

# GENDERED SOCIAL CONTROL AND CRIMINAL PUNISHMENT

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## ABSTRACT

The rates of women under the criminal justice supervision are smaller than men across countries. Therefore, the goal of this paper is to explore the possible factors leading small rates of women. Drawing from feminist perspective, this paper suggests that social control mechanisms are gendered; that is, the social control of women is different from that of men. In the contemporary societies, women are controlled by informal as well as the formal mechanisms. This paper suggests that the interplay among various social control mechanisms may be one of the reasons leading to the small rates of women under the control of the criminal justice system.

**Keywords:** Gender, Criminal Status, Law and Punishment

## ÖZET

Adalet sisteminin kontrolü altındaki kadınların oranları erkeklerin oranlarından küçüktür. Bu çalışmanın amacı kadınların küçük oranlarına neden olabilecek olası faktörleri incelemektir. Feminist düşünceye dayanarak, bu çalışma sosyal cinsiyete bağlı farklı sosyal kontrol mekanizmalarının olduğunu ve bundan dolayı kadınların sosyal kontrolünün erkeklerin sosyal kontrolünden farklı olduğunu öneriyor. Günümüzün toplumlarında kadınlar hem informel hemde formel kontrol mekanizmaları tarafından kontrol edilmektedirler. Bu yazı değişik sosyal kontrol mekanizmaları arasındaki etkileşimlerin adalet sisteminin kontrolü altındaki kadınların oranlarının küçük olmasına neden olan faktörlerden biri olabileceği öneriyor.

**Anahtar sözcükler:** Toplumsal Cinsiyet, Kontrol, Hukuk ve Ceza Sistemleri

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Around the world, the number of women under the criminal justice supervision has been smaller than that of men. For example, in 2000, the rates of adult females convicted in the criminal courts were 4 per 100,000 population in Qatar, 28 in Norway, 49 in Estonia and 412 in New Zealand while the rates of adult males convicted in the criminal courts were 595 per 100,000 population in Qatar, 193 in Norway, 582 in Estonia and 2030 in New Zealand (UN Survey of Crime Trends and Operations of Criminal Justice Systems 7<sup>th</sup> Wave). Similarly, in 2000, the rates of convicted adult females admitted to prison were 2 per 100,000 population in Italy, 15 in Malaysia, 27 in Russian Federation compared to 49 per 100,000 population for males in Italy, 151 in Malaysia and 432 in Russian Federation (UN Survey of Crime Trends and Operations of Criminal Justice Systems 7<sup>th</sup> Wave). The numbers show that women's rates under the criminal justice supervision are small across countries.

Research on women's imprisonment focuses on lives of women in and out of prison (Carlen 1983, 1988, 1998; Giallombardo 1966; Kruttschnitt, Gartner and Miller 2000), pre-prison characteristics of women and characteristics of institutions (Kruttschnitt et al 2000; Owen 1998; Ward and Kassebaum 1965), women's cultural heritage (Diaz-Cotto 1996; Faith 1993), and mothers in prison (Enos 2001). Even though these studies can give some insight to women's imprisonment, the question why the rate of women under the criminal justice supervision is so small is not answered thoroughly. I think it is itself worthwhile to explore in depth.

What kinds of social mechanisms could be leading to the small number of women under the criminal justice supervision? To answer this question, we need to step back and explore the various social control mechanisms and their relationships with criminal justice system. I will argue that social control mechanisms towards women in the society are gender specific in which social control of women is different from the social control of men. Women and men are controlled by the different gender ideologies and gendered social institutions. The interplay among these social control mechanisms could give an explanation.

In this paper, I will explore the rate of females and males under the criminal justice supervision in various countries. Then, feminist studies will be used to describe the gendered social control of women. Finally, with help of studies done in criminal justice system, the link between gendered social control and criminal justice system will be explained in order to understand the small rates of women under the criminal justice supervision.

