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Outdated Ideas About Violent Crime Hurt Victims and Trap Offenders

By F. T. Green | March 12, 2018



Adi Talwar

Almost 40 years after her parents were killed, Amber Grumet still feels insecure, as though something might go wrong at any time. The lengthy sentences imposed on the two young women responsible for the murders have not helped.

On August 21st, 1979, two girls aged 17 and 21 entered Rose and Louis Feit's apartment in Flatbush, Brooklyn and demanded money. Rose refused, so the girls grabbed a knife and a potato peeler out of the kitchen drawer. Rose Feit, who was 73, was left with 28 stab wounds, according to court records. Louis, who was 80, had 59. Both died of their injuries.

Valerie Gaiter, the 21-year-old, was convicted of two counts of robbery and two counts of second-degree murder. Almost 40 years later, she's still technically a "violent offender." It's a label that increasingly defines American ideas of who ought to be in prison. But statistically she has long been among the people at Bedford Hills Correctional Facility least likely to ever commit another crime.

That's not just because she'll be in prison until she's at least 71. Valerie Gaiter would still be less likely to reoffend even if she'd been released decades ago, studies indicate. But sentencing policies in the U.S. continue to be founded on fear-driven misconceptions of who poses a danger to society, experts say. That's why recent criminal justice reforms exclude people like Gaiter, as well as people guilty of sexual offenses, in spite of evidence that they're generally the most promising candidates for shorter sentences.

"All of the innovative and more progressive measures we've been putting in place to reduce the prison population and make sure people don't come back, they draw a bright line between inmates who are seen as nonviolent and those seen as violent," says Michele Deitch, senior lecturer at The University of Texas School of Law. "And it's not a distinction that really makes any sense."

Rethinking punishment — for some, but not others

By the mid 2000s, there seemed to be a shift away from punitive criminal justice. Politicians began talking about being "smart on crime," rather than just "tough," and there was a new focus on the fiscal costs of imprisoning people, if not the human costs. Lawmakers started turning to alternatives to prison, especially for people with nonviolent drug offenses, such as expanding the use of parole. Incarceration

rates have dropped as a result: There were about 52,000 people in New York State prisons in 2016, down from almost 63,000 in 2006.

But the changes were really just fine-tuning the line between the people society is afraid of and those at whom we're merely mad, explains the 2016 paper by Christopher Seeds, "Bifurcation nation: American penal policy in late mass incarceration." Prison remains unchanged as the place to lock up "real criminals," the people we fear.

There isn't a straightforward correlation between the horror of someone's crime and their threat to society going forward, however. That statistical reality underpins many efforts to reform the justice system.

A key part of a recent proposal to close the jails on New York City's Rikers Island, for instance, rests on incarcerating fewer defendants, which would include some charged with violent crimes. Beyond the fact that defendants are presumed innocent, risk assessment data shows that there's sometimes shockingly little public safety rationale for locking someone up

(https://www.courtinnovation.org/sites/default/files/documents/NYC_Path_Analysis_Final%20Report.pdf). A man charged with murdering his spouse is one striking example of someone especially unlikely to hurt anyone else while he remains free, explain Greg Berman and Julian Adler of the Center for Court Innovation, who consulted on the Rikers proposal.

"People use charge severity as a proxy for risk," Berman says. "When you really look at the numbers, those two things are almost totally disconnected."

Statistics notwithstanding, it continues to be politically dangerous to appear "soft" on crime. As a result, politicians often ratchet up punishments for people with violent offenses in tandem with lowering them for others, namely drug crimes, explains a recent paper, "The End of an Era? Understanding the Contradictions of Criminal Justice Reform," by Katherine Beckett, Anna Reosti, Emily Knaphus.

The dropping incarceration rate obscures, for example, the soaring number of people sentenced to life in prison without a chance at parole, says Ashley Nellis, senior research analyst at The Sentencing Project. There are roughly 2,400 fewer people in New York State doing time for violent felonies (including both for murder and for rape) in 2016 than in 2006. But the number of inmates serving life without parole actually rose over that same period, from 161 to 275.

"We have to at some point, now or later, deal with the fact that about half of the people in state prisons are there for a violent crime," Nellis says. "If we truly want to make a dent in our prison population we're going to have to rethink how we punish and how we respond to people who commit violence."

