’s work ignores the unique psychology of women that suggests solitary confinement may be a harsher punishment for women and more damaging to their mental health. In a review of the 2014 ACLU report on the solitary confinement of women, it is asserted that, “the effects of solitary on prisoners have been well studied, but its effects specifically on women are less known”.⁴⁰ Guenther’s book is one example of how women are ignored within debates about punishment itself; a phenomenon that occurs out of sight, victimizing those who already have no voice.

Today, prison not only relegates its inhabitants to second class status and deprives them of basic rights, but it additionally punishes them in ways that are largely hidden from the public eye. Since the horrifying experience of prolonged solitary confinement is not part of everyday

³⁷ Stephanie Covington, 2007, "The Relational Theory of Women's Psychological Development: Implications for the Criminal Justice System," *Female Offenders: Critical Perspectives and Effective Interventions*.

³⁸ Guenther, *Solitary Confinement: Social Death and Its Afterlives*, 165.

³⁹ Covington, 2007, "The Relational Theory of Women's Psychological Development", 4.

⁴⁰ Matthew Clarke, "ACLU Report: Women Uniquely Harmed by Solitary Confinement," *Prison Legal News*, May 2016.

dialogue, it continues to persist while remaining largely invisible. This only further conceals the lives of those who spend years or decades hidden away from human interaction. Since women are already ignored under the topic of incarceration, women who experience solitary confinement are subjected to an even deeper level of invisibility. Many argue that solitary confinement is inhumane and a large failure of the U.S. Criminal Justice System. In addition to this, as Covington shows, its lack of humanity should not be measured without taking gender into account. Guenther's account of solitary confinement and disregard of the female experience begs the question of whether or not women should be punished in the same way as men. It is only when we consider gender differences that we can understand where failures lie and how to reform female prisons. Women have not only been left invisible in the conversation surrounding the U.S.'s high incarceration rates, but also in conversations about how prison's greatest form of punishment, besides the death penalty, affects those subjected. Covington's research provides justification that the differences between incarcerated men and women should be recognized. When women's experiences are brought into the light, it changes the way we perceive punishment and what constitutes fair and humane treatment. Can solitary confinement be seen as equal punishment for men and women when women's experiences are not included in the very discussions that explain and reform this type of punishment? Although the discussion on solitary confinement is only one example of how the criminal justice system has ignored gender differences, it illustrates a larger pattern of neglect for the topic of female incarceration. Understanding the unique experiences of female prisoners draws attention to the failure of the criminal justice system to address female-specific needs. If we are to enforce humane and effective punishment or rehabilitation, it is crucial that gender differences are a part of the conversation about prison reform.

When we turn our attention to focus on women in prison, the statistics paint an unsettling and unexpected picture. Although it is rarely talked about, the U.S. Criminal Justice System imprisons women at an increasingly high rate. The main reason that ignorance of this reality exists is that, “comparing women's incarceration rate to that for men paints a falsely optimistic picture”.⁴¹ It is only when women are brought to the forefront that we can understand the serious nature of female imprisonment. Women, like men, are incarcerated in the U.S. at a high rate relative to the amount of crime they commit. In fact, compared to the rest of the world, the U.S. holds the highest number of female prisoners, constituting roughly one third of the world's female prison population.⁴² This statistic illustrates that the U.S. has a high propensity for incarcerating females, despite the fact that female incarceration appears insignificant when compared to males. It is concerning that women have been marginalized in the conversation about mass incarceration, especially during a time when “the numbers of women in prison have escalated more rapidly than any other segment of the prison population”.⁴³ Although the total incarcerated population of the U.S., including both genders, has increased by about 500% over the last 40 years, the rate of female incarceration has increased at double the rate of male incarceration.⁴⁴ Yet, typically we only hear about the staggering increase in male prisoners. Today, the population of females incarcerated in prisons and jails in the U.S. is nearly eight times higher than it was in 1980, having increased from 26,378 to 215,332.⁴⁵ This number is especially surprising when we recognize that males, even though they commit more crime, are

⁴¹ Prison Policy Initiative, "University of Poverty: Uncovering the pre-incarceration incomes of the imprisoned," news release, July 9, 2015, Prison Policy Initiative.

⁴² Walmsley, *World Female Imprisonment List*.

⁴³ Watterson, *Inside the Concrete Womb*, xv.

⁴⁴ "Criminal Justice Facts," The Sentencing Project, 2016.

⁴⁵ "Criminal Justice Facts," The Sentencing Project.

being imprisoned at a slower rate than women. For example, the most recent statistics on prison show that male imprisonment rate decreased from 2013 to 2014, but that the female imprisonment rate increased during this time, going from 65 to 85 per 100,000 females in the U.S.⁴⁶ These statistics provide evidence that female incarceration is a topic deserving of attention. Furthermore, a question that needs to be asked is: why are women are being imprisoned more than ever before? And given the changing nature of the imprisoned population, why do female prisoners continue to remain invisible in these discussions? With men committing a much higher percentage of crime, it is important to explore and question the rapid increase in female incarceration.

The most obvious explanation for the rise in imprisonment in the U.S. would be a change in crime. Yet, despite the increase in both male and female prison populations, there has not been an increase in crime. In fact, crime rates in the U.S. have declined for both violent crime and property crime since 1993.⁴⁷ Although exact causation is unknown, crime rates have also declined internationally since the mid 1990's.⁴⁸ Even with a decline in crime, both in the U.S. and worldwide, the U.S. has continued to increase the number of incarcerated males and females. Additionally, even with a decline in crime leading up to the 2000s, the prison population of the U.S. continued to grow by 16% from 2001 to 2012.⁴⁹ This illustrates that there is not a clear correlation between increasing crime rates and responsive incarceration. It is peculiar that the U.S. has experienced a tremendous spike in prison populations during a time when crime has

⁴⁶ U.S., Bureau of Justice Statistics, *Prisoners in 2014*, by Ann Carson.

⁴⁷ U.S., Bureau of Justice Statistics, Office of Justice Programs, *Criminal Victimization, 2013*, by Jennifer L. Truman and Lynn Langton, NCJ 247648 (2014).

⁴⁸ D'Vera Cohn et al., "Gun Homicide Rate Down 49% Since 1993 Peak; Public Unaware," Pew Research Center's Social & Demographic Trends Project, May 07, 2013.

⁴⁹ Rob Allen, 2015, *Global Prison Trends 2015*, London, UK: Penal Reform International.

been relatively stable. It is even more concerning that the female prison population has grown the fastest and still remains relatively invisible. In recent years, “the rate of women’s incarceration continues to grow at a faster rate than men’s despite a decrease in violent crime committed by women”.⁵⁰ Between 1886 and 1991, the percentage of women incarcerated for violent crimes decreased from 41% to 32%.⁵¹ Yet, from 1980 and 1990, the incarcerated female population increased 256%, while the male population only increased 140%.⁵² Although violent crime committed by women decreased in the 1990’s, the rate of female incarceration continued to increase in the years following. These statistics are some of many that point to the lack of evidence that mass incarceration is a response to high crime rates. There has not been a change in female crime significant enough to explain today’s high level of female imprisonment.

Today the proportion of violent crimes committed by men and women within their respective gender groups differ. The topic of increased female incarceration is especially deserving of attention when we acknowledge that women commit violent crimes at a lower rate than men. Although women are more likely to commit crime nowadays than in the past, the majority of the crimes committed by women are nonviolent.⁵³ Of incarcerated females in state prisons, 37.1% were held for violent crimes, whereas among incarcerated males, 54.4% were held for violent crimes.⁵⁴ The majority of males in prison have committed violent crimes, including murder, manslaughter, rape or sexual assault, robbery, or aggravated assault among other violent acts. The majority of women, however, are incarcerated for nonviolent crimes,

⁵⁰ Covington, 2007, "The Relational Theory of Women's Psychological Development", 2.

⁵¹ Watterson, *Inside the Concrete Womb*.

⁵² Ibid.

⁵³ U.S., White House, *Women in America: Crime Violence Factsheet* (USA.gov).

⁵⁴ U.S., Bureau of Justice Statistics, *Prisoners in 2014*, by Ann Carson.

including drug and property offenses. Of the violent crimes committed in 2014, nearly 80% arrested were male.⁵⁵ These statistics illustrate that when women commit crimes, they are frequently less serious types of crime. It is therefore worrisome that the female prison population is growing at a faster rate than men when women generally commit less serious crime. It is only logical that we should question the legitimacy of the rapid rise in female imprisonment. Furthermore, it is worth noting that in the past, “sentencing practices for women within the reformatory system often required women of all racial backgrounds to do more time than men for similar offenses”.⁵⁶ Although only speculative, this prompts the question of whether or not women today are held to a different standard during sentencing because they frequently commit less serious crimes than males. Although some argue that courts are more lenient on women, looking at the difference in violent crime between genders adds a new perspective to this debate. Even so, this question can only be explored if we understand how the population of women in prison has changed in recent decades.

It is concerning that the population of female prisoners has increased significantly faster than the male population when we recognize that the majority of women are being imprisoned for nonviolent crimes. Instead, women are primarily incarcerated for drug and property crimes.⁵⁷ Of female prisoners in state facilities in 2014, 28.4% were serving sentences for property crimes, including burglary, larceny-theft, motor vehicle theft, and fraud among other offenses.⁵⁸ On the other hand, the proportion of males serving sentences for property crimes was 18.6%.⁵⁹ Men and

⁵⁵ U.S., Department of Justice, Federal Bureau of Investigation, *Persons Arrested*, 2012.

⁵⁶ Davis, *Are Prisons Obsolete?*, 72.

⁵⁷ "Criminal Justice Facts," The Sentencing Project.

⁵⁸ U.S., Bureau of Justice Statistics, *Prisoners in 2014*, by Ann Carson.

⁵⁹ *Ibid.*

women differ in the types of crimes they more frequently commit, with females tending to commit property or drug crimes over violent crimes. Furthermore, the war on drugs has not only affected men, but it has affected women as well, and has accounted for a large percentage of the increase in the female prison population. In 2014, the percentage of women incarcerated in state prisons for drug crimes constituted 24%, compared with 15% of males.⁶⁰ Although state facilities hold more prisoners, drug crimes in federal prisons constituted 50% of male sentences and 59% of female sentences in 2014.⁶¹ Many activists of prison reform have highlighted these statistics to show how often drug offenses are punished. With men and women often turning to property crimes as a means of feeding their drug addiction, the rates of both drug and property offenses have been influenced by the war on drugs. However, populations of incarcerated females have especially faced growth within these crime categories.

Since the creation of a war on drugs in 1971 by President Nixon and its expansion during Reagan's presidency in the 80s, drug offenses have significantly influenced the female prison population. The increase in mandatory minimum sentences and laws that target drug possession have greatly affected females. Between 1986 and 1996, the population of females incarcerated for drug offenses in state facilities increased by 888%, in comparison to only increasing 129% for non-drug related offenses.⁶² However, there was no increase in the rate of drug crimes committed by women during this time period.⁶³ It could be argued that the war on drugs has had a more profound effect on female incarceration than male incarceration. Although the population of male prisoners has increased drastically, female incarceration has increased even more

⁶⁰ U.S., Bureau of Justice Statistics, *Prisoners in 2014*, by Ann Carson.

⁶¹ U.S., Bureau of Justice Statistics, *Prisoners in 2014*, by Ann Carson.

⁶² "Criminal Justice Facts," The Sentencing Project.

⁶³ Watterson, *Inside the Concrete Womb*.

drastically, and primarily, as a result of drug laws. Of the arrests made in 2014 for drug law violations, 83% of them were for possession.⁶⁴ Many of the females arrested for drug crimes have committed small offenses, yet drug crimes constitute a large amount of female prison sentences. However, drug use has not decreased since the war on drugs began. In fact, the estimated percentage of the population using illicit drugs went from 8.3% in 2002 to 9.4% in 2013.⁶⁵ This illustrates that illicit drug use has actually increased in the U.S., signifying the ineffectiveness of the war on drugs. More significantly, America's increased tendency to incarcerate women for drug offenses has not curbed drug use or crime among female populations.

Often the U.S. "War on Drugs" is justified as having been a response to the increase in crime surrounding drug use, and particularly the use of crack cocaine. However, this argument is unsubstantiated when we recognize that crack cocaine was not prevalent in American cities until the mid 1980's, over a decade after Nixon declared a war on drugs. Reagan used the introduction of crack cocaine in the 1980's in poor neighborhoods as a way to publicize and gain support for the expansion of drug policy. "While it would seem plausible to suggest that crime rates would be linked directly to incarceration rates...the reality is that incarceration rates are not usually a response to a country's crime problem".⁶⁶ Instead, research has shown that incarceration is often linked to a fear of crime or perception of threat that a minority population poses.⁶⁷ With the U.S. correctional system operating as a means of social control, the linkage between perceived threat

⁶⁴ "Drug War Statistics," Drug Policy Alliance (DPA), 2017.

⁶⁵ "Nationwide Trends," National Institute on Drug Abuse, June 2015.

⁶⁶ James M. Byrne, April Pattavina, and Faye S. Taxman, 2015, "International Trends in Prison Upsizing and Downsizing: In Search of Evidence of a Global Rehabilitation Revolution," *Victims & Offenders* 10 (4).

⁶⁷ Byrne, Pattavina, and Taxman, "International Trends in Prison Upsizing and Downsizing."

and incarceration can be seen through the trends of mass incarceration. For example, harsher drug laws were introduced in the 1970's, during a time when African Americans were gaining more freedom. Since then, Black males have disproportionately been targeted and incarcerated, creating what Michelle Alexander calls "a new racial caste".⁶⁸ Since the 1980's, women have also been imprisoned at a disproportionate rate of increase and for largely nonviolent crimes, unlike their male counterparts. Although these two examples have different origins, they both depict the correctional system as an institution of social control; reinforcing racist and patriarchal principles. Whether intentional or not, one cannot deny that institutionalized racism and a male-centered approach to policy exist within the correctional system in the U.S. It has become clear through the study of the male prison population that the U.S. Criminal Justice System has racist underpinnings. Paralleled with these White supremacist underpinnings, is the additional reality that the U.S. Criminal Justice System rewards wealth and penalizes poverty. What is less clear is the role that sexism has played in female imprisonment in recent history. As previously noted, sexism appears to influence the way prisoners are depicted and discussed. If the issues that female prisoners face are ignored, the ways in which patriarchy permeates the system will also be neglected.