### **Cross-National Variations in the Rates of Women and Men under the Criminal Justice Supervision**

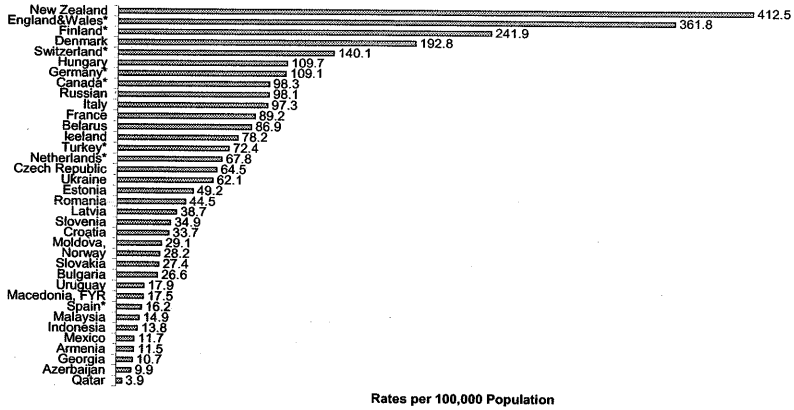
There are only a few data sets consisting information about criminal justice process across countries. One of them is United Nations Survey of Crime Trends and Operations of Criminal Justice Systems. Since 1978, United Nations has gathered world-wide data on crime rates and criminal justice process. United Nations Survey is now in its seventh wave. This data set has its own limitations because there are differences in the criminal law and court systems. However, I think it is very useful to get the cross-national descriptive data related to women and men under the criminal justice supervision.

The rates of adult females and males convicted in the criminal courts in 2000 are presented in Figure 1. As seen, there is great variability in these rates across countries within a given year. Qatar had the lowest rates of females convicted in the criminal courts where female rates were 4 per 100,000 while New Zealand had the highest rates of females convicted in the criminal courts having the rate 513 per 100,000. When we look at the rates of males convicted in criminal court, the rates also vary across countries. For example, the rates of males convicted in the criminal courts ranged from 113 per 100,000 in Mexico to 2030 per 100,000 in New Zealand.

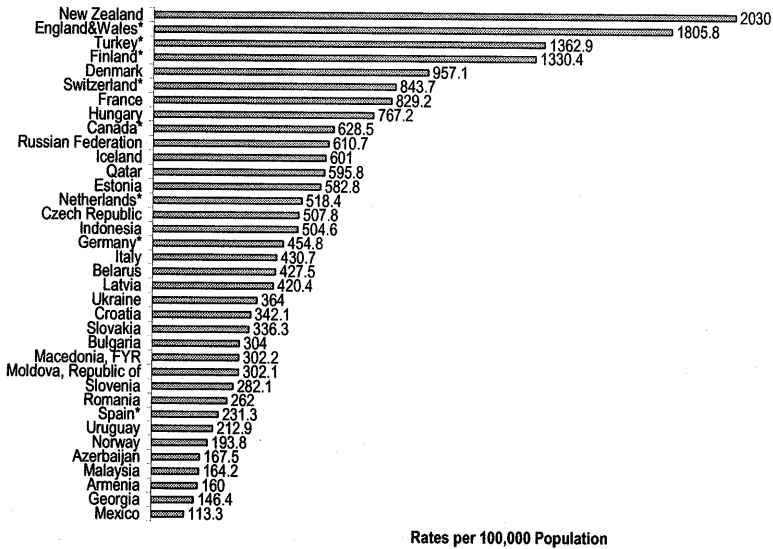
To get a better understanding of the differences between rates of women and men convicted, we can examine a few countries' rates in depth. For example, the rates of females convicted in the criminal courts were about 5 times smaller than those of males in New Zealand, England and Wales, Denmark and Ukraine. In some countries, the differences between female and male rates are very big. For example, the female rates were 19 times in Turkey and 36 times in Indonesia smaller than male rates. As seen in here, although these differences in rates greatly vary across countries, female rates are always smaller than male rates.

When we look at the females rates admitted to prison compared to males, the female rates are getting smaller. The rates of adult convicted females and males who were admitted to prison in 2000 are illustrated in figure 2. Iceland and Indonesia had the smallest female rates which were less than 1 per 100,000 population while Thailand had the highest female rates which were 40 per 100,000 population. The rates of males admitted to prison were ranged from less than 21 per 100,000 population in Iceland and Indonesia to 524 per 100,000 population in Belarus.

