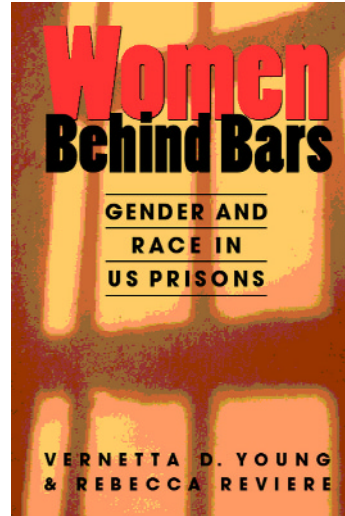


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**Women Behind Bars:
Gender and Race in US Prisons**

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1 Equal Rights or Lost Opportunities?

The end of the twentieth century was a time of unparalleled growth in the female prison population. This period was characterized by social and political developments that drained the resources from urban neighborhoods, increased income disparities between the rich and the poor, and changed the roles and expectations for and of women. More important, however, it was a time when the nation declared “war on drugs,” launching policies that had a greater impact on the criminalization and incarceration of women than any others in the nation’s history. This confluence of events and trends resulted in a state and federal female prison population that soared from 12,300 in 1980 to 96,000 in 2002, even though women’s rate of violent crime actually decreased during this period. Black women are imprisoned at a rate eight times that of white women; Hispanic women are imprisoned at a rate four times that of white women (Amnesty International 1999).

This incredible explosion in the women’s prison population comes at a huge cost, not only to the women themselves but also to their families and communities. Many incarcerated women are serving long sentences for small-time drug crimes. They serve these years behind bars in prisons that were designed for and by men, and the implications of this male-oriented design are simple—prisons do not meet the needs of women or the nearly 200,000 children they leave behind. When they return to the community, and most do, they bring home the same sets of problems, as well as new ones. They return to communities where many of their basic rights are taken away; sometimes they even lose their children. Taxpayers pay millions of dollars to fund prison building and maintenance rather than social programs to prevent and treat the problems that send these women to prison in the first place.

In this book we examine the history and the special concerns of women, overwhelmingly women of color, in prison. Because far fewer women are incarcerated and because women as a group have less power and lower status than men, the causes and conditions of their skyrocketing rates of imprison-

ment have only recently come under scrutiny. The picture that has begun to emerge is one of tremendous disparities. The male-female disparity between the crimes that are punished and the penalties received and between their prison and postprison needs and the services offered to meet these needs is striking. Because of harsh sentencing policies that incarcerate women for years for low-level drug involvement, prisons that do not meet the treatment needs of women, and reentry policies that fail to provide a safety net, these women are punished twice, directly through their prison terms and indirectly through the many policies that do nothing to solve their problems but instead compound their misery.

The neglect of female prisoners results from complex and cumulative factors. It has been possible to ignore female criminals for several reasons: (1) with the small number of women in prison, there was no obvious imperative to develop separate policies; (2) women do not riot or become violent when their demands are not met, making them easier to disregard; (3) the needs and problems of poor, minority women are easy to overlook; and (4) current prisons were developed for men, and policies and programs from men's institutions are often simply stenciled onto women's prisons. But most prisons are built to house violent men; when that template is applied to women, with their different histories and different needs, it simply does not fit. In a male-oriented society, policies and programs created without gender in mind are designed for men by default. Women are marginalized in society; without deliberate design, they become further disenfranchised in prison. Specifically developing environments uniquely suited to the improvement of women's lives has so far proven impossible in prison.

■ **Social Control of the Undeserving**

This is not to suggest that men's prisons are ever particularly conducive to health and rehabilitation. Prisons are designed as institutions of formal social control; they were originally intended simply for the punishment of those who broke the law. Over time the focus changed to rehabilitation, but now the mission is once again to punish. For the most part, members of society accept and applaud this mission of the prison system and call for criminals to get the punishment they deserve: "you do the crime, you do the time." The popular feeling is that having stepped outside the bounds of common decency and proper society, lawbreakers do not deserve privileges or special treatment. Having broken the law, they lose their civil rights. This reasoning is not hard to understand when prisoners are violent repeat offenders.