Given that women are largely obscured in conversations about the failures of prison, it is concerning that they make up the population being incarcerated at the highest rate of increase in the U.S. The drastic increase of female prisoners is especially unsettling granted that women are being incarcerated for primarily non-violent, property and drug crimes when the opposite is true for men. With a limited inclination to commit crime, female crimes are far less violent and

⁶⁸ Alexander, *The New Jim Crow*.

frequent than male crimes. However, female imprisonment largely mimics male imprisonment trends when looking at race, population increases, and the impact of the war on drugs. Both male and female prison populations have increased substantially since the 1980's, however, the female population has increased at nearly double the rate of the male population. The war on drugs has also affected women tremendously, with drug offenses accounting for the largest number of female crimes. Although it has played a key role in the increased imprisonment of women, drug use in the U.S. has not decreased for either men or women.⁶⁹ Similar to Black men, Black women are more likely to be imprisoned than their White counterparts, illustrating the racial discrimination that women experience within the criminal justice system. Yet, Black women are rendered even more invisible than White women because they are disadvantaged by both their race and gender. Female incarceration frequently follows patterns of male incarceration, however, women are often subject to worse abuses by the system. However, the invisibility of incarcerated women generally keeps these abuses tucked away from public discussion. And yet, women are being increasingly subject to the conditions of prison that have been designed and reformed without much regard to the unique experiences of women. The patriarchal values ingrained in the criminal justice system create and reinforce the abuses women face in society, while also allowing incarcerated women to remain invisible.

Although drug laws provide one explanation for an increase in the female prison population, they cannot entirely explain this transformation. Around the time that more drug laws were introduced, additional policies were brought into play that have subsequently affected female prison populations. The increase in drug sentencing, coupled with globalization of

⁶⁹ "Nationwide Trends," National Institute on Drug Abuse.

capitalism, the dismantling of an industrialized workforce, the elimination of certain social services, and creation of new prison facilities, have led to the increased imprisonment of women.⁷⁰ The female prisoner is often poor and undereducated, illustrating the nation's tendency to incarcerate those who are less privileged. Covington argues that more women have been incarcerated as non-violent crimes have gone up during two economic recessions. Yet, increases in female crime during recessions is indicative of the link between poverty and female crime. Female "involvement in crime is often economically motivated, driven by poverty and/or substance abuse. Women are also less likely to be convicted of a violent offense, and their risk to society is much lower than that of men".⁷¹ It is important to understand why women are motivated to commit crime in order to understand how the criminal justice system fails to properly deal with the issues that many female prisoners have faced.

Psychological, biological, and social factors have been explored and used to explain the differences in crime and incarceration rates between genders. However, most criminologists cite social factors as playing a large role in determining who commits what crimes and why. The socialization of gender has caused men and women to strive to fulfill different roles defined by society, which in turn influences their motivations to commit crimes. Females face less pressure to achieve material success, and have stronger social bonds, more responsibility to take care of children, are influenced by femininity stereotypes and experience greater supervision due to their gendered vulnerability. In addition, women are pressured to be ladylike, nurturing and beautiful, characteristics that stand in contrast to behaviors linked with criminality. Males, however, are more antisocial, pressured to achieve success and power, and are influenced by peers that are

⁷⁰ Davis, *Are Prisons Obsolete?* 65.

⁷¹ Covington, 2007, "The Relational Theory of Women's Psychological Development", 2.

more delinquent or inclined to take risks. Therefore, female crimes often result from a motivation to maintain relationships, whereas males are more likely to commit crime due to status or power. The role that females have within society influence women to commit lower levels of crime across all categories, with the exception of prostitution. Even when men and women commit the same crimes, they are often motivated to do so for different reasons. When women do in fact commit violent crimes, the victim is rarely a stranger, and often their crimes are motivated as a response to abuse. Sociologists tend to observe that women commit crimes because they are motivated to survive as a result of poor economic situations or mental health issues involving drug use. According to Darrell Steffensmeier and Emilie Allan, in their research on gender and crime, women are pushed “into crime through victimization, role entrapment, economic marginality, and survival needs”.⁷² The difference in the incarcerated populations illustrates that punishment within the U.S. reflects the reality that women commit less crime and when they do, it is often less aggressive crimes than men. If men and women who commit crimes are typically motivated by different factors, prison reform needs to acknowledge varying psychologies, societal expectations and gender-specific needs. Since women have not been the main focus of prison reform, we are left to question prison’s effectiveness in punishing and rehabilitating female prisoners.

Despite the lack of attention on women in prison, some influential work has focused on the specific experiences of women and the importance of sharing those accounts. Coupled with the issues male prisoners face, the issues of female prisoners call attention to the out of date features of the prison system. Calling herself an anti-prison activist, Angela Davis argues in her

⁷² Steffensmeier and Allan, “Toward a Gendered Theory of Female Offending,” 470.

book, *Are Prisons Obsolete?*, that prisons are largely outdated. Davis's book, unlike the work of DuVernay, Alexander and Guenther, incorporates women into the argument. Although today a large number of female prisoners inhabit U.S. correctional facilities, Davis acknowledges that prisons were never designed for women. In her analysis she highlights the ineffectiveness of prisons by conveying that since the 1960's, the steep increase in the U.S. prison population has had little effect on crime rates. Part of her argument focuses on the early penitentiary and the development of prison over the years, suggesting that we should consider its relevance in today's society. The book also analyzes the creation of supermax prisons in 1983 and critiques solitary confinement for its lack of rehabilitative elements. She contends that, "No one –not even the most ardent defenders of the supermax– would try to argue today that absolute segregation, including sensory deprivation, is restorative and healing".⁷³ Although the recognition of male gender differences is included in this analysis, Davis contends that prisons are often conducive of conditions that are more repressive for women. She argues that male and female prisons have operated on a "separate but equal" framework, and therefore we need to shift our focus to include gender if we are to understand the failures of state punishment.⁷⁴

The objective of much of the book is to show the way prison has changed over the years and shed light on how prisons are obsolete. Davis focuses on the failures of the criminal justice system in terms of race, pointing out how deeply entrenched racism is within the institution of prison. She says that although the 13th Amendment outlawed slavery, "White supremacy continued to be embraced by vast numbers of people and became deeply inscribed in new

⁷³ Davis, *Are Prisons Obsolete?*, 50.

⁷⁴ *Ibid*, 75.

institutions”.⁷⁵ Yet, Davis recognizes the unique female experience, articulating that, “the destructive combination of racism and misogyny...retains all its awful consequences within women’s prisons”.⁷⁶ She writes about the increase that female prison populations have experienced and argues that female prisons are even more invisible than prisons that detain males. In her 2003 book, she writes that, “Over the last five years, the prison system has received far more attention by the media than at any time since the period following the 1971 Attica Rebellion. However, with a few important exceptions, women have been left out of the public discussions about the expansion of the U.S. prison system”.⁷⁷ This statement is incredibly important considering that today, thirteen years later, the exclusion of women continues to exist within the discussion.

Yet, in recent years we have seen more outlets portraying the life of female prisoners. Recent productions, such as *Orange is the New Black*, created by Jenji Kohan, have helped the issue of female incarceration come to light by focusing on the unique experiences of female prisoners. As Davis argues, “Our sense of familiarity with prisons comes from representations of prisons in film and visual media”.⁷⁸ Although the series is partially fictitious, the production highlights the failures of the criminal justice system, depicting the unjust regulations and treatment that occurs behind bars. For example, it includes a negative portrayal of solitary confinement, racial divides, underfunded programs, disregard for mental health, the reality of sexual assault, and the corrupt nature of prison. Yet, this popular television series can paint an almost enticing picture of a woman’s life in prison at times. It is difficult to gather a real sense of

⁷⁵ Ibid, 23.

⁷⁶ Ibid, 83.

⁷⁷ Davis, *Are Prisons Obsolete?*, 60.

⁷⁸ Ibid, 17.

the reality of prison from media designed to attract viewers. Nevertheless, the show serves as a means of dismantling the pre-conceived notions that we have about female prisoners. With traditional images of femininity continuing to mask our perceptions about women, female criminality still remains a somewhat taboo abstraction. Visual media representations of female criminality encourage discussion about the gender-specific injustices and struggles that women face in prison. More than anything, *Orange is the New Black* opens up a powerful and important conversation about prison reform with women as focal point.

Although women are becoming part of the conversation about incarceration and the failures of the criminal justice system, women continue to remain more invisible than men in these discussions. Taking into account the injustices that Ava DuVernay, Michelle Alexander, Lisa Guenther, Angela Davis and Jenji Kohan have illustrated in their work, it is important to recognize that incarcerated women face some of the worst abuses. Michelle Alexander asserts that it is important to understand “how women have been rendered invisible time and time again, in ways that are not only distinct and unique, but that pose a fundamental challenge to movement building for transformational justice itself”.⁷⁹ If women’s experiences are brought to the forefront, it changes the analysis of prison’s effectiveness. Since women typically require more provoking to commit crime, their reasons for imprisonment are varied from that of men. When we expose the trends among female prisoners, it becomes clear that prison, built from a patriarchal fabric, is only mimicking the abuses these women face in society.

⁷⁹ Alexander, "Invisible Woman: The Experience of Women and Girls." (speech, Faith in America).

3 The Female Prisoner as Victim and Offender

Understanding pathways to imprisonment illustrates that policies have largely ignored these pathways and subsequently failed to prevent criminal behavior. As noted, the “war on drugs” and mass incarceration have not reduced crime. Policies targeting the issue of crime in America have largely focused on punishment. However, policy that only takes a “tough on crime” approach and punishes the individual offender disregards the unfavorable environments from which crime often arises. Criminal activity does not abruptly materialize out of thin air, but it predominantly evolves as a product of social inequality. This is especially true for women, as evidenced by the high prevalence of economically motivated drug and property crimes among female prisoners. It is clear that the “criminalization” of women’s survival strategies has become a main symptom of female imprisonment. Furthermore, policies and prison often exacerbate the dire conditions from which female criminality originates.

When pathways to imprisonment are exposed, it points to the ineffectiveness of mass incarceration. It also shows us that male and female prisoners face different challenges prior to imprisonment. “Virtually nowhere is this gross misuse of incarceration more evident than when considering the challenges women in prison faced before they entered the system”.⁸⁰ Namely, female prisoners face strikingly high rates of sexual and physical abuse, mental illness, and substance abuse. Women are not only offenders, but they are victims. In the vast majority of

⁸⁰ “Women and the Criminal Justice System,” The Correctional Association of New York.

cases, prior to offending, female offenders are already victims in one way or another. Often these women are abused by fathers, boyfriends, or husbands; unemployed or financially unstable; struggling to support their children; or drawn into crime by situations out of their control. These prior conditions and experiences continue to affect women once they enter prison.

In addition to these factors, the most unique circumstance that differentiates the experience of men and women in prison is pregnancy and motherhood. The added responsibility of motherhood that the majority of female prisoners face also relates significantly to the cyclical nature of prison. These distinctive experiences shed light on the failures of current policy to acknowledge the challenges that women face prior to and during imprisonment. With women constituting the fastest growing prison population, it is imperative to note that implementing policy that is “tough on crime” only further entrenches society’s most powerless. In recognizing the unique characteristics of female incarceration, we see that women in prison often face some of the worst abuses in society.

Who is the Female Criminal?

The experiences that women face prior to incarceration play an important role in our understanding of how the criminal justice system has failed. As we have seen, women entering into the criminal justice system are mainly young, undereducated, poor, of ethnic minorities, and require more provoking than men to commit crime. With their motivations resting largely on survival, economic needs, and supporting their children, it becomes evident that a woman’s life prior to incarceration plays a significant role in her criminality. “Our society has a strong tendency to define incarcerated women solely by their crimes, ignoring the various

circumstances that affect their lives and actions”.⁸¹ Deconstructing the female prisoner as a villainous and reinterpreting her criminality as a product of her environment is key to understanding trends among female prisoners. As noted, much of the crimes women commit are drug or property offenses, which are highly linked with survival habits. Since many female offenders face poverty and drug addiction, surviving and coping with these experiences often push women into unfavorable situations that become pathways to crime. Along with poverty and addiction, women in prison report a high prevalence of prior sexual or physical assault, victimization, or domestic abuse. It is noteworthy that these experiences are common among incarcerated women, because it illustrates that many female prisoners face trauma prior to their imprisonment. When it is recognized that women in prison face high levels of abuse it highlights a need to tackle other failures of society. “Theorists have argued that women's imprisonment is largely attributable to "unsolved social problems" (Fine, 1992)—drug addiction, prostitution, and retaliation against abusive partners”. Understanding pathways to crime is of utmost importance when analyzing the criminal justice system’s failures and policy implications.

Abuse in the Lives of Incarcerated Women

Perhaps the most unique characteristic of female criminality and imprisonment is the association with prior victimization and abuse. It is commonly known that women experience far greater levels of sexual or physical abuse, domestic violence, and victimization than men throughout their lifetimes. Despite progression toward female equality, “interpersonal violence is a profoundly gendered phenomenon, and overwhelmingly women are the targets of men’s use of force”.⁸² The majority of sexual abuse against women is not committed by strangers, but rather

⁸¹ "Women and the Criminal Justice System," The Correctional Association of New York.

⁸² Miller, *Victims as Offenders: The Paradox of Women's Violence*, 22.

by intimates, family members, or community members. There has been substantial awareness and research conducted on the violence women face in society, however, less attention has been paid to women behind bars and the violence that got them there. The research that has received attention concerns the topic of sexual assault *within* prison facilities, perpetrated by prison guards and other inmates. What is less widely recognized is the high rate of sexual or physical abuse in the lives of female prisoners *prior to incarceration*. In a 1999 study published by the Bureau of Justice Statistics, it was found that 57.2% of females in U.S. state prisons reported some form of abuse prior to incarceration, while only 16.1% of men reported the same.⁸³ In terms of sexual abuse, 39% of females inmates and 5.8% of male inmates reported this type of abuse.⁸⁴ Both these findings illustrate that incarcerated women face much higher rates of abuse than incarcerated men prior to imprisonment. However, these 1999 statistics were reported on a 2014 fact sheet to illustrate the association between female prisoners and prior abuse, indicating that there has not been a more recent government study on this topic. Much of the prominent research concerning abuse and victimization in the lives of criminals was conducted in the 1990's and early 2000's. Since then, there has been less attention on the association between female incarceration and prior abuse. However, the high prevalence of abuse that has been reported is cause for concern. This phenomenon is something that is unique to women entering our criminal justice system and therefore deserving of attention. "In other words, women offenders face gender-specific adversities – namely, sexual abuse, sexual assault, domestic violence, and poverty".⁸⁵

⁸³ U.S., Court Services and Offender Supervision Agency (CSOSA), *Statistics on Women in the Justice System* (D.C., 2014).