Rates of Adult Females Convicted in the Criminal Courts, 2000



Rates of Adult Males Convicted in the Criminal Courts, 2000

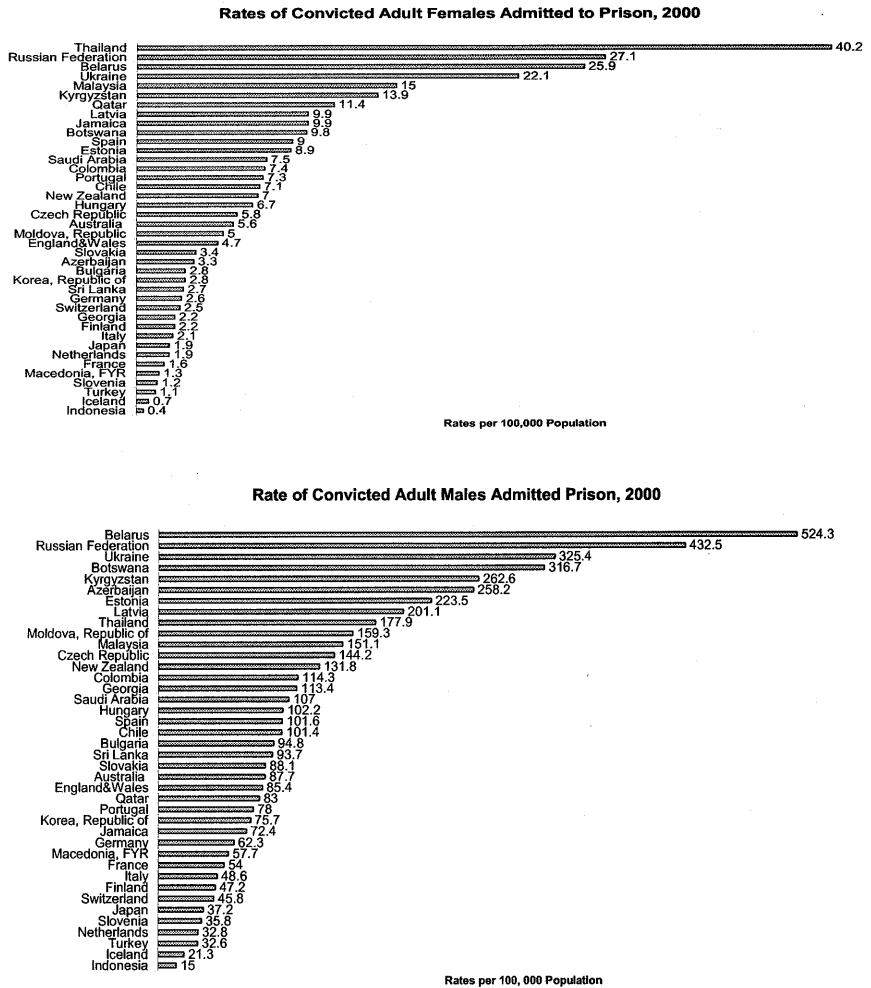


\*Data are for 1999

Figure 1: Adult Female and Males Convicted in the Criminal Courts

Source: United Nations Survey of Crime Trends and Operations of Criminal Justice Systems, 7<sup>th</sup> Wave. United Nations Office on Drugs and Crime (UNODC) <http://www.unodc.org/unodc/index.html> New York: United Nations.

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**Figure 2: Adult Females and Males Convicted in the Criminal Courts**

Source: United Nations Survey of Crime Trends and Operations of Criminal Justice Systems.7<sup>th</sup> Wave. United Nations Office on Drugs and Crime (UNODC) <http://www.unodc.org/unodc/index.html> New York: United Nations.

As seen in figure 2, the differences between female and male rates are quite high. The female rates were 4 times smaller than male rates in Thailand. In countries such as France, Iceland, Bulgaria, the female rates were around 30 times smaller than male rates. The highest difference between female and male rates was in Azerbaijan

where female rates were 77 times smaller than male rates. Overall, female rates under the criminal justice supervision are quite smaller than male rates across the countries.