Once locked away, prisoners are alternately dehumanized and ignored. When they are considered, they are feared and despised as dangerous predators; otherwise, they are forgotten until a sensational story brings them to the

public eye. If it is easy to disdain and disregard men in prison, it is even easier to look down on or overlook women in prison. Women who are incarcerated are seen not only as prisoners but also as bad wives, mothers, and daughters; they have both broken the law and stepped outside of their normative roles. In addition, they are primarily poor and dark-skinned. Many are mentally ill; most have been victims of gender-based violence. They are not the women that conjure respect or concern or attention, but they are the women who were locked away in unprecedented numbers during the end of the twentieth century.

“It would be impossible for me to say imprisonment is *worse* for women than for men. Imprisonment is terrible for everybody. Imprisonment is different for women because women are different from men” (Kathryn Watterson Burkhart 1973, 425).

■ Background to the Buildup

Prisons and the prisoners they house reflect the social and political climate in which they exist and operate. Conditions were ripe during the end of the twentieth century for an explosion in the prison population (Mauer 2001).

The Social Climate

Changes in residential patterns that began after World War II were beginning to reshape major metropolitan areas by the 1970s. As more affluent families bought homes outside the cities (“white flight”), the suburbs became major centers of employment. The poorest were left behind in sections of urban areas that became “slums of despair” (Palen 2002). Unlike the wealthier urban dwellers, the inhabitants of these areas had (and still have) few marketable skills, erratic work records, and high welfare rates. These neighborhoods were characterized by residential instability, poverty, and crime. As manufacturing and blue collar jobs disappeared, few decent employment opportunities were available for those who did not have the advantages of appropriate education, experience, transportation, or computer access.

With this brittle backdrop, crack cocaine entered the scene and wreaked havoc. Drugs and drug abuse have always been around; for example, the 1960s introduced drugs to a broad slice of the population. But the emergence of crack in the 1980s was different and devastating. Simply made by cooking powder cocaine with baking powder, it was a cheap, quick, euphoric high and a marketing marvel. Having few other employment options, many in these “slums of despair” turned to drug dealing as the only viable route to earning money. The

drug trade was accompanied by guns and gangs, and an underground economy sprang up. The media image of littered streets, broken windows, and hooded young men on the prowl was frightening to most Americans. The country's reflex was to erase the problem, and the set of sentencing requirements that were available made it easy to do just that.

As these urban areas grew more blighted, the wealthiest communities grew more affluent. During the thirty-year period between 1970 and 2000, income disparity widened between the richest and poorest Americans. In 1979, the richest 1 percent earned 7.5 percent of after-tax income compared to 6.8 percent for the lowest 20 percent. By 2000, the top 1 percent share of after-tax income had increased to 15.5 percent, while the lowest 20 percent were earning only 4.9 percent (Greenstein and Shapiro 2003). The economic chasm that segregated the US population according to wealth and privilege had profound implications for the poor generally and for lawbreakers specifically.

When society becomes so radically divided, it is much easier to dehumanize those who are "different" (Mauer 2001). The frightening depictions of these urban neighborhoods reinforced this belief. Women during the crack epidemic were depicted in particularly vile ways; they were called "crack whores" and "crack moms." Photographs were published of women with babies on their backs performing sex acts to make money for drugs. With these images in mind, most Americans had no difficulty agreeing with the need for increasingly harsh punishments.

The Political Climate

This social mix was both a cause of and a reaction to the political climate of the times. Policies had begun to "get tough on crime" in the 1960s (Mauer 2001). These policies, however, had a fairly small impact on incarceration rates of women since they did not participate in crime in substantial numbers. There was another development, however, that had the most direct impact on women.