⁸⁴ U.S., (CSOSA), *Statistics on Women in the Justice System*.

⁸⁵ Covington, 2007, "The Relational Theory of Women's Psychological Development", 2.

Although government studies have reported the incidence of abuse among female offenders to be around 60 percent, qualitative studies and surveys have placed this number higher, around 75 to 90 percent.⁸⁶ The violence that women face can range from rape, sexual or physical assault, and prolonged physical or sexual abuse. The more recent data that exists on abuse and female incarceration is consistent with previous findings. According to the Correctional Association of New York, three-quarters of female prisoners have experienced severe physical abuse committed by an intimate partner.⁸⁷ Similarly, a 2005 study of 100 female jail inmates found that 71% of these women had reported facing partner violence before incarceration.⁸⁸ These startling statistics illustrate that female offenders overwhelmingly face traumatic experiences prior to offending. Evidence also indicates that women experience high rates of childhood abuse. In a 2008 study including 391 female prisoners, half reported a history of childhood abuse.⁸⁹ Other claims also put the rate even higher, with one source estimating that 82% of female prisoners report childhood abuse.⁹⁰ The inconsistency of the data suggests that more extensive research is needed. However, the evidence that exists overwhelming demonstrates that a great deal of incarcerated women have suffered from physical or sexual abuse. Furthermore, it is common knowledge among police officers, prison staff, and lawyers that women in prison have faced high rates of abuse.⁹¹ Despite this awareness among those within the criminal justice system, there has been a lack of attention to this issue. Yet it is clear

⁸⁶ Ferraro, *Neither Angels nor Demons*, 3.

⁸⁷ "Survivors of Abuse and Incarceration," Correctional Association of New York.

⁸⁸ Bonnie L. Green, Jeanne Miranda, Anahita Daroowalla, and Juned Siddique, 2005, "Trauma Exposure, Mental Health Functioning, and Program Needs of Women in Jail" *NCCD News* 51 (1).

⁸⁹ Cathy Mcdaniels-Wilson and Joanne Belknap, 2008, "The Extensive Sexual Violation and Sexual Abuse Histories of Incarcerated Women," *Violence Against Women* 14, (10).

⁹⁰ "Survivors of Abuse and Incarceration," Correctional Association of New York.

⁹¹ Ferraro, *Neither Angels nor Demons*, 3.

that these gender-specific experiences of trauma are connected to pathways of female criminality. “It is no coincidence that incarcerated women are exposed to violence at much higher rates than women in the general U.S. population”.⁹² The evidence that exists suggests that the violence women face in their lives plays a role in their subsequent criminality. More importantly, it points to the criminal justice system’s failure to address the violence women face in society.

How Does Abuse Cause Women to Enter into Crime?

The question that must now be asked is, “how is victimization part of the constellation of experiences of women charged with crimes”?⁹³ While causation can vary, common pathways to prison for women include circumstances of poverty, drug addiction, mental illness and abuse. Prior to entering prison, female offenders typically face serious economic hardship.⁹⁴ These women are not only on the lowest rungs of society, but they face obstacles that only worsen their situations. Poverty and abusive relationships can provoke women to commit minor economic crimes. Sometimes abusive partners directly pressure women to commit crimes, leading to their subsequent imprisonment. Also, prior incidence of abuse often indirectly pushes women into pathways of crime. For example, childhood abuse can lead to homelessness, drug abuse and poor access to economic resources, which can compel young women to engage in illegal behavior to survive. Women who have suffered from violence and abuse often develop or struggle with mental illness and/or substance abuse, which increases the risk of criminality. These examples demonstrate that, “the violence that many incarcerated women are exposed to is chronic, severe,

⁹² Braithwaite, Arriola, and Newkirk, *Health Issues Among Incarcerated Women*, 50.

⁹³ Ferraro, *Neither Angels nor Demons*, 4.

⁹⁴ Braithwaite, Arriola, and Newkirk, *Health Issues Among Incarcerated Women*, 23.

and has had long lasting effects on their mental and physical well-being”.⁹⁵ These pathways illustrate the interlocking nature of poverty, abuse, mental illness, and drug abuse in relation to female offending. “Not surprisingly, many incarcerated women and girls report that they believe their sexual victimization histories are related to their subsequent offending”.⁹⁶ As these circumstances illustrate, the criminal justice system often discounts the societal and structural forces that influence female crime. Policies that ignore female pathways to crime only further marginalize women who are at risk of offending.

“In the United States, policies for responding to social problems, such as poverty, homelessness, drug use, and interpersonal violence have tended to focus on individual behavior rather than social structures”.⁹⁷ Rather than eradicating these social issues from the source, the criminal justice system has opted to largely criminalize the individuals relegated to these categories. There is evidence that a “tough on crime” approach has been disproportionately detrimental to women, people of color, and the poor.⁹⁸ President Clinton’s 1996 “One-Strike and You’re Out” public housing policy is an example of a crime policy that adversely affects women who are in abusive relationships. With the added threat of being evicted, women who face sexual or physical abuse in public housing are even more unlikely to call the police for help. Calling the police for help may result in an arrest of the abuser or draw attention to other illegal activity within the home. In both cases, the “One-Strike and You’re Out” mentality potentially removes the woman seeking help from public housing, which can then lead to a multitude of other issues.

⁹⁵ Ibid, 63.

⁹⁶ Mcdaniels-Wilson and Belknap, "Extensive Sexual Violation and Sexual Abuse Histories."

⁹⁷ Ferraro, *Neither Angels nor Demons*, 3.

⁹⁸ Dana D. DeHart, *Pathways to Prison: Impact of Victimization in the Lives of Incarcerated Women*, report no. 208383, U.S. Department of Justice, January 2005.

Even though women are generally the victims of abuse, landlords may choose to evict them anyway. This demonstrates that heavy-handed policies on crime often ignore the circumstances of poverty and conditions that influence crime. Furthermore, African American and Latina women have been disproportionately affected by “tough on crime” policy. Incidents of domestic violence and abuse are likely to be unreported by women in these minority groups because they, “are more likely to be skeptical of ‘help’ from law enforcement”.⁹⁹ With a tendency to marginalize, incriminate, and highly police African American and Latino communities and individuals, U.S. policy has deterred women in these communities from seeking help from abuse. Even more concerning is that low-income women of color are more likely to face abuse. When women fail to receive the help they need, they become more vulnerable to pathways to crime. This exemplifies how cycles of crime operate, which helps to explain why poor African American and Latina women are at higher risk for criminalization. These policies fail to recognize the violence women face, the lack of opportunity and the adverse environments that drive crime in the first place.

Defending Against Abusers: Women in Prison for Violent Crimes

Given the high prevalence of violence that women face in intimate relationships, it is worth noting how rarely women respond to this abuse with similar violence.¹⁰⁰ “The vast majority of women who are victimized by intimate partners do not become perpetrators of serious crime”.¹⁰¹ Not surprisingly, much of the violence that women commit is in connection to violence that they have faced in their lives. According to Susan L. Miller, in her book *Victims as*

⁹⁹ Sheryl Kubiak et al., "How Domestic Violence May Impact Women Before, During and Beyond Incarceration," *Best Practice Toolkit for Working with Domestic Violence Survivors with Criminal Histories*, December 2011.

¹⁰⁰ Maggie Wykes and Kirsty Welsh, *Violence, Gender and Justice* (London: SAGE, 2009), 62.

¹⁰¹ Ferraro, *Neither Angels nor Demons*, 4.

Offenders: The Paradox of Women's Violence in Relationships, "the bulk of women's violence entails self-defensive force".¹⁰² Of women convicted of killing a intimate partner, 93% had a history of abuse by an intimate partner.¹⁰³ Research has found that women use violence to defend themselves or their children, to escape from restraint, and in retaliation to abuse. Contrastingly, men often use violence to control a woman's behavior, assert their dominance, release anger, or command attention.¹⁰⁴ Evidence indicates that criminal behavior that ensues after abuse is a natural response to the violence these women are facing.¹⁰⁵ Although popular perception of battered women is that they are weak and passive, studies actually show that battered women, despite being fearful, are often active in fighting back.¹⁰⁶ These biased perceptions prove to disadvantage battered women that do not fit these expectations of passiveness because they have difficulty persuading people of their abuse.

Despite the distinct nature of female violence, violence as self-defense is not always fully understood in court or properly defended by lawyers. Research suggests that prosecutors may sometimes threaten women with longer sentences to encourage testimony against a male counterpart, which harms women if they refuse. Furthermore, when women commit murder against an abusive partner it is frequently their first offense, or at least their first violent offense. Yet, women typically receive longer prison sentences for killing their male partner than vice versa because they're more likely to kill using a weapon.¹⁰⁷ Weapons warrant harsher punishments than incidences of beating or strangulation. This illustrates how laws dictating

¹⁰² Miller, *Victims as Offenders: The Paradox of Women's Violence*, ix.

¹⁰³ "Domestic Violence Survivors Justice Act Campaign," Correctional Association of New York.

¹⁰⁴ Miller, *Victims as Offenders: The Paradox of Women's Violence*, 29.

¹⁰⁵ Braithwaite, Arriola, and Newkirk, *Health Issues Among Incarcerated Women*, 60.

¹⁰⁶ Miller, *Victims as Offenders: The Paradox of Women's Violence*, 30.

¹⁰⁷ Rebecca McCray, "When Battered Women Are Punished With Prison," TakePart, September 24, 2015.

punishment fail to observe that a woman's strength relative to her male counterpart may legitimize her use of a weapon. These policies also disregard the association between female violence and abuse. As noted, policies and fear of imprisonment can often deter abused women from seeking help. However, when women do seek assistance, policies often fail to properly protect women from abuse. According to a study by the Police Foundation in Detroit and Kansas City, in 85% of domestic homicide cases, abused women called the police at least once before the homicide occurred. In 50% of these cases, the police were called at least five times.¹⁰⁸ This evidence suggests that female prisoners who have killed their abusive partner are not receiving the help they are desperately seeking. According to Robert Knechtel, the chief operating officer at one of the largest domestic violence shelters in the U.S. stated that, "for a lot of women who do ultimately kill their abusive partners, it's a last-gasp effort".¹⁰⁹ It is under the umbrella of violent female crime that context is critical.

Incarcerated women who have experienced abuse represent a contradicting duality. "These women occupy two social locations that are ordinarily viewed as dichotomous and mutually exclusive: victim and offender".¹¹⁰ The victim is perceived as good, while the offender is inherently perceived as bad. Yet, many women in U.S. prisons fit into these divergent categories. The vast number of victimized women in prisons shed light on the failure of social services and the criminal justice system's leniency to use prison as a solution. Although correctional personnel is generally aware of the victimization that many incarcerated women have faced, there has been limited research on this subject. "Lack of academic attention to the

¹⁰⁸ McCray, "When Battered Women Are Punished With Prison."

¹⁰⁹ Ibid.

¹¹⁰ Ferraro, *Neither Angels nor Demons*, 13.

nexus of victimization and offending has contributed to what Meda Chesney-Lind has termed the “criminalization of victimization”.¹¹¹ When abused women’s survival strategies are criminalized, we end up with a female prison population that is in desperate need of help, and poses relatively little threat to society.

Mental Illness, Substance Abuse, and Health Among Incarcerated Women

Another characteristic of the female prison population that is connected to victimization and abuse, is the high prevalence of mental illness. It has been found that female prisoners are more likely to suffer from mental illness than male prisoners. This prevalence of declining mental health is undoubtedly associated with the high rate of prior abuse that female prisoners report. “In rape, as in all trauma, the victim’s sense of self is shattered”, which can cause victims to develop mental illness. Reported by the Bureau of Justice Statistics, of female prisoners with mental illness, 68% had faced past sexual or physical abuse, compared to 44% of those without mental illness.¹¹² With the evidence that exists, it is recognized that women who face abuse are at a higher risk for developing psychological problems. “Specifically, exposure to various forms of IPV [interpersonal violence] over the lifespan is a significant risk factor for depression, posttraumatic stress disorder (PTSD), suicide, and substance use problems”.¹¹³ These mental health issues and subsequent coping mechanisms are connected to behavior that is defined as criminal. Therefore, it makes sense that a large percentage of female prisoners suffer from both mental illness and prior abuse. Furthermore, the deinstitutionalization of mental illness beginning

¹¹¹ Ferraro, *Neither Angels nor Demons*, 3.

¹¹² U.S. , Bureau of Justice Assistance, Office of Justice Programs, *Mental Health Problems of Prison and Jail Inmates*, by James J. Doris and Lauren E. Glaze, series 213600 (Washington, DC, 2006).

¹¹³ Shannon M. Lynch, April Fritch, and Nicole M. Heath, 2012, "Looking Beneath the Surface." *Feminist Criminology* 7 (4).

in the 1960's and 70's had repercussions for the criminal justice system. Many women with mental illness have since proliferated prisons. Instead of treating mental illness as a serious health issue, this deinstitutionalization has largely criminalized mental illness. According to the Bureau of Justice Statistics, 73% of women in state prisons reported mental health issues, while only 55% of men reported the same.¹¹⁴ Given that many incarcerated women experience interpersonal violence and abuse, it is not surprising that these women suffer from mental illness at 3 to 5 times the rate of the general population and at a higher rate than male prisoners.¹¹⁵ This high rate points to the failure of the criminal justice system to recognize mental illness as a health issue rather than a criminal offense. Instead of rehabilitating the mentally ill women who have often faced abuse, prison is used as a mechanism of control.

Connected to conditions of sexual or physical abuse, mental illness, and poverty, is a higher likelihood of drug and alcohol abuse. "It is well documented that psychiatric disorders and alcohol and drug abuse disorders are highly co-morbid".¹¹⁶ Given that many incarcerated women face sexual or physical abuse, it is no surprise that these women report high rates of substance abuse issues. Women who have experienced violence and sexual abuse may develop substance abuse issues as a way of coping with the trauma they have experienced in their lives. In fact, women who face abuse are 9 times more likely than women who have not faced abuse to have drug addiction issues.¹¹⁷ The relationship between abuse and drug addiction is important because it helps us understand female pathways to incarceration. Women can also resort to drug addiction in response to poverty, other traumatic events, and mental illness. Also, female

¹¹⁴ U.S. , Bureau of Justice Assistance, *Mental Health Problems of Prison*, by Doris and Glaze.