The question is what may account for these small female rates across countries may be tackled by various ways. First, the differences in the number of women and men under the criminal justice supervision may be due to the differences in their crime rates because women's crime rates are smaller than men's crime rates. (O'Brien 1999). In general, some groups with higher crime rates will certainly experience higher rates of criminal punishment than groups with less crime rates. In this case, women committed less crime than men, thus, the rates of women under criminal justice system could be smaller than those of men. However, this cannot be the only reason because studies exploring the association between overall crime and criminal punishment rates point out that the rates of population under the criminal justice supervision are not solely determined by crime rates (e.g. Beckett 1997; Greenberg and West 2001; Jacobs and Carmichael 2001; Jacobs and Helms 1996). In addition, recently, Unal and Heimer (2003) found that the gender ratio of arrest for property and violent crimes did not have a significant impact on the gender ratio of criminal punishment in the United States. Of course, to some extent, the function of criminal justice system is the crime control but the criminal justice system is also determined by the wider social forces in society beyond the crime rates. For example, Garland (1985, 1990) and others (Beckett and Western 2001; Jacobs and Helms 1996) point out that economic, social and political factors affect the criminal punishment, above and beyond the crime rates. Therefore, in this paper, the focus will not be the differences in the crime rates of women and men. Rather, it will be the role of social control mechanisms in the society to identify the possible factors for lower number of women under the criminal justice system than men. First, I discuss the gendered social control mechanisms and then the interplay between these control mechanisms and criminal justice system.

#### **Mechanisms of Gendered Social Control**

Researchers have argued that historically women have been controlled more through informal social control, whereas men have been much more likely to be subject to the formal social controls of the criminal justice system (Boritch and Hagan 1990; Hagan, Simpson and Gillis 1979). The root of gender-specific social control goes back to the separation between private and public spheres starting with industrialization, which moved work outside the home and placed women and men in private and public realms; home and labor force respectively (e.g. Abromatviz 1988; Gordon 1990; Nelson 1990; Walby 1994). Men are considered as breadwinners for their families while women are considered wives and mothers who are dependent upon on the male breadwinner and are responsible for the domestic work (Abromatviz 1988; Gordon 1990; Nelson 1990). Industrialization created a growing differentiation between informal and formal social control agencies because the movement of work from home to public sphere led to the shift in the locus of social control from family to state agencies (Hagan, Simpson, and Gillis 1979). Therefore, men who were moving into the public sphere in order to work were exposed to formal social control agencies, such as criminal justice system while women at home were the objects of the informal social control of the family.

In the contemporary societies, however, Walby (1994) and other feminists (Abromativz 1988; Brown 1981; Gordon 1990) argue that private patriarchy, which refers the direct informal control of women in the household, is not the major social control mechanism over women. This does not mean that patriarchy has disappeared; however, rather, patriarchy has changed its locus and has become more public and formal. Therefore, contemporary women are controlled through various formal, public institutions, such as welfare programs, mental institutions, labor markets and criminal justice as well as through private patriarchy in the family. For example, feminist scholars argue that welfare is an especially important structure of social control under the public patriarchy in the developed countries (Abramotivz 1988; Brown 1981; Fraser 1990; Gordon 1990; Miller 1990; Walby 1994). They argue that the state creates a public patriarchy in which the direct private control of women by men in the family has been replaced to some extent by the impersonal and public control of women by the state, via the welfare system (Abramotivz 1988; Brown 1981; Fraser 1990; Gordon 1990; Miller 1990; Walby 1994). State welfare policies continue to promote women's inferior status relative to men by substituting female dependency on the state for the earlier control by men in families (Abromativitz 1988; Brown 1981).

