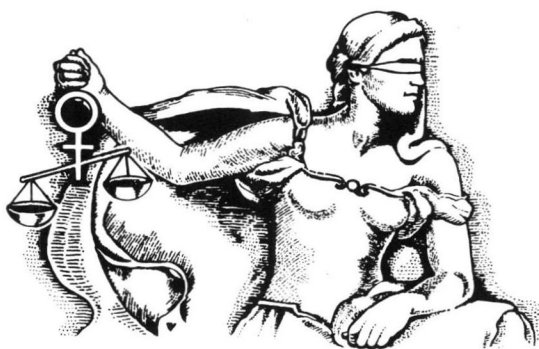


# WOMEN IN THE CRIMINAL JUSTICE SYSTEM

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CLARICE FEINMAN



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**WOMEN  
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# PREFACE

Women in the criminal justice system (criminals, correction officers, police officers, lawyers, and judges), are poorly understood by the public. Casual and sometimes sensational exposure in the news media does not provide the kind of information that makes for understanding. Even when discussed by the academy or by the government, explanations of the behavior of women are often distorted by a reliance on traditional beliefs about the nature of women and their place in society. As a result there exists much misinformation, simplification, and a great tendency to rely on stereotypes and superficial theories to interpret the words and actions of women.

Unfortunately, there is still relatively little material available examining women in the criminal justice system. Information in newspapers and magazines is based on little real evidence and usually either repeats old stereotypes or uncritically accepts new ones. Most of the scholarly literature since the 1960s focuses on women criminals and women in prisons. The professionals in the system have received less attention: a few books on policewomen and lawyers and none dealing with women as correction officers. Articles in journals cover some areas but ignore others.

This book has been written to provide a more reliable source of information on women in the criminal justice system. At the most obvious level, it gathers material from many different sources and offers a wide-ranging examination of the current situation and the historical factors that produced it. At another level, it interprets this information according to ideas more in harmony with the facts and less influenced by traditional stereotypes. It is an attempt to see women in criminal justice from a fresh perspective, outside the narrowly defined ideas that have predominated until very recently.

To some degree, this book owes a debt to the civil rights movement of the 1960s, which challenged stereotypes about black Americans and thus called into questions stereotypes about other groups. It also owes much to the women's movement, which has questioned the accepted role of women. It owes most, however, to actual experiences and observations centered on the New York City Correctional Institution for Women on Rikers Island, and to conversations with prisoners, correctional personnel in jails, prisons, and departments of correction, and to police

personnel, lawyers, and judges in a number of cities. For, in the final analysis, theories and statistics are valuable only if they correspond with the realities of life in prisons, police stations, and courtrooms.



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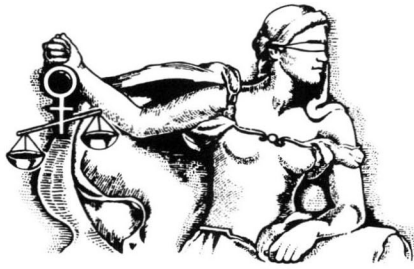
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**CRIMINAL**  
**JUSTICE**  
**SYSTEM**

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# — One —

## INTRODUCTION

In the modern criminal justice system women are viewed according to attitudes that derive in large measure from classical Greece and Rome and medieval Europe. Both pagan mythology and Judeo-Christian theology present women with a dual nature, either as madonnas, or as whores.

### THE MADONNA/WHORE DUALITY

The dual perception seems to have arisen from the two sharply different ways in which female sexuality affected men. On the one hand, women produced children, which was good and necessary for the survival of the family and community. Exactly how this was done was a mystery, although it was known somehow to relate to the equally mysterious phenomenon of menstruation. On the other hand, women inflamed men's passions and prompted them to lose control of themselves, again in ways that were often difficult to explain. Clearly women were different from men and possessed unique powers that made them both necessary and dangerous. It was not surprising that men, in their effort to come to terms with female sexuality, should categorize women according to the degree to which they fit one role or the other, either madonna or whore.<sup>1</sup>

In the Old and New Testaments, a good woman helps her man and is submissive and loyal; Ruth said, "Whither thou goest, I will go."<sup>2</sup> A good

woman, as in the Song of Solomon, brings life: "Thy belly is like a heap of wheat, set about with lilies."<sup>3</sup> The evil nature of women destroys men by using sex, just as Delilah robbed Samson of his strength and betrayed him. Ecclesiasticus warned, "Wine and women will make men of understanding to fall away."<sup>4</sup>