¹¹⁵ Lynch, Fritch, and Heath, "Looking Beneath the Surface."

¹¹⁶ Braithwaite, Arriola, and Newkirk, *Health Issues Among Incarcerated Women*, 10.

¹¹⁷ Kubiak et al., "How Domestic Violence May Impact Women."

prisoners report higher rates of substance abuse than male prisoners. According to the Bureau of Justice Statistics, 73% of women in state prisons reported frequent drug use prior to imprisonment, in comparison to 47% of men.¹¹⁸ It is no shock that the most common psychiatric disorder among incarcerated women is substance abuse when we acknowledge that “drug use accounts for a disproportionate number of arrests and convictions among women”.¹¹⁹ Changes in policy that criminalizes drug use has especially impacted women. As we have seen, the rapid increase of female prisoners is largely due to arrests for nonviolent drug crime. U.S. federal and state mandatory sentencing laws targeting drug dealing and possession have severely impacted women with drug addiction. Since judges are required to give minimum sentences for certain crimes, they are unable to consider the individual facts of each case and administer appropriate punishment. “Instead, women have been shoehorned into a punitive pro-prison model for sentencing males who are assumed to be violent and/or major drug dealers”.¹²⁰ Therefore, the context of the crime is disregarded in determining punishment. Laws that are tough on drug possession ignore the reason that many women abuse drugs in the first place. According to the surgeon general, Dr. Vivek H. Murthy, “It’s time to change how we view addiction. Not as a moral failing but as a chronic illness”.¹²¹ When we recognize drug addiction as an illness rather than a crime, prison sentences suddenly seem unfitting as a solution.

¹¹⁸ Barbara E. Bloom and Stephanie S. Covington, "Addressing the Mental Health Needs of Women Offenders," *Women's Mental Health Issues Across the Criminal Justice System*, 2008.

¹¹⁹ Braithwaite, Arriola, and Newkirk, *Health Issues Among Incarcerated Women*.

¹²⁰ Sandra Enos, "Mass Incarceration: Triple Jeopardy for Women in a "Color-Blind" and Gender-Neutral Justice System," *Journal of Interdisciplinary Feminist Thought* 6, no. 1 (October 5, 2012).

¹²¹ Nicholas Kristof, "Mothers in Prison," *The New York Times*, November 25, 2016.

As a result of the “endless cycle of violence, abuse and drug use in the lives of many incarcerated women”, female prisoners often suffer from poor health.¹²² Poverty and unemployment can mean limited access to health care for many incarcerated women, especially those of color. This, in addition to a history of sexual and physical abuse, makes female prisoners more likely have HIV/AIDS, HPV, hepatitis C, and higher-risk pregnancies.¹²³ Women in the general population face some of the same health concerns, however, women in prison face them at a higher rate and with more severity in terms of disease and injury.¹²⁴ This is not unexpected, given the high rate of abuse that female prisoners face in comparison to women in the general population. Furthermore, female prisoners even have worse physical health than male prisoners. According to the US Department of Justice, 2.6% of women in state prison were HIV positive in 2004, whereas only 1.8% of males tested positive.¹²⁵ Drug use among women is linked to higher risk of HIV and STD’s due to increased likelihood of multiple partners that may also high risk for disease. Substance abuse itself also has damaging effects on the health of female prisoners. Prostitution, which is a highly gendered industry and quite obviously patriarchal in nature, increases the risk of disease such as HIV and sexual abuse. For many women attempting to survive poverty, sex-exchange is a lucrative option. The criminalization of female prostitutes fundamentally disregards the gender and economic inequalities that generate the market for sex-exchange. Although men drive the profit-making aspect of the industry, women tend to get caught up in crime relating to sex-exchange largely due to the conditions their environment, such as poverty and drug use. Furthermore, prostitution is strongly associated with drug use, poverty,

¹²² Braithwaite, Arriola, and Newkirk, *Health Issues Among Incarcerated Women*, 9.

¹²³ *Ibid.*, 19.

¹²⁴ Braithwaite, Arriola, and Newkirk, *Health Issues Among Incarcerated Women*, 3.

¹²⁵ U.S., (CSOSA), *Statistics on Women in the Justice System*.

a history of abuse, risky sex practices, and therefore, poor health. “It is no coincidence that the people who suffer poor health status are also the ones who are disproportionately incarcerated in the United States: the poor health status of incarcerated women reflects the inequalities that exist in the social, political, and economic structures of the larger society”.¹²⁶

Policy Implications

When the interconnectedness of poverty, abuse, mental illness and drug addiction is understood within the context of female imprisonment, pathways to female offending become apparent. We are also able to recognize that women face unique challenges prior to incarceration that can have an especially adverse effect. Yet, U.S. policy has not only failed to eradicate the abuses and obstacles women face in society, but has exacerbated these struggles. It is recognized that mandatory sentences, drug laws, strict public housing, welfare restrictions, and other sentencing policies unfairly increases the risk of criminalization for certain social groups. These policies are especially harsh on women, whose imprisonment is heavily driven by unfavorable environments and subsequent survival tactics. When these policies are implemented, women’s efforts to survive are further criminalized. The unique survival strategies that women use, more often than men, when facing poverty and abuse, are criminalized through these “tough on crime” policy approaches. The changing definitions of crime are pushing more and more women into prison. Mandatory minimum sentences have unfairly targeted the vast majority of women, many of which are first time offenders, who are arrested for minor nonviolent drug-related offenses. Since drug use and possession are defined as criminal behavior, many women who suffer from substance abuse and addiction are imprisoned.

¹²⁶ Braithwaite, Arriola, and Newkirk, *Health Issues Among Incarcerated Women*, 4.

Additionally, “zero-tolerance” public housing policy that aims to reduce crime, has caused women to face eviction or discrimination if they have faced domestic abuse. When it becomes more difficult for women to find low-income housing this only adds economic difficulty, and increases the likelihood of minor crime. Furthermore, restrictions that ban access to welfare for those convicted of a drug felony disproportionately affect women. Coupled with the high rates of drug-related offenses among female criminals, women also tend to be the main recipients of these restricted welfare programs. When mothers are denied welfare and therefore face financial instability, their children inevitably suffer as well. It should be acknowledged that policies that unfairly disadvantage mothers, and especially single mothers, are simultaneously harming new generations of children. When we recognize the unique experiences that female offenders face, it becomes clear that constructed definitions of crime beg reexamination. A large part of the problem and reason for female mass incarceration is that policies fail to help abused and poor women and instead increase their need for assistance. Subsequently, women resort to survival strategies, which are then criminalized by poorly designed crime policies. All in all, these policies do not prevent crime from happening but rather further supplement cycles of crime.

Incarcerated Mothers

Mothers and their children have been greatly affected by the increase in the female prison population in recent years. Between 1991 and 2007, the number of children with a mother in prison increased by 131%, compared to 77% for fathers.¹²⁷ The rate of mothers being held in prison has grown faster than the rate of fathers. These numbers also illustrate that a large portion

¹²⁷ U.S., Bureau of Justice Statistics, Office of Justice Programs, *Special Report: Parents in Prison and Their Minor Children*, by Lauren E. Glaze and Laura M. Maruschak, NCJ 222984 (2008).

of the women incarcerated in the U.S. are mothers. This is concerning when we acknowledge the damage that incarceration imposes on families. To be specific, 62% of women in state prisons have minor children in addition to 56% of women in federal prisons.¹²⁸ Furthermore, the statistics show that 80 percent of women in prison have children of some age.¹²⁹ Although many incarcerated men also have minor children, the prevalence is higher among incarcerated women. This means that as the female prison population has risen rapidly, the number of mothers imprisoned has also risen substantially. Since women often play different roles in childcare responsibilities than men, the differential effects of maternal imprisonment on children should be explored. Single mothers face especially challenging circumstances when it comes to giving their children adequate childcare. Policies must take into account that motherhood presents unique challenges for women prior to and during their incarceration. In addition, the effect that maternal incarceration has on children should play a role in designing policy.

Women in prison are not only more likely to have children than male prisoners, but they are also more likely to be primary caregivers of their children. For example, 64.2% of mothers lived with their minor children preceding their incarceration in state prison.¹³⁰ In U.S. prisons, women report living with their children more often than men prior to imprisonment. Of women in state prison, 55% reported living with their minor children in the month before their arrest, compared to only 35.5% of men.¹³¹ Although parents may live with their children prior to incarceration, it does not always mean that they are providing the majority of childcare. For example, 77% of mothers in state prisons reported providing most of the daily care for their

¹²⁸ Clarke, "ACLU Report: Women Uniquely Harmed by Solitary Confinement," May 2016.

¹²⁹ Braithwaite, Arriola, and Newkirk, *Health Issues Among Incarcerated Women*, xviii.

¹³⁰ U.S., Bureau of Justice Statistics, *Parents in Prison and Their Minor Children*, by Glaze and Maruschak.

¹³¹ Ibid.

children, in comparison to 26% of fathers.¹³² This means that incarcerated mothers were nearly three times more likely to be responsible for the daily care of their children than incarcerated fathers. Women in prison have also reported having more contact with their children during their imprisonment than their male counterparts. As these statistics suggest, the imprisonment of mothers may be more detrimental to family structures than the imprisonment of fathers. Although the incarceration of both mothers and fathers can be equally destructive to families, “the imprisonment of women has heartbreaking collateral damage, because women are disproportionately likely to be primary caregivers”.¹³³

Furthermore, mothers in prison are disproportionately likely to report being a single-parent in comparison to fathers in prison. Not only do many women provide the majority of childcare, but they are more likely to be the sole provider of childcare. According to the Bureau of Justice Statistics, 41.7% of mothers in prison lived in a single-parent household, whereas only 17.2% of fathers reported the same.¹³⁴ This indicates that some incarcerated mothers face the unique challenge of raising a child independently. Raising children is financially and emotionally draining on its own, however, single mothers and mothers in poverty face an even bigger burden. As we know, the crimes that women commit are often economically motivated, influenced by poverty and the need to provide for their children. Single parents are more at risk of experiencing financial instability due to fewer sources of income and increased need for daycare and supervisory services. It is not surprising that 36% of mothers in state prison were dependent on some type of government assistance prior to their incarceration. In both state and federal prisons,

¹³² Ibid.

¹³³ Kristof, "Mothers in Prison," November 25, 2016.

¹³⁴ U.S., Bureau of Justice Statistics, *Parents in Prison and Their Minor Children*, by Glaze and Maruschak.

“mothers were more likely than fathers to report receiving government transfers regardless of who provided the primary financial support for their children”.¹³⁵ Among female prisoners, the prevalence of single mothers and mothers dependent on welfare prior to incarceration illustrates the failure of government programs and policies. When welfare programs are cut or inadequate in assisting mothers, this serves as breeding ground for economic difficulty and pathways to crime. It is clear that motherhood, and especially single motherhood, presents unique challenges for incarcerated women, which are not mimicked to the same extent among incarcerated men. What is most important to take away from this, is that cutting welfare and other programs, directly influences new generations of children.

When we talk about mothers in prison, we are largely talking about women who have committed drug and property crimes. Non-violent female offenders, which make up the majority of female prisoners, are more likely to be mothers than violent offenders.¹³⁶ Although many mothers have not committed serious crimes, it should be understood that some incarcerated mothers struggle financially and emotionally to provide appropriate care for their children. Mothers fall into the same pathways of crime as previously discussed. Many are poor, undereducated, and report substance abuse, mental illness and prior abuse. In comparison to fathers, mothers in state prison were “four times more likely to report past physical or sexual abuse, and almost one and half times more likely to have either a current medical or mental health problem”.¹³⁷ In addition to the challenges associated with caring for one’s children, incarcerated mothers have often resorted to survival strategies strategies related to poverty,

¹³⁵ Ibid.

¹³⁶ U.S., Bureau of Justice Statistics, *Parents in Prison and Their Minor Children*, by Glaze and Maruschak.

¹³⁷ Ibid.

mental illness, and sexual and physical abuse. Society's tendency to criminalize these survival strategies and incarcerate drug-addicted mothers fails to present women and their children with the help they ultimately need.

When we study the demographics of women in prison, they show that incarcerated women are at a higher risk of unplanned pregnancy throughout their lives. As we know, women who have faced economic hardship, prior abuse, mental illness, and drug abuse are more likely to engage in risky sex behavior where protection is not a priority. In addition to this, a lack of education and access to family planning services plays into the increased likelihood of unplanned pregnancy. All of these increased risks are associated with the conditions that many incarcerated women face prior to their imprisonment. Therefore, incarcerated women have not only faced a higher risk of unplanned pregnancy, but have also disproportionately struggled to cope with the challenges that ensue during motherhood. It is crucial that this is recognized. Policies must take into account the higher risk of unplanned pregnancies when designing programs that help disadvantaged women. When poor, undereducated women have limited access to contraceptives and family planning resources it increases the likelihood of unplanned, high risk pregnancies. What can result is that mothers are unprepared to take on parental responsibilities, which in turn can push them into even more unfavorable situations. As seen in the past, drug-addicted women who fall pregnant have faced prosecution in many states. Today, the states of Tennessee, Alabama and South Carolina, continue to prosecute substance abuse during pregnancy as a crime. For example, Tennessee enacted a law in 2014 which would charge women who use narcotics during pregnancy with aggravated assault; a sentence that could result in 15 years in prison. While using drugs during pregnancy is unethical and harmful to a child's life, policy that criminalizes pregnant drug addicts fails to deal with the real issue at hand. Pregnant drug addicts

are in need of intensive rehabilitation and have not been offered adequate treatment for their addiction. For instance, Tennessee has not created any state-funded drug-treatment programs that target pregnant women. Furthermore, “of the 15 states that require mandatory reporting to the state when substance abuse is suspected, only six have created or funded treatment programs for pregnant women”.¹³⁸ It is highly problematic that in these states the solution for dealing with drug addicted mothers is to imprison them. Criminalizing the actions of pregnant drug-addicts discourages women from seeking the help and proper prenatal care they need due to fear of imprisonment. As Susan Miller contends in her book, *Victims as Offenders*, “the modern movement to criminalize pregnant drug-addicted mothers provides a contemporary example of the state’s interest in controlling women, not crime”.¹³⁹ When drug addiction among women is understood, these women are not seen as villainous criminals, but largely as women struggling and in need of help. Locking drug-addicted women up in prison cells is not a reasonable solution to our society’s mental health and drug problem.