What the victims think

Crime survivors, as well as the families of homicide victims, have long been left out of the discussion of what criminal justice should look like.

Rose and Louis Feit's daughter, Amber Grumet, couldn't bring herself to attend the trial. But she decided to go to the sentencing, flanked by a cousin and a close friend. Grumet heard Roslyn Smith, the 17-year-old, and Gaiter each get 50 years to life in prison for the murders of her parents. She remembers feeling pleased.

But today, almost 40 years later, Grumet still feels insecure, as though something might go wrong at any time. Telling someone what happened to her parents can leave her "gone" for four days—semi-functioning through a haze of grief and anger.

"I fight very hard for my own stability," Grumet says in an interview. She's now in her 80s, and she looks fragile. But she dresses loud: That day she wore an orange jacket, red pants, a rainbow scarf, and a sequined shirt. She says the festive clothes cheer her up.

Grumet doesn't know if she ever wants to see Gaiter or Smith released from prison. But she also thinks the justice system should emphasize rehabilitation, and that sentences are too long. Prisons should do away with the "clank clank" of metal bars and let inmates live with dignity, she says.

"I'm very torn between my own individual situation and between my politics and philosophy, and I exist that way. For years and years and years I tried to bring myself together into one human being," she says. "I finally gave up. That's the way I exist."

A recent study suggests that Grumet's feelings may reflect broader trends among people hurt by crime. Both crime survivors and the family members of murder victims want the justice system to prioritize rehabilitation over punishment, according to a 2016 survey, Crime Survivors Speak. Overwhelming majorities support shortening prison sentences to emphasize treatment and prevention, for example—even among the survivors of serious, violent crimes.

At the same time, the justice system often sidelines survivors of crime and people like Amber Grumet, reducing them to little more than onlookers. Technically, crimes are actually committed against the government, not the victim.

“One mother spoke of her courtroom experience, stating, ‘It’s just like we were bugs. We were a nuisance in the court,’” reads a 2014 study, “The Experiences of Homicide Victims’ Families With the Criminal Justice System.” “This process, which has been set in motion by the death of their loved one, left little room for their input, voice, or interests,” authors Christine Englebrecht, Derek T. Mason, and Margaret J. Adams conclude.

This approach can feel upsettingly “defendant focused”—victims and those close to them have little agency and scant institutional support, the study found. People get ejected from courtrooms for expressing emotion, because the spectacle would deny the defendant a fair trial. Even “victim impact statements” leave some people feeling frustrated—they must address the judge rather than the person who hurt them, and a defense lawyer’s objections can strafe them in a vulnerable moment. The justice system often disappoints people or even traumatizes them anew—“secondary victimization,” as academics call it.

Part of Grumet’s ambivalence comes from how little she knows about the people who killed her parents. She doesn’t know how or if they’ve changed over the past several decades. She says she’d want to meet them face to face to get a sense of what they’re like now, but she also isn’t sure if she could handle that. She wonders if Gaiter and Smith even know that their victims had children, “that they left two orphans.” (Her older brother, Melvin Feit, died in 2006.)

In fact, until the subject came up during an interview at Bedford Hills Correctional Facility this fall, Valerie Gaiter did not know Amber Grumet existed.

“I didn’t know. I didn’t know that,” Gaiter says. “I will remember that name for the rest of my life. Amber.”

“I ask her forgiveness.”

The murder before

Valerie Gaiter traces her path to Bedford Hills back to the murder of her older brother, Michael, when she was 15 years old. He was the first brother who gave her a piece of gum, the first to take her to a pool hall, and the first she ever lied for—after she helped him sneak back into their house through a window.

Soon after he died, Gaiter ran away from home for six months. She ended up in Connecticut pickpocketing with a girl named Agnes. Gaiter’s role was to jostle the marks, but she soon learned to pickpocket by herself. Then Agnes found money in Gaiter’s sneakers.

“When I woke up she had my hair in her hand with the scissors, and she told me to get on my knees. She threatened to cut off all my hair if I didn’t tell her where I got the money from,” she says. “Eventually when she went to sleep I escaped, called my mother and they came to pick me up.”

After returning home, she continued on the same trajectory. She kept pickpocketing, and soon escalated to sticking people up and robbing corner stores, up until the night she and Smith murdered Rose and Louis Feit.