The war on drugs began slowly about 1972, and by the early 1980s the consequences for incarceration rates were evident. Four particular aspects of this war are relevant here:

1. Drugs were deemed a serious and dangerous public problem—the cause of criminal offenses that, as defined by the Drug Enforcement Administration (DEA), include the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited. The health or psychological interpretations of drug use were disregarded or forgotten. As a result, drug crimes became felonies (criminal offenses punishable by death or im-

prisonment for a term exceeding one year) as opposed to misdemeanors (criminal offenses punishable by a jail term not exceeding one year).

2. This definition of drugs as “criminal” was coupled with increasingly aggressive policing, especially in high-crime areas. More police officers on the streets made communities appear safer as drug officers infiltrated drug markets and made arrests in unprecedented numbers. The areas that came under this criminal justice gaze were those already distressed, and the many law-abiding citizens in those neighborhoods welcomed the protection from the chaos.
3. Sentencing policies for felonies were reformed, becoming harsher and less flexible. Box 1.1 gives a brief description of these guidelines. Before these changes occurred, judges had discretion to sentence according to their knowledge of each specific case and defendant. There was obvious racial discrimination in this system, but it did give judges the power to make decisions based on the individual rather than on a strict definition of the crime as presented by the prosecutor. As sentencing went from offender-based to offense-based (Mauer 2001), there were serious deleterious implications for women. Their low levels of criminal involvement and violence and their central roles in their families were no longer considered relevant to their sentencing. They were subject to the same increasingly severe punishment as the person who actually controlled a drug operation—even though they might have only answered the phone in a house where drugs were sold.

Box 1.1 Sentencing Policies

- Mandatory sentencing is a sentencing system in which the judge is **required** by law to impose an incarcerative sentence, often of a specified length, for certain crimes or for particular categories of offenders.
- Sentencing guidelines indicate to judges the expected sanctions for certain offenses.
- Determinate sentencing, also called flat or fixed sentencing, is a sentencing system that fixes the term of imprisonment at a specific period.
- Truth in sentencing is a sentencing system that requires offenders to serve a substantial proportion (usually 85 percent for violent crimes) of their prison sentence before being released on parole.

4. Systemic shifts in funding priorities essentially transferred monies toward drug control, prison building, and maintenance and away from social programs. Funds that once went to support low-income women and their children in the community and to fund educational opportunities have been continually cut back at the same time that funds for the war on drugs increased (Chesney-Lind 1998). For example, in fiscal year 2004, the following received funding from drug control monies: the Department of Agriculture (this includes Women, Infants, and Children programs), Corporation for National and Community Service, District of Columbia Court Services and Offender Supervision, Department of Defense, Intelligence Community Management Account, Department of Education, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, the judiciary, Department of Justice, Department of Labor, Office of National Drug Control Policy, Small Business Administration, Bureau of State, Department of Transportation, Department of the Treasury, and the Department of Veterans Affairs (“National Drug Control Strategy” 2003). Monies funneled to fight drugs are no longer available to help women and their families avoid or treat their drug problems or to help them reintegrate successfully into the community after prison. With the war on terror joining the war on drugs, poor women and their children face even more drastic cutbacks and a smaller social safety net.

Sociopolitical factors coupled with economic transfers were crucial to the spike in the general incarceration rate. But there was an additional set of circumstances unique to women that made them more vulnerable to arrest and incarceration than ever before. Changing roles, increasing numbers of female-headed households in poverty, and the ever-present violence toward women made the allure of drugs as escapes and avenues to income compelling.

The Climate for Women

By the 1970s, the notion of “women’s liberation” had reached center stage in the United States. Women’s attitudes about their rights and opportunities and the general public’s perceptions of women had changed dramatically. Increasingly, women saw themselves and were seen as equal to men; women were ready, able, and determined to do everything men did. At the same time, the criminal justice system began to react to women differently. Punishment originally assigned to men was increasingly seen as appropriate for women. (African American women have always received harsher punishment than white women. See Chapter 2 for more details about racial differences in punishment.)

