

Gender, Crime, and Punishment. By Kathleen Daly. New Haven, Conn., and London: Yale University Press, 1994.

Punish and Critique: Towards a Feminist Analysis of Penalty. By Adrian Howe. London and New York: Routledge, 1994.

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The two books under review address both the androcentrism of theoretical and empirical work on penalty and troubling issues of bridging theoretical critique and social policy. Adrian Howe's book is broadly theoretical in nature, while Kathleen Daly's is a detailed empirical analysis of gender disparities in sentencing.

Howe's goal in *Punish and Critique* is "to pursue the critical project by pressing it into service of those moving towards a theoretically-grounded feminist analysis of penalty" (3). Her strategy is to describe the masculinist critical projects of the past twenty years and their various critiques and configurations, next to describe feminist work on imprisonment and penalty, and finally to make tentative suggestions for "postmodern penal politics." The first two chapters reiterate one more dreary narrative of masculinist social science parading as critical while almost completely neglecting the role of gender in constructions of crime and punishment. Howe designates the republication and rediscovery of Georg Rusche and Otto Kirchheimer's *Punishment and Social Structure* in 1968 as a "rupturing event enabling critical analyses of penalty to emerge from the intellectual deadwood of traditional penology" (6) and spends several pages defending her choice, noting other potentially worthy fathers (William Bonger, Evgenii Pashukanis, and Émile Durkheim).¹ The Rusche-Kirchheimer thesis helped to decouple crime from punishment by working out a historical materialist conception of systems of punishment. Against the hegemonic reign of positivist criminology, the Rusche-Kirchheimer thesis argued that punishment systems reflected the mode of production and the peculiar labor needs of historical periods. According to Howe, this model "provided the 'rules of formation' which defined the proper objects of a political economy of punishment" (19). A series of studies and critiques based on Rusch-Kirchheimer are then presented, during which Howe notes in passing, "It should be said from the start --- if it is not already obvious --- that these stud-

¹ Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (1939; reprint, New York: Russell & Russell, 1968).

ies are numbingly dull, and perhaps intrinsically so" (32). I agree completely and wonder whether each time we move toward a feminist analysis we must painfully sludge through what was forced upon us in graduate school. The chapter on Foucault, however, is much more engaging and clearly related to the project at hand. *Discipline and Punish* provides tools that were not intended for feminist application but which nevertheless are an important impetus to a range of investigations of the social control of women.² Foucault's insistence that the carceral is everywhere helped shift the focus from "women and crime" to "women and social control" during the 1980s and is important for the move toward a feminist analysis of penalty.

After detailing the lacunae in the "new social history" accounts of penology, which failed to consider gender relations, Howe summarizes studies of women's imprisonment. These studies emphasize the relationships between gender ideologies and the treatment of women in prisons. Perceptions of women as less dangerous have influenced penal policy as well as sentencing practices and have worked in contradictory ways to reinforce gender subordination. Howe correctly concludes that studies of women's imprisonment have neither grappled with feminist theory nor challenged masculinist theories. Unfortunately, efforts to link women's imprisonment to their lawbreaking activities reconnect punishment to crime rather than direct attention to penalty as a social institution. Adopting Tove Stang Dahl and Annika Snare's notion of the "coercion of privacy," Howe argues that a feminist analysis of penalty must be grounded in an "understanding of a coercion which restrains women to the point where we can speak of them 'living their lives in a private prison'" (163).

The most innovative and useful part of Howe's book is her imagined conversation between postmodern feminism and its critics. Howe brings the insights of Teresa de Lauretis and Judith Butler on the discursive boundaries of gender into contact with feminist penal analysts. Detailing her own concept of "social injury," which implies foundational status for gender, Howe argues that Denise Riley's notion of a "territory of pragmatism" can be staked out for the category of social injury without either an essentialist notion of women or a dependence on gender identity. To emphasize the various forms discipline and penalty assume in relation to women, Howe presents a number of studies of the policing of women and girls. Throughout her discussion, Howe is attuned to issues of race and class, although many of the authors she surveys are not.

² Michel Foucault, *Discipline and Punish: The Birth of the Prison* (1977; reprint, New York: Vintage, 1995).

Kathleen Daly's *Gender, Crime, and Punishment* is much more straightforward in its task of examining sentencing disparities between men and women. The theoretical issues driving Howe's work are not part of Daly's concern, thus highlighting Howe's contention that studies of women and penalty have not engaged with theoretical issues. At the same time, theoretical development relies on carefully crafted empirical investigations like Daly's.

Daly selected a sample of 397 cases of convicted felons and compared sentencing outcomes between men and women. She also selected a "deep sample" of eighty cases for which she obtained presentence investigation reports and transcripts of remarks made at sentencing. The statistical comparison of sentences, controlling for legally relevant variables, found that women received more lenient sentences than men. Her analysis of the deep sample cases, however, revealed that differences in sentencing could be explained by prior background and seriousness of offense in all but one case. The main difference between the two analyses was the use of narrative texts for the deep sample. Her study thus provides important insights on reliance on quantitative data for policy development. Daly argues for an "oscillation" between quantitative and narrative data to provide a more adequate understanding of sentencing practices.

Another contribution of Daly's study is her analysis of the biographies of offenders and classifications of pathways to crime. For women, Daly classified defendants as street women, harmed and harming women, battered women, drug-connected women, and "other." Contrary to popular views, most defendants are not motivated by economic gain. The largest category was harmed and harming women, that is, those who have suffered from abuse and neglect and whose offenses are related to their own victimization. The importance of the classificatory scheme lies in the awareness it creates about the "blurred boundaries" between women's victimization and victimizing. Her categorization of men also found a group of harmed and harming defendants, but a smaller proportion than among women. Instead, she found a large group of men whose pathway to court was based on "costs and excesses of masculinity" (62). Daly argues in her conclusion that women are often viewed as less blameworthy because of these blurred boundaries. She believes that if the "sites of masculinist domination of boys and men were recognized," gender-based mitigation of blame might be extended to men as well (260).

In the concluding two pages, Daly addresses "gender-neutral policy." On the basis of her analysis, she argues that the "equal treatment approach" is a harmful policy for eliminating gender-based differences. As in other areas of the law, applying a standard developed by and for men denies the

differences in men's and women's lives and may increase harm to women.

Both Howe and Daly have made significant contributions to feminist criminology in these texts and in prior work. However, the masculinist paradigms of traditional and critical criminology maintain a disturbing presence in both books. Howe offers a theoretical alternative in "postmodern penal politics" (208), but it consists of ten brief pages, four of which are devoted to Michel Foucault. It follows 122 pages of male-focused criminology and penal history. Daly's work focuses on the empirical issue of sentence disparity without engaging in critique of the theoretical basis of the question or the bureaucratically constructed data she employs. Most troubling, neither author seriously addresses the prison industrial complex as one of the fastest growing industries in the United States, nor does either author address the racial-, gender-, and class-based dynamics of that enterprise. ■