This suggests that to some extent, private and public patriarchy work in tandem to control women in contemporary society (Walby 1994). Private patriarchy enforces gendered social control to some extent on women through gender relations in the family while public patriarchy enforces gendered social control on women through various mechanisms in the public sphere. Walby (1994) argues that the distinction between private and public patriarchy does not refer to a rigid dichotomy. Rather, the private and public patriarchy constitutes a continuum (Walby 1994). Therefore, in different places, the importance of private and public patriarchy could be different but both of them exist. For example, in developing countries, the private patriarchy in the family could be more important than public patriarchy. By the same token, otherwise is true for some other countries. For example, increasing divorce rates and female-headed households in the developed countries such as United States (Pearce 1978; Wojtkiewicz, McLanahan, and Garfinkel 1990) may indicate the weak control of private patriarchy but higher number of women being the recipients of welfare benefits may reflect the strong control of public patriarchy through welfare institutions (e.g. Gordon 1990; Miller 1990; Orloff 1993). Therefore, we should keep in mind that in the contemporary society, women are controlled by informal social control as well as the formal social control under the public patriarchy. In addition, criminal justice system becomes another formal social control institutions over women in the contemporary societies. The question is why the rates of women under criminal justice supervision are small even though criminal justice system is also another formal control mechanism over women as well as over men. To answer this question, we need to consider the control function of criminal justice system with the relationship of other formal as well as informal social control mechanisms. Therefore, I will turn my attention to explain the interplay between these gendered social control mechanisms and criminal justice system.

### **Criminal Justice System as a Gendered Control Mechanism**

Since the beginning of the development of penal institutions, penal systems among many others play an important role in the social control of the women in society. As studies on the history of the punishment and development of prison systems in United States (Colvin 1997; Dodge 1999; Rafter 1990), England (Dobash, Dobash and Gutteridge 1986) and Ireland (Smith 1990), and on women and imprisonment (Carlen 1983, 1998) have shown, the social control function of penal institutions towards women is gender specific. Rafter (1990) has pointed out that specific and ideological concepts of femininity and true womanhood shaped social control functions of penal institutions towards women because these women were seen as depraved and acting contradictory of their moral organization during the nineteenth century. Social control exercised on women by penal institutions enforced the conformity to prescribed gender roles (Rafter 1990). Women who failed to fill dominant gender ideology were subject to punishment. The functions of the penal institutions were to reform these women. They were taught to be good mothers and housekeepers and prepared to be employed as domestic servants (Colvin 1997; Dobash, Dobash and Gutteridge 1986; Rafter, 1990).

There is not much change how the criminal justice system treats women. Some scholars argue that criminal justice system historically has operated to control women who were freer from traditional family controls, such as women without family ties (e.g. Boritch and Hagan 1990). Boritch and Hagan (1990) and Feeley and Little (1991) argue that as informal social control through families or formal social control through social institutions decreases, women are more likely to be exposed to legal control. Similarly, Kruttschnitt (1982) posits that there is a reciprocal relationship between informal and legal social control. Specifically, she maintains that the legal system tends to exercise a lesser degree of social control over women who are subjected to daily informal social control in their lives, such as economic dependency on their husbands (Kruttschnitt 1982; Feeley and Little 1991). This is consistent with the argument that private and public forms of patriarchy work together to control the women. In this case, the strong control of women in the family make less necessary the use of the criminal justice system. Therefore, the rate of women under the criminal justice supervision will be smaller than the rates of men due to the existence interplay between informal social control and the criminal justice system.

However, some may argue that an increasing number of women has participated in the paid labor force, thus, this may mean that women are less affected by informal social control mechanisms in the family and more women are economically independent than before. This may be true but we need to think the fact that in most countries, the labor participation of women is lower than men and there is a gender wage gap. For example, 76 percent of males between 15-64 ages were participating in the labor force compared to 28 percent of females in 2000 (World in Figures). Similarly, 74 percent of males in Italy and France were in the labor force compared to 46 percent of females in Italy and 61 percent of females in France at the same year