This concern over the potentially destructive nature of women provided the basis for persistent beliefs that women were morally, physically, and intellectually inferior to men. Zeus showed his superiority over women by giving birth to Athena and Dionysus, usurping from female divinities their unique procreative powers. Pandora, the first woman, according to Greek mythology, could not resist the urge to open the mysterious box given her as a marriage gift; out of it flew all the evils of this world, leaving behind only Hope. Similarly, in the Old Testament it was a woman who ate the forbidden fruit and caused the fall from Paradise.<sup>5</sup>

Implicit in the madonna/whore duality is women's subservience to men, who assumed the role of protectors of the madonnas and punishers of the whores. Eve was created from Adam's rib because it was "not good that the man should be alone; I will make a helpmeet for him."<sup>6</sup> In the New Testament Paul declared that "the man is not of the woman; but the woman is of the man. Neither was the man created for the woman; but the woman for the man."<sup>7</sup>

## WOMEN'S CRIMES AND PUNISHMENTS

The inferiority of women and their division along the madonna/whore duality were major factors in defining the nature of female criminal behavior. In classical Greece and Rome and medieval Europe, the primary role of the proper woman was as the mother of legitimate male heirs for the continuance of her husband's name and property. A virgin maid was valued because through a marriage contract she became the medium of exchange for wealth and power. Adultery was therefore a serious crime for a woman of a propertied marriage, since it threatened the purity and the legitimacy of the next generation. An adulterous wife could be put to death, and a husband who killed his wife and her lover in *flagrante delicto* suffered no legal penalty. ("Paramour homicide" remains a legitimate legal defense even today.)<sup>8</sup>

Different standards prevailed among the lower-class women and slaves, many of whom were prostitutes or "loose" women. Prostitution was condoned by Greco-Roman society and tolerated by the medieval church, as long as the women were of lower-class origin. Even in modern

times brothels operated quite openly in many countries. In England during the eighteenth century, proponents of public brothels argued that such establishments would protect women and children from venereal disease if the prostitutes were examined by government medical officials. Only with the great reform movements of the Victorian era did the brothels go underground and prostitution become a crime.<sup>9</sup>

Unlike adultery and prostitution, which tended to follow class divisions, infanticide touched all women. In the Greco-Roman world the exposure of unwanted infants, usually in places specifically set aside for the purpose, was a legal and socially acceptable means of regulating family size and composition. The spread of Christianity, which condemned infanticide as a form of murder, gradually did away with exposure, but new forms of infanticide arose. Studies of infanticide in England in the thirteenth and fourteenth centuries attest to the common occurrence of "overlaying," suffocation of the child being nursed when the mother rolled the wrong way. If the mother was married and living with her husband she was rarely punished, except perhaps with a public remonstrance. But the unmarried mother might be labeled a witch and could be stoned to death or buried alive.<sup>10</sup>

Yet another group of female offenses emerged in the sixteenth century, as the growth of commerce and urbanism produced large numbers of homeless people who had no regular livelihood. Paupers moving from parish to parish and town to town created a social and financial burden and contributed to the incidence of prostitution, theft, and more serious crimes. A common response was to make poverty a crime punishable by incarceration. In England, to cite one case, a series of poor laws were enacted. Vagrants and paupers with no home or employment were whipped, branded, driven from the towns, enslaved for up to two years, or placed in workhouses where they worked at spinning and carding wool or mending. Unmarried mothers were sent to houses of correction as a punishment because their illegitimate children were charges on the parish. If they continued to have bastards they were returned to houses of correction until they were deemed reformed. By the Act of 1661, the government authorized contractors to transport women from the workhouses and houses of correction to the American colonies. Some of the women were thieves and prostitutes, but others, perhaps a goodly number, were guilty only of poverty, indebtedness, or unemployment. In contrast, upper-class women offenders could take advantage of "Benefit of Clergy," which allowed them to do penance or serve the church in lieu of confinement in a prison or workhouse; they thus were able to remain free and live with their families.<sup>11</sup>

## WOMEN REFORMERS

In addition to punishment, women offenders also were subject to attempts at reform. The reformers, usually upper-class women, concentrated on the most fallen of women, the prostitutes. Basing their program on Christian teaching and exhortation, they offered as role models their own exemplary lives. In order to accomplish their goals, women reformers tried to isolate the sinners from corrupt elements, primarily men. Residences were established where women offenders could live and learn and where unsullied women could do the reforming and teaching.