Instead of helping mothers to overcome drug addiction, learn new skills, and become better mothers through rehabilitative programs, the U.S. Criminal Justice System has instead largely opted to imprison and punish these mothers. Although this may be seen as removing a negative influence from a child’s life, children almost always suffer when a caregiver is incarcerated. Furthermore, not all incarcerated mothers are drug addicts or involved in behavior that threatens a child’s well-being. Whether the mother is well-equipped to be a parent or not, removing a child’s primary caregiver can have detrimental effects on child development. This, in addition to the context of the crime, needs to be taken into full account when determining

¹³⁸ Samantha Allen, "The States Sending Pregnant Addicts to Jail, Not Rehab," *The Daily Beast*, August 12, 2015.

¹³⁹ Miller, *Victims as Offenders: The Paradox of Women's Violence*, 4.

punishment for mothers who break laws. Rather than prescribing punishment, the criminal justice system should look toward rehabilitative programs in order to help rebuild families. The most important component of maternal incarceration is the effect it has on children. “Though more mothers and fathers are going to jail and prison every year, relatively little research is directed at understanding the effects of parental incarceration on children”.¹⁴⁰ More so, there is even less attention paid to the specific effects of the imprisonment of mothers, who are more often primarily responsible for their children. The research that has been done indicates that the imprisonment of a parent, and especially mothers, can have devastating effects on families.

Effects on Children

The statistics on mothers in prison are alarming considering that parental incarceration often leads to the breakup of a family. Children with mothers in prison are more at risk of experiencing the breakup of a family since women are more often primary caregivers and single parents. In fact, for incarcerated mother’s, “their minor children were more likely to be in foster and other nonfamilial care situations than incarcerated fathers”.¹⁴¹ Children of incarcerated parents who cannot live with other family members may be forced to enter into foster care, which can have adverse effects on a child’s life. The George Kaiser Family Foundation, which supports alternatives to prison for women, has noted that for children with incarcerated mothers, “They’re put in chaotic homes, they’re more likely to be sexually abused, they’re more likely to be imprisoned themselves”.¹⁴² It is important to recognize that chaotic homes and sexual abuse are highly linked with pathways to criminal behavior and mental health issues. More so, it is

¹⁴⁰ Danielle H. Dallaire, 2007, "Incarcerated Mothers and Fathers: A Comparison of Risks for Children and Families," *Family Relations* 56, (5).

¹⁴¹ Dallaire, "Incarcerated Mothers and Fathers: A Comparison."

¹⁴² Kristof, "Mothers in Prison," November 25, 2016.

concerning that when women are incarcerated it increases the risk that their children will also be incarcerated; perpetuating cycles of criminal behavior and imprisonment. To be exact, in a U.S. Department of Justice Survey, the likelihood among incarcerated mothers that their adult child was incarcerated was 2.5 times higher than among incarcerated fathers.¹⁴³ As this number demonstrates, separation from mothers who are imprisoned can put children at a higher risk for delinquency. There is evidence that children with mothers in prison experience more disruption in terms of their attachment relationships, in contrast to children with fathers in prison.¹⁴⁴ When fathers go to prison, children often remain under the care of their mother, whereas when mothers go to prison, there is a higher likelihood of transition. This stress, coupled with emotional detachment, adds to the increased risk of delinquent behavior.

Separation from one's parent is a risk factor in itself, however, many children of incarcerated women already face poverty and unfavorable circumstances. Furthermore, women and their children are not only physically separated, but they experience emotional separation as well. The factors of maternal incarceration can have longterm effects on the wellbeing of children. "Many of these children demonstrate depression, anxiety, and rule-breaking behavior, and are more likely to drop out of school, be suspended, be absent from school, and do poorly academically, compared with classmates without a parent in prison".¹⁴⁵ Children with parents in prison may also turn to drugs and law breaking because they are conditioned to this type of environment. Adding to this, is the reality that a parent who is incarcerated cannot act as a role model and support system in the same way that many privileged children experience. These

¹⁴³ Dallaire, "Incarcerated Mothers and Fathers: A Comparison."

¹⁴⁴ Ibid.

¹⁴⁵ Artemis Benedetti, "What Happens When Moms Go to Prison," Child Trends, August 25, 2016,

factors, which are out of a child's control, can have profound effects on development and can greatly influence criminal behavior. "By locking up the mothers, we're creating a self-fulfilling prophecy for these children who already are at a high risk of joining the cycle of substance abuse and crime that continues from generation to generation".¹⁴⁶

As we've learned, cycles of imprisonment within families are potentially exacerbated even more when mothers are imprisoned, compared to when fathers are imprisoned. Since female offenders and their children are often living in substandard conditions prior to incarceration, a mother's conviction and imprisonment only magnifies these dire circumstances for children. According to Miller, the "imprisonment of women exacts more profound costs on society in ways that damage families and communities, given women's central role in nurturing, caretaking, and maintaining parental and familial relationships".¹⁴⁷ It is important that policy dictating the criminal justice system recognizes the vast number of mothers that are incarcerated, and therefore, the vast number of children negatively affected by their imprisonment.

Conclusion

As this chapter has explored, incarcerated women face unique challenges prior to their offending and imprisonment. "It is evident that early experiences of abuse, substance abuse, poverty, mental illness, and HIV risk behavior oftentimes work together to impact women's likelihood of engaging in criminal behavior".¹⁴⁸ Many of the circumstances incarcerated women face prior to incarceration are heavily dictated by external forces. These external forces include the failure of U.S. policy to alleviate poverty, provide education, treat drug addiction, protect

¹⁴⁶ Watterson, *Inside the Concrete Womb*, xviii and xix.

¹⁴⁷ Miller, *Victims as Offenders: The Paradox of Women's Violence*, 4.

¹⁴⁸ Braithwaite, Arriola, and Newkirk, *Health Issues Among Incarcerated Women*, 10.

against abusers and assist society's most marginalized. Yet, a "tough on crime" approach has been the basis of U.S. criminal justice policy. This approach has ignored the ways in which women cope with conditions of abuse and poverty, and instead criminalized women's survival strategies. In addition, many policies have failed to understand how women enter into crime and rather than preventing criminal behavior, policies have disadvantaged women further. The injustices that the criminal justice system carries out and perpetuates become obvious when the abuses women face are acknowledged.

It is logical that punishment and rehabilitation should take into account the different circumstances that propel male and female criminality. "The convoluted cycle of violence, poor health, illegal behavior, and incarceration persists in the lives of many women".¹⁴⁹ Addressing cycles of incarceration is the first step toward reforming the criminal justice system. A large proportion of women in prison are victims of circumstance, including poverty, abusive homes, abusive partners, and mental illness. Ultimately, the majority of incarcerated women do not pose a significant threat to society. However, women continue to be incarcerated at a high rate. Instead of prescribing punishment after the crime has been committed, women need early intervention to prevent violence, improved protection, effective responses to requests for help, and increased economic opportunity and resources. Preventing crimes from happening by providing disadvantaged women with the correct support is crucial to lowering the number of women being imprisoned. The demographics of female prisons tell us that the incarcerated women are some of the most disadvantaged women in society. "If incarcerated women reflect the failure of our society to provide a group of our citizens the kind of opportunities and

¹⁴⁹ Braithwaite, Arriola, and Newkirk, *Health Issues Among Incarcerated Women*, 63.

protection that they deserve, then the question becomes whether the experience of incarceration is one that contributes to improving their lives”.¹⁵⁰

¹⁵⁰ Braithwaite, Arriola, and Newkirk, *Health Issues Among Incarcerated Women*, xvii.

4 Female Prisoners in a “Gender Neutral” Prison System

As the previous chapter articulated, female prisoners often face disadvantages within society that are subsequently related to their imprisonment. The conditions that many female prisoners face prior to incarceration often continue to affect women once they are confined within prison walls. Therefore, we must turn our attention to look at how policy affects women during and after prison. Given the large population of male prisoners, female prison facilities have received less attention and are often inferior to that of males. As a minority, incarcerated women have suffered from prison policy that is derived from a male-centered framework. Despite the evident need of assistance that many incarcerated women exhibit, there is a lack of success among female prison facilities in providing women with the help they need. High levels of substance abuse, psychiatric disorders, sexual or childhood abuse, and lack of knowledge of about parenting all warrant substantial treatment. Female prisoners are not given adequate rehabilitation in the form of counseling and training programs, which only makes it more difficult for them to reintegrate into society.

Due to the disparate influence of female prisoners on new generations of children, it is crucial that mothers are able to maintain positive relationships with children and are able to receive assistance once released. Although there are programs that exist, the U.S. government should look to alternative programs as the way of the future. Programs that focus heavily on drug and mental health treatment, counseling for abuse, job and skills training, maintaining ties with children, parenting advice, and help reentering communities, could have profound benefits for

many female offenders. It is imperative that the criminal justice system's basis for policy creation understand that women face a conglomerate of disadvantages related to their gender, both within prison and following release.

Policy Framework: "Separate but Equal"

Historically, women have been underrepresented under the scope of the criminal justice system and prison reform. "This underrepresentation of women has resulted in a criminal justice system created by males for males in which the diverse needs of women are forgotten and neglected".¹⁵¹ Since women in the past did not make up a large portion of the prison population, policies were catered toward incarcerated men. While male and female inmates were first separated in the Walnut Street Jail in 1790, segregation has become an accepted feature of our correctional system since the 1990's.¹⁵² Although some female prisoners are now housed in the same complex as male prisoners due to overcrowding, males and females are still separated within the U.S. correctional system. The segregation of men and women in the prison system has primarily disadvantaged women since they are a minority within the prison population. "Female prisons have historically received inferior services compared to those provided to male inmates".¹⁵³ As women began to increasingly enter into the correctional system in the 1970's, policies have attempted to account for the differences between incarcerated men and women.¹⁵⁴ In a venture to strive for equality, a "Separate but Equal" federal policy framework was adopted. However, this stipulation has not led to equality among male and female correctional facilities. It

¹⁵¹ Braithwaite, Arriola, and Newkirk, *Health Issues Among Incarcerated Women*, 19.

¹⁵² Marya P. McDonald, "A Multidimensional Look at the Gender Crisis in the Correctional System," *Law & Inequality: A Journal of Theory and Practice*, 15, no. 2 (1997).

¹⁵³ McDonald, "A Multidimensional Look at the Gender Crisis."

¹⁵⁴ Stacy L. Mallicoat, "The Incarceration of Women," in *Women and Crime: A Text/Reader*, vol. 2 (SAGE, 2015).

did not take long for female criminologists to discover “that parity and equality for female offenders does not necessarily mean that women require the same treatment as men”.¹⁵⁵

Implementing a “separate but equal” policy framework does not treat male and female prisoners on an equal basis. Instead, it has assumed that men and women have the same needs and operate under the same psychological and social conditions. The reality is that women are largely thrown into a system that was originally designed for men. Given the variation between gender in terms of abuse, mental health, drug addiction, and parental responsibility among prisoners, policy should be mindful of gender disparities. A 1997 report from the Office of Criminal Justice Services in Ohio notes that “it is important to recognize *equality does not mean “sameness.”*...Equality is about providing opportunities that mean the same to each gender”.¹⁵⁶ Although we must be careful not to oversimplify and generalize gender and, therefore, women in the correctional system, research indicates that there are overarching trends that differentiate the male and female prison populations. Acknowledging differences between male and female prison populations is a crucial step in reforming the criminal justice system, however, it is most important that “treatment and punishment should be tailored to specific needs; not just gender alone”.¹⁵⁷ Not all men and women follow the same trajectories into crime and there is a great variety among prisoners in the U.S. correctional system. Most importantly, the recognition of gender as a factor in designing policy is only a component of the greater need for policy to acknowledge the context of offending.

¹⁵⁵ Mallicoat, "The Incarceration of Women," in *Women and Crime*.

¹⁵⁶ Covington, 2007, "The Relational Theory of Women's Psychological Development", 11.

¹⁵⁷ Elizabeth Cauffman, "Understanding the Female Offender," *The Future of Children* 18, no. 2 (2008)

The lack of fair policy that exists within prisons relates to the lack of research that focuses on female prisoners and their specific needs. A “gender neutral” approach has predominantly been created within a male-dominated framework, based on research which has primarily focused on the male prison population. Instead of treating both male and female prisoners equally, this policy framework places women at a disadvantage. According to a legal study on federal sentencing guidelines, “gender-neutral” guidelines, “do not allow courts to consider mitigating circumstances such as the role of single mothers in caring for children, the minor and peripheral roles that women play in many crimes, the abusive/coercive environments in which many women play these roles, and women's lower recidivism rates”.¹⁵⁸ When guidelines and policy are created based on research that focuses on the male prison population, the context within which women enter into the criminal justice system can be easily disregarded. Instead of meaning equality, “gender neutral” has often meant “male” considering that much of the research is focused on the total prison population, which is predominantly male. As Angela Davis contends, it has been very difficult to convince the public to recognize the importance of gender in understanding punishment.¹⁵⁹ If men and women are separated within the U.S. Criminal Justice System, policies and access to rehabilitation must reflect the needs of each population separately.

On the flip side, female prisoners have also faced a disadvantage when policy relies too heavily on perceptions of gender norms. In the past, female prisoners were provided with job training services that were primarily related to a woman’s role within the home or jobs that were typically done by women. Skill-training services included sewing, typing, nurse’s aid work,

¹⁵⁸ DeHart, *Pathways to Prison: Impact of Victimization*.

¹⁵⁹ Davis, *Are Prisons Obsolete?*, 64-65.

hairdressing, and other domestic labor, which greatly reflected gender stereotypes.¹⁶⁰ As women began to enter jobs in more realms of society, these prison programs put women at a disadvantage when entering the job market and relegated them to female-dominated sectors. Although this began to change as female equality advanced, women in prison still continued to be deprived of opportunities afforded to their male counterparts. Women have fought against disparate treatment between male and female correctional facilities over the years. For example, *Glover v. Johnson* (1979) declared that it was unconstitutional for states not to “provide the same opportunities for education, rehabilitation, and vocational training for females as provided for male offenders”.¹⁶¹ Additionally, *Todaro v. Ward* (1977) found that the Eighth Amendment protecting against cruel and unusual punishment was in violation due to failure to provide incarcerated women with access to health care. Furthermore, both the cases of *Cooper v. Morin* (1980) and *Canterino v. Wilson* (1982) added to the to the push for equal status among male and female prisoners under the law. As these cases illustrate, the adoption of “gender neutral” policies was a response to women facing disparate treatment under the correctional system. Despite an effort to provide equality, female prison facilities today still receive inferior services and access to treatment compared to male facilities. As demonstrated, the adoption of a sexist policy framework is similarly detrimental women within the prison system as is a “gender-neutral” framework. These differences in policy approaches point to the challenge of creating policy that acknowledges gender while simultaneously providing men and women with equal services and opportunities.