During this period there was also a marked increase in the number of female-headed households. This phenomenon was the result of social changes such as increases in the number of divorces, decreased use of adoption for extramarital pregnancies, and the growing acceptance of out-of-wedlock births. Although the stigma of single motherhood was reduced, the financial burden was tremendous. Female-headed households have always been more vulnerable to poverty than households with two adults. (For example, in 2000, 26.5 percent of all female-headed households were below the poverty line [US Census Bureau 2002]). Raising children alone is difficult; raising children alone with minimal resources is daunting and extremely stressful. For some women, a readily available coping mechanism for stress was the use of illicit drugs.

Women's high rates of physical and sexual abuse also made them more vulnerable to the escape of drugs. Women have always been subject to male violence. Their fathers, stepfathers, husbands, and lovers beat and rape them with virtual impunity. Crimes that would be severely punished if perpetrated on a stranger are overlooked when the victim is a female intimate. This gender-based violence erodes a woman's self-confidence and envelops her in fear and hopelessness. When women are victims of abuse, their lives are a crime scene already; to engage in illegal behavior themselves is not a step out of line with their existing realities. And drugs offered a break from their misery and pain and a chance to make some much-needed money.

These historical trends converged, and in this book we show a snapshot of a particular time in the history of the criminal justice system. The intersection of concentrated poverty, harsh drug penalties, and new roles and responsibilities for women meant that women were suddenly engaged in punishable crimes on a broad scale. And those punished were, and are, overwhelmingly women of color. Historically, the inequalities in prison parallel the inequalities in society. The sexism, racism, and classism that exist in the larger community also exist in the criminal justice system. With scarce resources and little support, some women have few alternatives in a society that favors punishment over prevention. For many, prisons become the social program of last resort (Church and Browning 1990).

A Prison System Unprepared

Prison conditions for women have never been comfortable and therapeutic, but an annual report from the early 1900s describes a very different prison than what we see today. "Outdoors the women have carried water, chopped wood, mowed the yards, cared for the roads and paths, weeded, dug potatoes, gathered and prepared vegetables, picked and canned blueberries, cared for pigs. . . ." A later report from that same prison went on, "The work helps to build bodies and to strengthen high-strung nervous creatures that come to us

worn out by their habits of late hours, improper eating and vile indulgence” (quoted in Rierden 1997, 47). In addition, “these buildings with soft chairs, couches, and a fireplace, picture windows and open-out windows for each inmate’s room, give the appearance of a convalescent hospital” (Ward and Kassebaum 1965, 7).

At the end of the twentieth century, sentencing changes rapidly escalated the number of women sentenced to prison. Prison officials, largely unprepared for the sudden influx, scrambled simply to make space. As prison construction tried to catch up with the growing prison population, there was a dramatic change from the earlier picture of more “homey” conditions. These women were now crowded, sometimes six to a cell, into prisons designed for a smaller number of women. Today, many maximum security inmates are locked in their cells much of the time, eat army-style rations, and rarely see the sun (Murphy 2004). They must buy their supplies in overpriced commissaries; work for pennies an hour to maintain the prison; and have access only to food that is high in fat, sodium, and sugar (Chandler 2003). Women are punished by far more than simple incarceration; they are punished with overcrowded, exploitive, and unhealthy living conditions.

■ **The Importance of Policy**

Policies are “authoritative decisions that are made in the legislative, executive, or judicial branches of government. These decisions are intended to direct or influence the actions, behaviors, or decisions of others” (Longest 1998). Although this book is not about policy per se, prisons do reflect the policies of society. They are agents of social control, and thus the laws of society determine what behaviors are punishable by imprisonment. Now most women end up in prison because of drug laws instituted in the 1970s, 1980s, and 1990s. These laws were intended to catch major drug lords, but instead small-time using, running, and dealing women were hauled in. Drug laws and policies are particularly salient because they affect women directly through sentencing requirements that mandate long sentence terms and indirectly through policies that are not explicitly related to criminal justice. The indirect effects come from the many agencies that are involved in “deterring” drug trafficking and that control options women have when they return to the community. Women convicted of drug crimes may find they have lost their children, homes, and opportunities for income and education—they are punished again for their drug crimes.