(World in Figures). In addition, women are working in the segregated occupations (Walby 1996). Women are more likely to work in occupations that are predominantly female than in occupations that are predominantly male (England 1992; Reskin and Padavic 1994, 1999; Treiman and Hartmann 1981). In recent report "Progress of the World's Women 2002" (2002) prepared by United Nations Development Fund for Women, it is written that in many countries as the part of non-agricultural sector, high proportion of women works as informal workers including "workers who have no contract of employment or no legal or social protection whether they work in factories or other places, self-employed or own account workers, member of informal producers' cooperatives and domestic workers" (pp 36). Most important of all, studies done in United States (e.g. England 1992, Reskin and Padavic 1994), in England (Walby 1996), in Sweden (Hultin and Szuklin 1999), Russia (Ogloblin 1999) and in Africa (Appleton, Haddinot and Krishnan 1999) have showed the existence of the gender wage gap referring to the fact that women earn less than men. Recent report "Progress of the World's Women" (2002) also reveals the similar pattern in various countries around the world. Additionally, women are more likely to work in part-time jobs with less pay (World in Figures). For example, 80 percent of part-time employees are women in France and Switzerland in 2000 (World in Figures). Finally, we should not forget that many women in the world are working in agriculture as unpaid family workers. Overall, women compared to men are subordinated in the paid labor market.

This discussion above suggests that under the public patriarchy, women have more access to the public spheres but they are subordinated within them. Therefore, the participation of women in the paid labor forces does not necessarily mean that women are economically independent and free from the patriarchal control. It seems that their subordinations in the family are also recreated in the public sphere. Therefore, even in the recent decades, when women come to the contact with the criminal justice system, the subordinate position of women in the family and paid labor market may make less necessary to use the criminal justice system. This may lead to lower rates of women under the criminal justice control than men.

In addition, the gendered function of criminal justice system as a social control structure under public patriarchy could be clearly seen in the decision making process. Scholars from sentencing research have argued that there is paternalism in the criminal justice system leading to the less severe sentence of women than men (Belknap 2001; Daly and Brodt 1995). Paternalism refers to the idea that women are in need of protection (Daly 1987). Recently, Helms and Jacobs (2002) reported that in the most conservative court environments, males are sentenced more harshly than females. In addition, studies on the role of gender in sentencing outcomes have revealed that the traditional gender role expectations and gender related attributes have the influence on the sentencing of women (Belknap 2001; Steffensmeier, Kramer and Sterifel 1993; Bickle and Peterson 1991; Daly 1987). It is found that women who conform to the traditional gender roles are likely to be sentenced in lenient manner compared to women who do not act according to gender roles and men (Steffenmeier et al 1993; Bickle and

Peterson 1991; Daly 1987). Recent studies reveal that marital status and motherhood are important factors in sentencing (Bickle and Peterson, 1991; Daly 1987). Because women are typically responsible for child care, giving severe sentence to women may destroy the unity of the family (Daly 1987; 1989); thus, women behaving along gender lines such as being a good mother or wife get more likely less severe punishment (Daly 1987; Koons-witt 2002). This suggests that paternalistic ideas in the criminal justice system create the bias in sentencing not only across gender but also within gender which may lead to lower rates of females under the criminal justice control. Women committed to the same crime may get different sentences; the ones conforming to traditional gender role expectations such as being a good mother and wife may be punished less severely or not be punished at all. For example, they may be required to do some community work rather than serving time in prison. This may indicate that traditional gender role expectations such as being a good mother and wife are valued more than others in the society. Therefore, gender specific ideology within the criminal justice processing may keep some women out of the criminal justice system, and lead to small rates of women under the criminal justice supervision.