Prison Facilities: Unwarranted Punishment for Incarcerated Women

¹⁶⁰ McDonald, "A Multidimensional Look at the Gender Crisis," 510.

¹⁶¹ Mallicoat, "The Incarceration of Women," in *Women and Crime*.

Although often overlooked, it should be understood that in addition to denying the right to freedom, prison also punishes prisoners in ways that are not always obvious. Prison functions to punish, deter future crime, protect the public, and rehabilitate.¹⁶² Punishment within prisons is defined as restricting freedom and removing criminals from society, which has been the primary objective of the modern penitentiary. Depriving an individual of his or her freedom is a punishment in and of itself. Prisoners are removed from society, constrained within a correctional facility, taken out of their homes, away from their friends and family, denied the right of privacy, and no longer allowed to enjoy the minor freedoms of daily life. However, prisoners are not only denied freedom, but many are punished to an even greater degree. Focusing on female prisoners specifically, it is revealed that women suffer from a myriad of additional and often unjust punishments. The reality of prison, such as the use of solitary confinement and the unfortunate existence of sexual assault, cause female prisoners unique harm. Additionally, conditions within female prison facilities are often sub-standard. Many prison directors have noted the failure of prison policy to “address the unique needs of women offenders, particularly those pertaining to mental health, children and parenting, relationships, self-esteem, and abuse”.¹⁶³ When female prisoners do not receive the necessary programs and assistance that is appropriate, many face a continuum of marginalization that dictated their lives prior to imprisonment. Women in poverty, on welfare, unprepared for motherhood, sexually abused, and struggling to cope are oppressed by a society that continues to trivialize the conditions of their livelihood. “It is clear that for many of the women in prison, going to prison is

¹⁶² The deterrence of future crime can be related to the prevention of re-offending or it can serve as a model to discourage others within society from committing crime.

¹⁶³ Emily J Salisbury, Patricia Van Voorhis, and Georgia V. Spiropoulos, 2009, "The Predictive Validity of a Gender-Responsive Needs Assessment," *Crime & Delinquency* 55 (4), 552.

just a traumatic if not unexpected transition from one confining and oppressive society to another”.¹⁶⁴

Re-Victimization within Prisons

As it exists in free society, prisons are no exception when it comes to the sexual assault or abuse of women. In a study conducted by the Bureau of Justice, it was found that women account for 47% of all victims of staff-on-inmate sexual victimization in state prisons, and 67% in local jails.¹⁶⁵ Given the small percentage of women within the prison population, these numbers show that women face disproportionate levels of sexual victimization in correctional facilities. Additionally, 98 percent of the staff-on-inmate sexual assault of female prisoners is perpetrated by males.¹⁶⁶ As a result of the structural hierarchy, guards can sexually assault women by manipulating their authority to use physical force or by coercing women through withholding privileges. Alarming in many cases, sexual abuse in prison is left ignored with little to no punitive action filed against the abuser. Women also have faced solitary confinement for reporting sexual misconduct. In one example, Lisa Jaramillo, a female prisoner in New Mexico, was kept in solitary confinement for 100 days because prison staff incorrectly believed she was lying about the abuse.¹⁶⁷ Since women in solitary confinement have no privacy and are predominantly supervised by males, this can compound the traumatization of sexual abuse. Women who experience sexual misconduct prior to and then again during imprisonment are undoubtedly being stripped of their freedom to an even greater degree. Therefore, female

¹⁶⁴ Watterson, *Inside the Concrete Womb*, 61.

¹⁶⁵ U.S., Bureau of Justice Statistics, Office of Justice Programs, *Sexual Victimization Reported by Adult Correctional Authorities, 2009–11*, by Allen J. Beck, Ramona R. Rantala, and Jessica Rexroat, (2014).

¹⁶⁶ Flynn L. Flesher, "Cross-Gender Supervision in Prison and the Constitutional Right of Prisoners to Remain Free from Rape," *William & Mary Journal of Women and the Law* 13, no. 3 (2007).

¹⁶⁷ Clarke, "ACLU Report: Women Uniquely Harmed by Solitary Confinement," May 2016.

prisoners are not only discouraged to report abuse. Furthermore, legal obstacles, such as the Prison Litigation Reform Act, have restricted prisoner's ability to litigate certain cases and therefore, challenge sexual assault in prison. According to report published by the William and Mary Journal of Women and the Law, "Strangely, female prisoners have had much *less* success challenging repeated sexual abuse perpetrated by prison guards" in comparison to male prisoners.¹⁶⁸ As a result, women in prison also face the added horror of not being able to escape their abuser. It is concerning that women in prison face higher rates of staff sexual assault, and yet, greater difficulty obtaining justice.

Although the issue of sexual assault in female prisons began to attract more attention in the late 1990's, there is still a significant lack of research around this topic. In 2003, the Prison Rape Elimination Act (PREA) was created to fund research on and prevention of sexual victimization in U.S. prisons. However, as of 2014 only 2 states had fully complied with the policy, while 46 states "intended" to comply.¹⁶⁹ This indicates that states have been largely indifferent to sexual assault in prisons; a phenomenon that women are especially vulnerable to. Incarcerated women also face vulnerability to sexual victimization due to a lack of privacy and subjection to strip searches. PREA specifically warns against opposite-sex searches and viewing of unclothed prisoners, however, they still occurs in state prisons.¹⁷⁰ Although states differ in the extent that male inmates are allowed to observe or search female prisoners, "cross gender supervision can have particularly traumatizing effects on female prisoners".¹⁷¹ This illustrates

¹⁶⁸ Flesher, "Cross-Gender Supervision in Prison."

¹⁶⁹ U.S. , Bureau of Justice Assistance, Justice Programs, *State's and Territories' Responses to the May 15, 2014 Prison Rape Elimination Act Deadline* (U.S Department of Justice, 2015).

¹⁷⁰ Clarke, "ACLU Report: Women Uniquely Harmed by Solitary Confinement," May 2016.

¹⁷¹ Flesher, "Cross-Gender Supervision in Prison," 844.

that our current prison policy can detrimentally mimic the abuses and violence that women face in free society.

Given the high prevalence of female offenders who have experienced trauma related to violence or sexual assault, women in prison are at a high risk for re-victimization. Experiencing sexual assault in prison can cause women to revisit trauma they faced in their path to offending. Despite the recognition that female prisoners are largely victims, there are a lack of counseling programs within prisons that specifically target the experience of sexual abuse. Instead, programs have tended to focus heavily on drug abuse. However, there is a growing field of knowledge that recognizes that programs provided in female facilities must address violence and sexual assault directly. The Correctional Association of New York argues that the implications of domestic violence, “should be taken into account and addressed at all stages of the criminal justice process”.¹⁷²

The Role of Mental Illness and Substance Abuse

Although female prisoners are more likely to report having a mental disorder, women in prison are less likely than their male counterparts to receive responsive treatment. The high prevalence of mental illness and the different conditions that lead to mental illness among female prisoners, points to the need for better programs in female prisons. Additionally, the Center for Substance Abuse Treatment (CSAT) under the Department of Health and Human Services specifies that women not only need better access to treatment, but they need treatment that is gender-responsive. There is a “need for gender-responsive treatment for women that takes into account physical, psychological, emotional, spiritual, and sociopolitical issues”.¹⁷³ When

¹⁷² "Survivors of Abuse and Incarceration," Correctional Association of New York.

¹⁷³ Bloom and Covington, "Addressing the Mental Health Needs of Women Offenders."

programs and policy fail to understand that many women suffer from a mental illness prior to incarceration, women continue to experience mental health issues behind bars. According to District Court Justice Mary Heffernan, “you cannot just lock people up and incarcerate them and expect their substance abuse issues to go away”.¹⁷⁴ This brings up the more important and growing recognition that drug addiction should be characterized and treated as a medical issue. Due to the tendency to incarcerate those who are drug addicts and/or mentally ill, the U.S. have a moral imperative to provide prison facilities with medical services that include mental health and substance abuse treatment. Furthermore, the tendency to incarcerate women who are mentally ill and drug addicted begs the question of whether prisons are appropriate for women facing these circumstances.

Female prisoners with mental illness are also often punished to a greater degree than others within the system. For instance, the adoption and acceptance of supermax prisons has uniquely harmed the female prison population due to the high prevalence of mental illness among female prisoners. Solitary confinement can be especially punitive for those who suffer from a psychiatric disorder. According to the United Nations, placing mentally ill prisoners in solitary confinement is a form torture.¹⁷⁵ Solitary confinement “has been shown to exacerbate their illness, often leading to suicide attempts”.¹⁷⁶ Additionally, mentally ill prisoners are more at risk of experiencing solitary confinement due to the behaviors associated with their illness that warrant disciplinary action. Given the prevalence of mental health issues among females in prison, solitary confinement has been largely ineffective at improving behavior in prisons. The

¹⁷⁴ Meredith Derby Berg, "This state figured out that addicted moms need treatment not jail," *The Marshall Project*, January 19, 2016.

¹⁷⁵ Clarke, "ACLU Report: Women Uniquely Harmed by Solitary Confinement," May 2016.

¹⁷⁶ Clarke, "ACLU Report: Women Uniquely Harmed by Solitary Confinement," May 2016.

conventional policy approach to mental illness has been to use restraint and isolation, however, when these strategies are reduced, both prisoners and guards have reported a greater sense of security. It is crucial that female facilities understand the high rate of mental illness and effects that solitary confinement on incarcerated women, so that female prisoners do not face harsher punishments.

Reproductive Rights and Parenting in Prison

One of the most unique aspects of female imprisonment surrounds the difference in reproductive health needs. It is within this realm of policy that the negative implications of a male-dominated or “gender neutral” frameworks on women are most pronounced. Given this framework, it is not surprising that prisons fail to provide women with adequate reproductive health care and to maintain the human rights of pregnant women. Although *Todaro v. Ward* (1977) mandated that women in prison receive health care and the American Civil Liberties Union maintains that access to reproductive health services is a constitutional right, these rights have not always been fully upheld in female prisons. “Women in prison complain of the lack of regular gynecological and breast exams and argue that their medical concerns are often dismissed as exaggerations”.¹⁷⁷ A criminal justice advocacy organization called the Women in Prison Project, found that over a 5 year study in New York female prisons there was essentially no oversight of reproductive services; abuses included shackling pregnant women and lack of sanitary products.¹⁷⁸ Conditions such as these are not unusual in other states and in some facilities, deprivation of reproductive rights is even worse.

¹⁷⁷ Braithwaite, Arriola, and Newkirk, *Health Issues Among Incarcerated Women*, 19.

¹⁷⁸ Susan Bittenwieser, Tiffany Nguyen, and Kate McCarthy, "Shackled and In Labor," *Shackled and In Labor*, March 10, 2015.

Since many women discover they are pregnant once inside a correctional facility, access to abortion and counseling on options are an important factor in female prison policy. Although *Planned Parenthood v. Casey* (1992) ruled that regulation cannot impede a woman's ability to obtain a legal abortion, women in prison are not always granted this right depending on where the correctional facility is located.¹⁷⁹ When courts do accord incarcerated pregnant women the right to an abortion, the decision often occurs after the time limit for termination of pregnancy has passed. Unplanned pregnancies can have profound emotional and medical implications for these incarcerated women. Pregnant women also report encountering unlawful practices or inadequate services during imprisonment. The Bureau of Justice Statistics reported that, despite the prevalence of high-risk pregnancies, only 54% of pregnant women incarcerated received prenatal care.¹⁸⁰ Additionally, prisoners do not often receive support services during pregnancy or in regard to postpartum mental wellbeing. Women who give birth while imprisoned are at a higher risk of postpartum depression due to the separation from their newborn, often occurring 1 to 2 days after birth. As this demonstrates, pregnant women face especially disparate consequences under prison policy.

The shackling of pregnant women is one of the most cruel examples of the U.S. Criminal Justice System's failure to design just and gender-responsive policy for women. It is understood that shackling pregnant women increases the risk that the fetus may be harmed as of a result of an accidental trip or fall. Additionally, shackling during labor and delivery have added consequences for women. "Women who are shackled to a bed are unable to move and thus

¹⁷⁹ Elizabeth Swavola, Kristine Riley, and Ram Subramanian, *Overlooked: Women and Jails in an Era of Reform* (New York: Vera Institute of Injustice, 2016).

¹⁸⁰ "Women's Health Care in Correctional Settings," National Commission on Correctional Health Care, October 19, 2014.

experience longer and more painful labor than is necessary”.¹⁸¹ In the case that the mother and her child are in danger during delivery, having to unshackle the prisoner can complicate and delay emergency procedures. Therefore, shackling prisoners during labor and delivery not only has the potential to interfere with the wellbeing of the mother and child, but it also strips women of their dignity and denies them basic human rights. Despite the dangers, anti-shackling legislation was not adopted by any states until 2000 and at the federal level, until 2008.¹⁸² Yet today, 29 states continue to allow the shackling of pregnant women during labor and delivery.¹⁸³ According to the ACLU, “This practice demonstrates unconstitutional, deliberate indifference to a prisoner’s serious medical needs”.¹⁸⁴ The Federal Bureau of Prisons, the U.S. Marshall Service, and 21 states have adopted legislation prohibiting the shackling of pregnant women.¹⁸⁵ Even so, legislation within these states often contain loopholes and most jurisdictions do not regulate shackling of pregnant prisoners closely, and therefore, many pregnant women continue to be shackled.¹⁸⁶

It is clear that many women who happen to give birth during incarceration endure torturous conditions, which inevitably punishes these prisoners more. In 2012, after undergoing an emergency cesarean section and blood transfusion, Jacqueline McDougall, a prisoner at Bedford Hills Correctional Facility in New York, was shackled to the extent that the chains

¹⁸¹ *The Shackling of Incarcerated Pregnant Women: A Human Rights Violation Committed Regularly in the United States*, report, International Human Rights Clinic, University of Chicago Law School (Chicago, 2013).