The policies of the prisons themselves shape what structure, rules, and sanctions govern the lives of prisoners once they are behind bars. Policies within prisons determine the treatment that women receive and the programs that are available. Relationships with family, drug treatment, and physical and

mental health care are all governed by the prison. Because there has only been lip service paid to women's concerns, the programs that should and could help women are barely adequate. On every front, the consequences of these policies are harsher for women than for men. Policies begin on paper, but they become manifest in the lives of individuals; the picture of sentencing and drug policies is the faces of suffering dark-skinned women.

■ **The Diversity of Women**

We recognize that to talk about "women" in prison assumes a monolithic group, and the above discussion implies that only poor urban women break the law and that drug crimes are the only route to prison. Clearly that is not the case; many different types of women enter prison for many different reasons. For example, Jean Harris, a graduate of Smith College and headmistress of a private school in Virginia, was sentenced to fifteen years to life for murdering her physician lover. Martha Stewart, the lifestyle maven, was sentenced to five months for obstruction of justice and lying to investigators about a stock deal. Women steal cars, embezzle, and commit murder.

But there is a modal woman, a typical woman who ends up behind bars. Most women in prison are dark-skinned, poor, unskilled mothers who are incarcerated for low-level drug involvement. They have been physically and sexually abused by the men in their lives, some since childhood. Many have complex collections of mental health and medical conditions and substance abuse problems. Relatively little has been written about subgroups of incarcerated women. We know almost nothing about Hispanic women (McQuaide and Ehrenreich 1998) and even less about Native American and Asian American women who are incarcerated. A major barrier to understanding and addressing the unique difficulties of women in prison is the remarkable lack of available data.

■ **Data Sources**

Most of the available statistics on women in prison come from the federal government. The National Institute of Justice (NIJ) is the research, development, and evaluation agency of the US Department of Justice and is dedicated to researching crime control and justice issues. The director, appointed by the president and confirmed by the Senate, establishes the institute's objectives, guided by the priorities of the Office of Justice Programs, the US Department of Justice, and the needs of the field. Within the NIJ, the Bureau of Justice Statistics gathers and disseminates most of the information, including data from various state departments of corrections. Clearly the political interests of each administration determine which statistics are gathered and disseminated to the

public. For example, in the pro-marriage Bush administration of 2004, the first comprehensive study of the relationship between marriage and low drug use was released.

For most researchers data are available only when released by these governmental agencies and only in the forms that they present. For example, many past and present reports give information only on “prisoners” and do not differentiate between females and males. It is even rarer when statistics are broken down into gender and race groups; for example, a report may give the percentage of women in prison who have received drug treatment but not the percentage of black, white, or Hispanic women who have received treatment. We know even less about social class or education of prisoners.

The lack of in-depth and current data makes painting a detailed picture of the complicated issues facing women in prison prohibitive. However, several nongovernmental organizations, such as Amnesty International and the Sentencing Project, collect information on women in prison. There are many such progressive groups involved in reporting and rectifying various aspects of incarceration issues and policies. Although these organizations may not have the broad overview of the federal data sources, they give a more human picture of certain aspects of women’s imprisonment. For example, much of what is known about the mental health problems and treatment of women in prison comes from Amnesty International’s groundbreaking study, *Not Part of My Sentence* (1999). Justice Now, based in San Francisco, has contributed greatly to the understanding of end-of-life issues for women dying in prison. Families against Mandatory Minimums has published widely on the harmful impact of sentencing policies for women and their families.