I think that the interplay among the formal control mechanisms is also important to understand the small rates of women under the criminal justice control because some of public institutions under the public patriarchy can be more important than others in various countries. For example, in the countries with welfare policies, welfare system can be used more often than other public institutions. Indeed, recently, some scholars have argued that welfare and criminal justice system work together as part of the penal-welfare complex (e.g. Beckett and Western 2001; Garland 1985). Generous welfare policies will make the use of criminal justice system less necessary (Beckett and Western 2001; Garland 1985; Inverarity and Grattet 1989; Wallace 1980). By the same token, reductions in welfare showed correspondence with increases in the rate of population under the criminal justice supervision (Beckett 1997; Beckett and Western 2001). However, there are only a few existing empirical studies of these associations. In the United States, Beckett and Western (2001), and Greenberg and West (2001), using state level data, report that states with generous welfare benefits have lower prison populations not disaggregated by gender. Therefore, the fact that women are more often the recipients of welfare assistance in contemporary societies such as the United States (e.g. Miller 1990; Orloff 1993) suggests that the interplay between these two formal institutions could be important for the control of women, in accordance with the feminist scholars who have argued that welfare system functions as formal public control over women. Higher welfare benefits increase women's dependency on the state; thus, increasing state control over women's lives, and this makes it less necessary to use of the criminal justice system to control women. Recently, Unal and Heimer (2003) found that in states with generous welfare benefits, the prison admission rates of women compared to those of males are low in the United States. This suggests that when state controls women with generous welfare programs, the use of the criminal justice supervision to control women compared to men is more likely to be less necessary.

Another formal social control mechanism under the public patriarchy may be the mental institutions because women may be more likely than men to experience social control through mental institutions. Morris (1987) notes that women are more likely to be labeled mentally ill than men and men are more likely to be labeled criminal than women. This may affect the decision making process in the criminal justice system so that judges may send women more likely to mental institutions rather than to prison. Thus, this may keep some women out the reach of criminal justice control.

In sum, the social control of women has become more public and more likely to be achieved through social institutions in the society along with still the existence of private patriarchy but with less diminishing power. The interplay between private and public patriarchy may be leading to the small rate of women compared to men in the criminal justice supervision because this interplay affects the decisions-making process in the criminal justice system.

### Conclusion

In this paper, I tried to explore the reasons for the smaller rates of women compared to men under the criminal justice supervision. The studies discussed in here suggest that the social control mechanisms are gender specific. Women are more likely to be controlled by informal and other formal social control mechanisms rather than legal formal control, namely, the criminal justice system. The interrelationship between social control mechanisms affects the use of criminal justice system toward women. Criminal justice system may be the last mechanism which the society uses to control women when other mechanisms become less effective in the control of women. In other words, when other social control mechanisms including both informal and formal are strong enough to control the women, the use of criminal justice will be less necessary. Therefore, this may lead to lower rates of women under the criminal justice supervision than those of men.

Some may notes that there are great variations in the social structures of the countries. For example, the political and economic structures, their effects on criminal justice shown by previous research, differ from each other. Some countries have more democratic system but some may not. Some countries are capitalist, some are not. Some of these countries are developed and some are developing or even third world countries. Rather than the gendered social control mechanism, variations in the political, economic and criminal justice structures across countries may affect the population under the criminal justice supervision. However, "Isn't it interesting that even though there are differences in the social structures of countries, female rates under the criminal justice supervision are still smaller than male rates across countries?" Differences in the structures of countries may create various forms of mechanisms to control women.

Based on the structure of countries, some forms of social control could be more dominant than the others. For example, in developed countries, formal mechanisms may be the dominant form of control compared to informal mechanisms in third world countries. Regardless of the differences in the form, informal or formal, these mechanisms function to control women. Therefore, this may lead to small rates of women under the criminal justice supervision even though the dominant control mechanisms over women may be differing across countries.

The studies discussed in this paper suggest that we should think outside of the box when we think about the gender and criminal justice system. When women have come to the contact with the criminal justice system, they may not be treated by criminal justice official only based on what they did. There is an array of decision-making points between arrest and imprisonment in the criminal justice system. Being a woman, gender expectations and ideologies contribute the decisions-making process of various officials such as prosecutors, judges, probation officers and police officers. For example, there are studies showing that gender bias has happened in arrest, prosecution, dismissal of cases, probation and parole in the United States (see Belknap 2001). Therefore, in the production of female crime outcomes, various factors are crucial. We need to explore the various mechanisms in a detail way in the future research. Not only are the social control mechanisms besides criminal justice system important, but also the processes within the criminal justice system are important to understand the response to women offenders. Criminal justice system does not operate in a vacuum. It is affected by the other social factors and social control mechanisms of the society. Therefore, we need to think the interactions between various social control mechanisms and criminal justice system to explain the factors leading to the low rates of women under the criminal justice supervision.

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