¹⁸² *The Shackling of Incarcerated Pregnant Women*, International Human Rights Clinic.

¹⁸³ Swavola, Riley, and Subramanian, *Overlooked: Women and Jails in an Era of Reform*.

¹⁸⁴ "State Standards for Pregnancy-Related Health Care and Abortion for Women in Correctional Settings," American Civil Liberties Union.

¹⁸⁵ Swavola, Riley, and Subramanian, *Overlooked: Women and Jails in an Era of Reform*.

¹⁸⁶ *Ibid.*

pressed directly into her painful sutured incision.¹⁸⁷ Overall, the reality indicates that prison policy treats some women more severely than men due to their biological differences. Furthermore, “there are no documented escape attempts among pregnant women who were not shackled, which raises questions about the institutional concerns that are usually offered to justify shackling practices”.¹⁸⁸ Policy adopted from a male-perspective naively fails to understand that women in labor are incredibly unlikely to escape due to the physical limitations of pregnancy, the biological need to deliver one’s child, and the essential role that the hospital setting serves in ensuring the health of the woman and her child. Given that it violates women based on their sex, the continued practice of shackling pregnant prisoners is patriarchal and undoubtedly outdated.

The circumstances of mothers in prison also warrant the need for policy that helps establish positive relationships between mothers and their children. While 5-10% of women enter prison pregnant, prison nurseries that allow women and their infant to stay together are largely non-existent.¹⁸⁹ Only 9 states, including New York, California, Illinois, Indiana, Ohio, Nebraska, South Dakota, Washington, and West Virginia have nursery programs that grant long-term infant stay. Both women and their children suffer from being separated. Since there are less female prison facilities in the U.S., it is often more difficult for children to visit their incarcerated mothers who tend to be farther away. “Maintaining these relationships can be one of incarcerated mothers’ primary concerns, potentially affecting their mental health while in prison”.¹⁹⁰

¹⁸⁷ Audrey Quinn, "In Labor, in Chains: The Outrageous Shackling of Pregnant Inmates," *The New York Times*, July 26, 2014.

¹⁸⁸ Swavola, Riley, and Subramanian, *Overlooked: Women and Jails in an Era of Reform*.

¹⁸⁹ Mallicoat, "The Incarceration of Women," in *Women and Crime*.

¹⁹⁰ Benedetti, "What Happens When Moms Go to Prison," August 25, 2016.

Considering the role that many incarcerated mothers play in the lives of their children, prisons must adopt policy that recognizes the negative implications of maternal imprisonment.

Maintaining ties between mothers and their children can lessen the collateral damage associated with imprisonment. Although prison serves as an unparalleled opportunity to improve parenting skills among society's weakest links, prison policy has failed to capitalize on this possibility.

Research suggests that many women in prison "may have quite unrealistic views about what are reasonable expectations for children and what it means to be a parents and that they lack the skills to provide adequate parenting for their children".¹⁹¹ Access to quality parenting classes may be especially beneficial for the female prison population due to their higher likelihood of being a primary caretaker. Both mothers and fathers in prison participated an equal amount in programs relating to education and job training, however, 27% of mothers reported attending parenting classes compared to only 11% of fathers.¹⁹² Programs that teach parenting skills are needed within female facilities in that they help reduce the risk that children are harmed by maternal incarceration. Also, in comparison to their male counterparts, mothers in prison serve less time on average, meaning that they have a higher chance of reuniting with their children and reentering society.¹⁹³ It is crucial that policymakers strive to improve access to parenting programs and prepare incarcerated mothers for the possibility of future pregnancies.

Inadequate Rehabilitation

As the abuses women face in prison illustrate, correctional facilities and policy framework have not adapted to the specific needs of female prisoners during a time when they

¹⁹¹ Green et al., "Trauma Exposure, Mental Health Functioning, and Program Needs."

¹⁹² U.S., Bureau of Justice Statistics, *Parents in Prison and Their Minor Children*, by Glaze and Maruschak.

¹⁹³ Ibid.

are increasingly entering the criminal justice system. The reason that female prisons have had substandard services is in part related to the populations small size and subsequent lack of funding. With the increase in the female prison population, facilities have been increasingly overcrowded, only making female facilities more substandard. Additionally, there is a lower incentive to invest money into rehabilitative and counseling services for female inmates because they are, overall, less dangerous than male prisoners. This mindset is troubling because many incarcerated women are in dire need of rehabilitative and counseling services. “Findings suggest that many incarcerated women are unlikely to meet goals of economic and social independence, family reunification, and reduced involvement in criminal activities without adequate attention to their trauma victimization, mental health problems, and functional deficits”.¹⁹⁴ Although prison reform is increasingly incorporating female specific needs into policy framework, there is still room for improvement. In terms of the programs that do exist today, many “take a universal, cookie-cutter approach to programming for women in general, rather than address individual needs”.¹⁹⁵ In addition, policy planning should be careful not to prioritize counseling for abuse, mental health, and parenting over programs that provide women with the skills to reenter society. Female prisoners have expressed a desire for more programs targeting job training (93%), stress management (88%), and communication skills (83%), in order to increase their chances of finding employment post-incarceration.¹⁹⁶ It is clear that prison policy has often disregarded the specific needs of incarcerated women; a circumstance that only hinders their ability to succeed in

¹⁹⁴ Green et al., "Trauma Exposure, Mental Health Functioning, and Program Needs."

¹⁹⁵ Mallicoat, "The Incarceration of Women," in *Women and Crime*.

¹⁹⁶ Green et al., "Trauma Exposure, Mental Health Functioning, and Program Needs."

free society. “Unfortunately, all too often, there is very little planning for reintegration of women into the communities from which they come”.¹⁹⁷

Reintegration Following Imprisonment

When studying reentry into society, it becomes evident that women are not given the adequate support in prison to be able to succeed in their communities. It is not only difficult for convicted felons to secure employment, welfare, student loans, and public housing due to legislation, but they face the added difficulty of discrimination. “In terms of employment, most states allow employers to deny workers with criminal records employment, even if the only record they have is an arrest without a conviction”.¹⁹⁸ Women face the unique challenge of dealing with both sexism and prior conviction as deterrents for being successful after their release. Black women are disadvantaged to an even greater extent, facing the triple threat of racism, sexism, and prior conviction. Since many female prisoners are uneducated and poor prior to imprisonment, they are likely to face those conditions again, but with the added burden of their new identity. Without rehabilitative counseling and training that take into account the unique struggles that women face, female convicts are unlikely to become financially stable and are at risk of returning to old tendencies. According to the Center on Budget and Policy Priorities, “incarceration also increases poverty, for those who have been to prison as well as other household members, including children”.¹⁹⁹ The susceptibility to poverty after incarceration makes the increase in maternal incarceration alarming considering it puts more children at risk of poverty. Women are also at a higher risk than men of facing increased levels

¹⁹⁷ Braithwaite, Arriola, and Newkirk, *Health Issues Among Incarcerated Women*, xviii.

¹⁹⁸ Enos, "Mass Incarceration: Triple Jeopardy for Women."

¹⁹⁹ Michael Mitchel and Michael Leachman, "Changing Priorities: State Criminal Justice Reforms and Investments in Education," *Center on Budget and Policy Priorities*, October 28, 2014.

of poverty after imprisonment due to inequality prior to conviction. In 2014, the average income of incarcerated men prior to imprisonment was \$19,650, whereas for women it was only \$13,890.²⁰⁰ Yet when female convicts who face poverty turn to public assistance, they are often denied this support. Laws that restrict convicts from accessing assistance only make it more difficult for women to succeed after being released. Given that women are, more often than men, single parents, primary caretakers, and primary recipients of certain welfare programs, these policies disparately influence women and their struggle for survival.

In 1996, Bill Clinton signed legislation under the Personal Responsibility and Work Reconciliation Act (PRWORA) that denied convicted drug felons access to federal benefits.²⁰¹ The bill “not only imposed time limits on the aid that women can receive, but has significantly affected the road to success by denying services and resources for women with a criminal record, particularly in cases of women convicted on a felony drug-related charge”.²⁰² The ban blocks individuals from receiving Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance for Needy Families (TANF) benefits, of which “women comprise the vast majority of recipients”.²⁰³ These welfare programs are often crucial for women who struggle to financially support their children. Although states can choose to opt-out or modify this ban, many states in the past have chosen not to. Today, 13 states fully enforce and 23 states partially enforce the ban on TANF, along with only 6 states fully enforcing the ban on SNAP and 26 partially enforcing

²⁰⁰ Prison Policy Initiative, "University of Poverty: Uncovering the pre-incarceration incomes of the imprisoned," news release, July 9, 2015, Prison Policy Initiative.

²⁰¹ Marc Mauer, "A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits," *The Sentencing Project*, 2013.

²⁰² Mallicoat, "The Incarceration of Women," in *Women and Crime*.

²⁰³ Mauer, "A Lifetime of Punishment: The Impact of the Felony Drug Ban."

it.²⁰⁴ It is concerning that the ban only applies drug offenses, meaning that those who have committed violent crimes or murder are eligible for this type of federal assistance. Drug convictions have accounted for a large percentage of the rising female prison population, meaning that women are especially disadvantaged by this ban. More men have drug convictions than women, however, women and their children receive TANF and SNAP assistance far more often than men. As a result, the ban has produced “disparate effects on women, children, and communities of color”.²⁰⁵ This legislation makes it difficult for women who have been convicted of drug crimes to re-enter society and rebuild their lives. Instead, restrictions on welfare increase the likelihood of homelessness or recidivism.

Drug convictions and longer sentences, which have both increased due to “tough on crime” policy, disadvantage women from the beginning of conviction until after their release from prison. As “gender neutral” legislation has been adopted at the federal level, women have received longer sentences that are predominantly related to drug offenses. This legislation ignores the more minor role that women often play in drug crime and therefore, women are more likely to be first-time offenders. Women make up 6% of state prisons, in contrast to 15% of federal prisons, with 62% being first time offenders in federal prisons.²⁰⁶ The difference between the female population in state and federal prisons is due to the federal adoption of “gender neutral” sentencing guidelines, which disadvantage women under a framework that is largely male-centered. Since drug crimes account for a larger percentage of female sentences than male sentences, women who are released from prison are disproportionately affected by policies that

²⁰⁴ Eli Hager, "Six States Where Felons Can't Get Food Stamps," The Marshall Project, February 4, 2016.

²⁰⁵ Mauer, "A Lifetime of Punishment: The Impact of the Felony Drug Ban."

²⁰⁶ Enos, "Mass Incarceration: Triple Jeopardy for Women."

restrict public assistance for drug felons. “Women convicted of a drug offense are barred from living in public housing developments and, in some areas, a criminal record can limit the availability of Section 8 housing options”.²⁰⁷ Public housing assistance is critical for women, and especially those with children, who live in poverty and need safe and affordable housing. It is concerning that female convicts who similarly face poverty and responsibilities of childcare are denied this much-needed assistance. Additionally, women who receive longer sentences related to “gender neutral” sentencing laws, face a higher likelihood of losing custody over their children. The Adoption and Safe Families Act (ASFA) of 1997 dictates that parental rights be terminated if children spend more than 15 months in foster care over the course of a 22 month period. This means that incarcerated mothers are at a high risk of losing their children due to long sentences. For instance, women in New York state prison are sentenced for a median of 36 months.²⁰⁸ This law becomes increasingly problematic when it is understood that women who have committed minor drug crimes have received long sentences under mandatory minimum laws. “As a result of the way that ASFA is implemented when a parent is in prison, incarcerated mothers are at serious and disproportionate risk of losing their parental rights – even in cases where the true best interest of the child is to keep reunification as the goal for the family”.²⁰⁹ This not only adversely affects mothers who cannot re-connect with their children after incarceration, but it can negatively affect children.

Alternative Approaches to Prison

²⁰⁷ Mallicoat, "The Incarceration of Women," in *Women and Crime*.

²⁰⁸ "Imprisonment and Families Fact Sheet," *Women in Prison Project*, April 2009.

²⁰⁹ "Imprisonment and Families Fact Sheet," *Women in Prison Project*.

“It is the case that the majority of incarcerated women will return to society”, yet prison majorly fails to rehabilitate female prisoners.²¹⁰ These women will spend more time in society than their male counterparts and have a higher likelihood of influencing children of the next generation. Therefore, it is imperative that punitive programs lead female offenders in the right direction as they reenter their communities. Severe punishment and inferior conditions in female prisons suggest that female imprisonment is largely inappropriate for the many women serving time for minor crimes. When the context of female crimes and incarceration are understood it becomes clear that prisons should be striving to rehabilitate offenders in order to successfully reintegrate them back into society. Policymakers have begun to recognize the context of female criminality and look to alternatives to incarceration for nonviolent offenders, and particularly mothers. Massachusetts is one example of a state that has increasingly recognized drug treatment for women as a better solution than prison. In addition to the 14 state-funded treatment centers that already exist, Massachusetts added two new treatment facilities in 2014 that are specifically for women.²¹¹ Among the state’s government officials, there is a consensus that “specialized care” is necessary for that mothers and pregnant women.²¹²

The National Women’s Law Center reported that in 2010, 32 states offered alternative programs for mothers who were convicted of nonviolent crimes.²¹³ These “family-based” treatment centers allow women to receive drug abuse treatment while being able to live with their children on site. Although these programs are often highly successful, keeping funding can be challenging due to the relative small population size of female offenders. In general, there are

²¹⁰ Braithwaite, Arriola, and Newkirk, *Health Issues Among Incarcerated Women*, 11.

²¹¹ Berg, “Addicted moms need treatment not jail,” January 19, 2016.

²¹² Berg, “Addicted moms need treatment not jail,” January 19, 2016.

²¹³ Berg, “Addicted moms need treatment not jail,” January 19, 2016.

fewer alternative programs for women in comparison to men. However, these programs are especially beneficial because many treatment centers fail to assist women with their children and therefore, put mothers who drug treatment at a disadvantage. The success of alternative treatment programs for women illustrate that these programs are often more appropriate for women than incarceration. A program called Women in Recovery in Tulsa, Oklahoma that focuses on helping women overcome drug abuse and improve their lives has had incredible success. “The program offers counseling, intensive support, coaching on budgeting and conflict resolution, and help getting high school equivalency diplomas, housing and jobs”.²¹⁴ Importantly, the program includes working with both women and children, which is not always the case for female treatment centers. Without this program women would serve long sentences for drug offenses and not receive adequate treatment, leading to a higher risk of recidivism.