■ Organization of the Book

We begin with a history of the penal system of the United States in Chapter 2. Women have been punished for the same and also for different crimes than men. In addition to punishment for theft, for example, women were subject to humiliation for having overstepped their roles as women, wives, and mothers. As the prison system developed, institutions for women were always the afterthought. They were allocated scant resources, but ironically, because there were so few incarcerated women, some early prisons managed to be less stark than they are today. Universally higher rates of incarceration for minority women have always meant that they were subject to more severe and abusive punishment. Chapter 3 discusses prisons and prisoners as they exist today and how they have changed over time.

The next five chapters (Chapters 4 through 8) present a specific set of concerns relevant to the lives of incarcerated women. Specifically, we examine drugs, health, family, death, and reentry. Men also deal with these same concerns, but our purpose is to examine these issues from a woman’s per-

spective. We demonstrate that, in essence, these women are punished twice. They are first punished by their sentence, and then they are punished again because the policies that govern their prison and postprison lives were not designed from the standpoint of women's needs and responsibilities. From every angle, we see that when policymakers do not explicitly consider women, women suffer. Opportunities to establish a path to health and productivity for these women are lost.

In Chapter 4, we begin with drugs as the entry point and main problem for most women in prison. The laws governing the use of, sale of, and conspiracy to sell illegal drugs, or legal drugs illegally, have punished women disproportionately. The "gender-neutral" sentencing requirements failed to recognize the nonviolent, low-level drug involvement of most of these women. Further, women's unique life histories have made them more vulnerable to substance abuse while making treatment less accessible.

Chapter 5 discusses women's larger and distinct burden of physical and mental health disorders—problems that have become more obvious as more women are incarcerated. The realities of older women's lives help to elucidate many of the essential difficulties that all women face. Health care is identified as a priority in the prison system, yet women have more and different health issues than men, and most prison health care has not been designed with women in mind. As a result, lawsuits have reformed prison health care more than advance planning or common sense.

Chapter 6 describes the caregiving dilemmas that face women in prison. Family issues are always particularly relevant for women, but they are further highlighted with the rising number of mothers being imprisoned and separated from their children for long periods. The problem of what to do with the children is one that incarcerated males seldom have to face. The double punishment and lost opportunities of new policies become painfully obvious as many mothers lose custody of their children altogether.

In Chapter 7, we examine death and dying in prison. Most incarcerated women do not die as a result of the criminal justice system; it is rare when a woman is executed. But as more women enter prison and remain for longer times, more will face their own deaths, and many will face the death of a loved one.

Chapter 8 traces the hardships women face when they leave prison. Most women will return to their communities when they complete their sentences. Reentry, however, is not the joyful reunion imagined as women accused of drug crimes lose rights and opportunities. And regardless of type of crime, work and family transitions are difficult.

In the final chapter, we summarize our findings and look to the future. The double burden of punishment faced by women, particularly minority women, drains their strength, dilutes their opportunities, and destroys their families. Policies must change to recognize that women returning to the community

have different needs than men; the same strategies that work for men do not work for women. Equal rights are not enough for women who shoulder a double burden.

■ **Conclusion**

Women in prison are punished once because of the restricted life behind bars. They are punished again because they are the afterthought in an overburdened system scrambling to keep up with unprecedented growth. The laws that put women there and the policies that govern what happens within prisons and what happens to them and their families on their release subject women to the unintended catastrophic consequences of policies developed without consideration of women's unique backgrounds or needs.

This is a significant period in the history of women's prisons. Because of the extreme costs, both financial and familial, states and citizens are beginning to sense a need for reform and to realize that these policies have not made society safer and in the process have cost millions and millions of dollars. Yet even if there were a change in these drug policies and the related prison buildup, the impact would not be quickly felt. The lives of women and their families that have been irreversibly damaged will never be reclaimed. For many of these women, the second punishment is far worse than the first.