She committed extraordinary violence. But labeling a person as “violent” isn’t criminologically helpful, experts say. One problem is that “violent crime” is a sprawling category: The US doesn’t even have a single “adequate definition” of what violent crime is, according to a spokesperson for the U.S. Sentencing Commission. And because everything from serial murder to domestic violence to a bar fight falls under its heading, “violent offenders” often don’t have much in common.

The boundaries of the term can be fuzzy, too, explains Todd Clear, distinguished professor at Rutgers’ School of Criminal Justice. Is it violent if someone paints a squirt gun black to stick up a gas station? Is the getaway driver from a violent crime guilty of one, too? What about the people prosecutors go after for lesser crimes to try to ensure a conviction? Remember Al Capone?

Another issue is that peoples’ criminal histories don’t fit into tidy, criminological categories. Someone’s prior crime has a weak correlation with their next. The Bureau of Justice Statistics looked at people arrested for crimes within five years of their release from prison, and compared the types of the crimes, each of which were classed as either violent, drug, property, or public order. They found that if the initial crime was violent, there was only a 33 percent chance a future arrest would be for violence, too. That was barely higher than people initially incarcerated for crimes in the public order, property, or drug categories, who clocked in at 29, 28 and 25 percent respectively.

At a more fundamental level, the data on people who have committed violent crimes actually shows that they’re the least likely to reoffend. People who committed murder, for example, had the single lowest rate of rearrest in the five years following their release, according to BJS stats (<https://www.bjs.gov/content/pub/pdf/rprtso5p0510.pdf>). The rate for people guilty of rape was also among the lowest.

And that’s likely not just because serious crimes command the longest sentences. The BJS looked at rearrest rates for people imprisoned for each of those four crime types organized by how old they were when they were released. At every age range—starting with people released when they were no more than 24 years old, and at four year intervals after that—people sentenced for a violent crime had the lowest rearrest rates.

Age itself may be the most important data point, and one of the most neglected. Valerie Gaiter is now 60 years old. She says she has changed, and common sense and statistics both support that idea. A person's criminality typically peaks when they're about 16 years old and drops from there—to relative non-existence by their mid-thirties, according to a seminal study (http://scholar.harvard.edu/files/sampson/files/2003_crim_laub_1.pdf) of the “life-course” of lawbreaking.

Gaiter has also checked basically every box for self-improvement that Bedford Hills has offered her. She finished her high school education and a college degree in calligraphy. She trains puppies through a program that sends them to be care dogs for veterans. She's taught her fellow inmates to deal with their aggression. She's also earned a room in the “super honor dorm” where she has a garden and her own room with a key. Her anecdotes about life in prison are typically about a time someone tried to pick a fight with her and how she scornfully turned the other cheek.

“That kid, that dummy—that's not me,” she says of her younger self. “I learned how to be a woman; I learned how to survive; I learned how to hold my head up.”

Rehabilitation for victims

Amber Grumet knows none of this, and she may not want to. But given that Gaiter may be released someday—at least 95 percent of the people now in state prisons will eventually walk free—it's worth considering what might make that less traumatic for Grumet.

But there's no big picture research on how the justice system can engage—or not engage—with victims to help them recover, says Meg Garvin, the executive director of the National Crime Victim Law Institute. And there's little money for new initiatives—about one percent of New York State's spending on the justice system goes to its Office of Victim Services.

The justice system only cares about crime survivors and the families of homicide victims insofar as they can help secure a conviction, says John Cutro, a restorative justice practitioner with the New York State Defenders Association. Cutro argues that prosecutors' interests actually conflict with victims' recovery—the more traumatized the witness, the more powerful their testimony, the thinking goes.

“If they get help, they're more composed on the witness stand. They're not, quote, as credible, because they don't look disheveled and destroyed,” Cutro says.

People become disposable after they testify, he added. “Only to the extent that you're needed as a witness would they extend anything at all.”

Almost 40 years ago, at Gaiter's sentencing, Grumet says the judge noticed her in the audience and called her over. She asked her who she was and why she was there. Grumet remembered the moment warmly—the judge had “great sympathy,” she says.

That was also the first and last time anyone in the justice system reached out to her.

“Nobody's helping me,” Grumet says. “There was outrage after outrage, and it never stops.”