In addition to looking at the success of alternative programs in the U.S., alternative programs and rehabilitation efforts in prisons in other parts of the world suggest the U.S. prison model is deeply flawed. For instance, focusing on the criminal justice systems in Germany and the Netherlands, which report much lower rates of incarceration, provides insight into the ways that the U.S. could reform its own system. In 2013, the Vera Institute found that in prisons in the Netherlands and Germany “sentences are significantly shorter than in the U.S, and the entire focus is on rehabilitating prisoners so they can return to society”.²¹⁵ These countries also direct nonviolent offenders into alternative programs much more often than the U.S. This stress on rehabilitation is evident in the law, with the primary objective of prison being “to enable prisoners to lead a life of social responsibility free of crime upon release, requiring that prison

²¹⁴ Kristof, "Mothers in Prison," November 25, 2016.

²¹⁵ Maurice Chammah, "Prison Without Punishment," The Marshall Project, September 25, 2015.

life be as similar as possible to life in the community”.²¹⁶ In comparison, the U.S. prison model centers on incapacitation and retribution rather than rehabilitative objectives. Prisons in Germany and the Netherlands recognize a prisoner's right to privacy and allow prisoners the opportunity to self-regulate their daily life within the prison. “The conditions of confinement are not meant to be punitive: the punishment is separation from society represented by the custodial sentence itself”.²¹⁷ Additionally, these prisoners suffer considerably less than U.S. prisoners when returning to their communities because prison policy upholds these prisoners’ rights as members of society. For example, prisoners have the right to vote, are able to receive social welfare upon release, and are not barred from public housing. Given the unique challenges that U.S. female prisoners face, these type of reforms would be undoubtedly beneficial. Specific to women, these countries have implemented mother-child units, which allow mothers in prison to remain with their infant for a long period of time. “Evaluations of prison nursery programs have shown lower rates of recidivism, an increased likelihood of obtaining child custody post-release, higher rates of mother and child bonding, and self-reported increases in self-esteem and self-confidence”.²¹⁸

As alternative programs in the U.S. and prison policy in other countries have shown, society greatly benefits from programs that target the specific needs of prisoners and help them reenter society. Female prisoners especially benefit from programs that understand the unique challenge that women face prior, during and after incarceration, such as sexual abuse, mental illness, motherhood, and poverty. Currently, the lack of rehabilitation in female prisons and continuum of assistance after release means that female offenders are not given the tools to

²¹⁶ Ram Subramanian and Alison Shames, "Sentencing and Prison Practices in Germany and the Netherlands: Implications for the United States," October 2013.

²¹⁷ Subramanian and Shames, "Sentencing and Prison Practices in Germany and the Netherlands."

²¹⁸ Subramanian and Shames, "Sentencing and Prison Practices in Germany and the Netherlands."

succeed in society, and therefore their success is unlikely. “There is a critical need to develop a system of support within communities to provide assistance to women who are returning to their communities”.²¹⁹ Recidivism is only increased when female convicts are denied the public assistance and overall help they need. Although female prisoners would greatly benefit from rehabilitative prison reform, alternative programs that understand gender-specific challenges are more appropriate for many female offenders. Since many female prisoners pose very little threat to the safety of our communities, alternatives to prison should be a major response to female criminality. Prison as it is today is not an appropriate solution for women, and especially mothers, coping with prior abuse, mental illness, and substance abuse.

Conclusion

As research illustrates, women have adverse experiences within prison due to the disregard for female specific needs. “Given their import to the lives of offenders, it is extremely unfortunate that most correctional classification systems were originally developed for men and subsequently applied to women with little regard for their validity or appropriateness”.²²⁰ Namely, female prisoners face sexual assault, exacerbation of mental illness in solitary confinement, and separation from their children. These often constitute harsher punishments for women, meaning that there is a need to protect women from these abuses. Not only do women face disparate treatment within prison facilities, but they are not given the adequate services and programs to help improve their lives. As a result of “gender neutral” or male-dominated framework, female prisoners often unfairly bear the brunt of substandard facilities and access to

²¹⁹ Stephanie S. Covington and Barbara E. Bloom, "Gendered Justice: Women in the Criminal Justice System," *Gendered Justice: Addressing Female Offenders*, 2003.

²²⁰ Salisbury, Voorhis, and Spiropoulos, "The Predictive Validity of a Gender-Responsive Needs Assessment," 551.

rehabilitation. Added legislation that restricts female convicts access to public assistance further debilitates women in their struggle to survive after prison. The conditions of female offending coupled with the lack of rehabilitative assistance and the implications of being labeled a felon, only reduce the likelihood that women will be able to succeed in society. “The deeper their involvement and entrenchment in the system, the more their criminal histories serve as another crippling disadvantage”.²²¹

There is variation between males and females when it comes to the demographics of their imprisoned populations. Therefore, female offenders deserve policies that recognize gender-specific differences such as, women’s unique reproductive needs, higher rates of sexual abuse, single motherhood, and lower median incomes prior to offending. It is crucial that female prisoners receive more attention and prison reform acknowledges that how women are disadvantaged by male-centered policy. Additionally, research on female prisoner’s points heavily to the ways in which society has failed to assist America’s most marginalized. Acknowledging that women in prison, “were, before they went to prison, some of the poorest people in this country makes it even more important that we make policy choices that can break the cycle of poverty and incarceration”.²²² Instead of punishing prisoners, which has proved ineffective, policy should strive to make rehabilitation the number one priority for dealing with female offenders. The energy and money spent on punishing women would have substantial benefits if shifted to focusing on rehabilitation and alternative programs. If we are to reduce future crime and increase the successful reintegration of women into society, policy must turn to rehabilitation and reduced incarceration in order to transform the lives of women and their

²²¹ Enos, "Mass Incarceration: Triple Jeopardy for Women."

²²² Prison Policy Initiative, "University of Poverty," July 9, 2015.

children. “The savings to society from a reduction in women’s imprisonment and from improved reintegration of female offenders into the community will benefit not only the women themselves, but also generations to come”.²²³

²²³ Covington and Bloom, "Gendered Justice: Women in the Criminal Justice System."

4 Conclusion

In understanding the criminal justice system in its entirety, it is important to understand that the argument presented in this paper does not encompass all facets of criminal justice failure. For example, his paper fails to mention the topic of private prisons and also the role that wealth plays in sentencing. Moreover, one of the most significant omissions of this analysis is on populations that represent minorities within both male and female prisons. Namely, those who identify as transgender or homosexual are not included in this analysis. Despite this omission, it must be understood that the failures of prison often affect transgender individuals and homosexuals to a much greater degree than the rest of the prison population, including both males and females. As society moves toward accepting and protecting the rights of those who identify as transgender and/or homosexual, a crucial component of this lies within the criminal justice system. It is important that more research and attention is focused on the specific abuses these groups face in reforming penal laws.

In addition, the incarceration of people of color is not largely explained in this paper to an extent that illustrates the seriousness of their mass imprisonment. Although considerable attention has been paid to the African American male prison population in recent years, we have not seen any transformation toward justice. It is imperative that institutional racism is addressed if we are to consider ourselves a democracy. Although quite obvious, this paper also does not acknowledge the unique abuses that men face within the system. However, some of the underlying arguments presented in this paper on how prisons have failed can also be applied to

men. Similar to women, men additionally experience challenges due to their gender, especially as a result of misconceptions of masculinity. It is clear that United States epidemic of mass incarceration has reached a point where male imprisonment is all too accepted in our society. This warrants attention to the ways in which male criminality can be prevented rather than punished.

The reason for not extending this argument to male prisoners is to highlight the reality of female imprisonment and to emphasize the failures of the system that often go unnoticed. The justification behind this is that women represent a population that has not received considerable attention during a time when their rate of imprisonment has skyrocketed. Even in attempting to provide a comprehensive account of women, this paper does not fully embrace all that falls under the topic of incarcerated women. Most notably, this paper does go in depth on the specific and unique abuses that women of color face. When it comes to African American women, this paper is almost hypocritical, given that women of color are even somewhat invisible in this analysis of female invisibility. However, it is incredibly important that in our analysis of prison we understand that women of color are in general, marginalized much more than white women. Women of color face not only gender-specific adversities, but face the added obstacles that their race poses. As society continues to push for justice in terms of African Americans in prison, it is of utmost importance that African American women are not disregarded in this movement. The arguments presented in this paper serve as a jumping off point to explore more levels of the criminal justice system. A focus on women represents just one of the avenues that criminal justice reform can take. However, it is an incredibly important one, as illustrated in this paper.

Final Thoughts

“In here, God knows, life is not a rose garden ... Nothing lovely flourishes here. Little that is good is nourished here. What grows is hypocrisy, obscenity, illness, illegality, ignorance, confusion, waste, hopelessness. Life in prison is a garden of dross, cultivated by those who never check to see what their crop is”.²²⁴

The prison industrial complex is not just flawed; it is broken. Given that the framework of today’s prison complex was built on inequality and punishment rather than rehabilitation, it appears that these fundamental characteristics are not going anywhere, anytime soon. “After two hundred years of failed experiments in prison reform, it is time to admit that prisons simply cannot be reformed. Nor can they serve as genuine instruments of rehabilitation”.²²⁵ As illustrated, we have known for many years about the failures of mass incarceration and its specific effects on certain groups, and yet today, our imprisonment rates still rise and we continue to adopt harsh crime policy. For this reason, mass incarceration is undoubtedly one of the most outdated and daunting issues facing our society today. As more scholarship is devoted to revealing the downfalls of the system, it has become more obvious that women within the correctional system face unique challenges. However, women are still predominantly invisible in our discussion and policies that dictate the criminal justice system. In a system that is responsible for some of society’s greatest injustices, it is not only fair that we discuss women, but it is incredibly necessary. Analyzing female prisoners points us to the ills of society and the failure to alleviate poverty, patriarchy and their symptoms.

²²⁴ Watterson, *Inside the Concrete Womb*, xxi.

²²⁵ Dodge, *Whores and Thieves of the Worst Kind*, 266.

Women commit relatively low rates of crime, and especially low rates of violent crime in comparison to men. Yet in recent history, our society's main solution for these female criminals, who pose little threat to society, has been to imprison them. Women are unique in that their motivations for committing nonviolent crimes are often a result of economic and survival needs. It is evident that many women who turn to petty crime as a coping mechanism for experiencing economic hardship, abuse, or drug addiction, are not guided out from their financial situation by prison's constraining hand. Instead, the conditions that defined these women's livelihood before prison still remain, but are now coupled with the burden of a new identity: "criminal". The implication of this is that these women, who were struggling prior to incarceration, will face even more obstacles after being released. With less access to public and welfare programs, society's most marginalized are further downgraded in their ability to seek assistance. It is seemingly inevitable, given the nature of the criminal justice system and our society's laws, that the cycles of imprisonment occur over and over within the same families and communities.

Prison not only takes away freedom, but it punishes women in unique ways. Namely, women are more often primary caretakers of children, and additionally face higher levels of mental illness, substance abuse, and prior sexual or domestic abuse than male prisoners. It is clear that the conditions of prison, and especially solitary confinement, have punished these women to an extent that should be deemed inhumane and considerably inappropriate, given the nature of female offending. It is particularly concerning that such high levels of prior abuse are reported in female prisons; a place where freedom is no longer a fundamental right. When women are subjected to sexual assault, victimization, and lack of privacy within prison facilities, prison only further exacerbates the victimization and challenges to personal freedom that these women have faced in their lives as "free" citizens. Domestic violence, childhood abuse, sexual

abuse, and victimization: these misuses of physical and patriarchal power place a real or perceived restraint over a woman's freedom. Female criminals who have been victimized and abused are not suddenly rehabilitated and free from mental disorders and emotional suffering once prison walls protect them from their perpetrators. Untreated and imprisoned, women continue to suffer in a world that controls their freedom.

Although immense progress has been made in the U.S., we must be careful in declaring frameworks such as patriarchy and racism obsolete within the criminal justice system. When we focus specifically on the female prison population, it is evident that women are not immune to the constraints of patriarchy or racial discrimination. In a prison system that was originally designed for men, the female prison system continues to operate under a male-oriented framework. This has meant that female specific needs, such as reproductive rights and the circumstances of motherhood, have not always been met. Additionally, dismissing women's disadvantages within the criminal justice system due to the overwhelming number of men in prison proves to be one-sided and gender discriminatory in and of itself. Since much of the existing research on prison reform is gender-neutral or preferences male prison populations, female prisoners are rendered to a new level of invisibility. What makes all of these unique experiences important to acknowledge, is the alarming rate at which women have entered prison over recent history. While the majority of male prisoners are committing violent crimes, women are entering prison for predominantly nonviolent, drug crimes. Yet, the rate of female imprisonment is increasing at higher rate than male imprisonment. And still, women are often left invisible in our discussion surrounding prison and prison reform. When we recognize this and assess the specifics of female incarceration, it becomes clear that patriarchy still permeates the criminal justice system, just as it does other areas of society.

Analyzing these separate prison populations with regard to gender provides a more equitable basis for creating prison reform. As displayed in institutions and everyday life, men and women do not yet have equal standing in society and gender constructs continue to define our society. Equality does not demand that men and women are the same, but rather that gender differences are respected and treated with equal attention. The pathway to prison reform is one that should take into account the different challenges that men and women face throughout their lives. Although this paper focuses mainly on the overarching trends that dominate female prison populations, definitions and identities of gender vary considerably. Most importantly and regardless of gender identity, it is necessary that the nature of offending is explored within its greater context. Paying attention to poverty, abuse, racism, and cycles of incarceration are important in understanding the origins of crime. This pinpoints America's failure to tackle society's inequality and the ways in which policy disadvantages those with less privilege. When the criminal justice system and prison are used as a replacement for dealing with these cycles of inequality, society is only harmed further. In understanding the source of law breaking and forces that influence it, it becomes straightforward that prison has failed to reduce crime and encourage upward mobility. Female imprisonment provides eye-opening insight into the injustices of the U.S. Criminal Justice System that have been largely ignored. Prison is an imprudent solution that ignores the foundations of inequality in our society that promote and maintain criminality. It is for this reason that our complacency to accept prison as appropriate and effective demands speculation and transformation.

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