One of the earliest attempts to apply these methods of reform took place in the sixth century in the Byzantine empire. The empress Theodora initiated a plan by which over 500 prostitutes were confined in a convent called Repentance (*Metanoia*) for the purpose of restoring them eventually to the church and the home. Although the project failed, it did establish a precedent. Similar experiments took place in medieval Europe, and by the fourteenth century, with the encouragement of the Church, a Magdalen Home opened in Vienna, where fallen but repentant women could live until they were ready to return to society as good Christians. Magdalen Homes, forerunners of present-day halfway houses, opened in other European cities, and in 1830 the Magdalen Society started a residence, the Magdalen Home, in New York City.<sup>12</sup>

The women who helped reform the prostitutes and other women offenders acted in accord with traditional female roles. They served God and protected the family and community by reforming criminal women. Therefore, although they went beyond the singular homemaker role, they found acceptance in their home, church, and community because they provided a necessary function in dealing with problems in the community. In addition, they were women beyond reproach in terms of their social class and their adherence to traditional values of womanhood.

Women reformers in the United States followed the pattern established in Europe. They were at first mostly from the upper class, white and traditional. They focused on dealing with women and children, attempting to isolate them in homes for the purpose of moral restoration. They did not seek to change the social order but rather to preserve it, and in so doing they gained the respect of the community. Because U. S. culture was Anglo-American, the standards set by reformers were based on values important to white Protestants, and because the reformers came from the upper class, the goals were based on the values of that class.



## LAWS DEFINING WOMEN'S PLACE

Both the woman reformer and the woman offender continued to be evaluated and defined in terms of traditional attitudes, and these attitudes were reflected in law. The men who wrote and interpreted the law considered it their responsibility to secure the safety of women, the family, and the community: "That God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply, and execute the laws was regarded as an almost axiomatic truth."<sup>13</sup> It followed that certain areas of life could be entered by women only under carefully controlled circumstances. This was true for employment, where the principle of classification by sex was reinforced in *Muller v. Oregon* in 1908. The U.S. Supreme Court declared constitutional the right of states to pass labor laws for the protection of women in specific job categories. The Court based its decision on the traditional belief that woman's biology, her sexual cycle, made her dependent on man. According to Justice Brewer, "That woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence is obvious."<sup>14</sup>

Recognizing that some women had to work, legislators and judges sought to protect womanhood and motherhood, but in reality they harmed women by restricting their ability to work and earn a living on an equal basis with men. Such protection made it difficult for women to have careers in criminal justice, for it reinforced traditional attitudes and thus prevented women from receiving the same work experience, promotions, and financial rewards as men.

That women had to be protected from the sordid facts of life to preserve their purity led to their exclusion from jury duty; even today automatic exemptions are available in many jurisdictions. Exclusion stems from the English common-law precedent that gave the right only to men. In 1869 the U.S. Supreme Court supported the common-law exclusion by deciding that states could constitutionally limit jury duty to men only. Women first gained the right to sit on juries in Utah in 1898. As of June 1975, five states provided an automatic exemption for men or women who could demonstrate that they had legal custody or care of a child, and four states provided automatic exemptions for women. This is despite the U. S. Supreme Court decision in January 1975 in *Taylor v. Louisiana* that women could not be excluded from jury duty solely because of sex.<sup>15</sup>

Although women gained the right to serve on federal juries by the

Civil Rights Act of 1957, states have continued to impose restrictions. In *Hoyt v. Florida* in 1961, U. S. Supreme Court Justice Harlan, delivering the opinion of the Court, wrote: "Despite the enlightened emancipation of women from the restrictions and protections of bygone years, and their entry into many parts of community life formerly considered to be reserved for men, woman is still regarded as the center of home and family life."<sup>16</sup> Rejecting the federal court decision in *White v. Crook* that held exclusion from jury duty a violation of a woman's Fourteenth Amendment right to equal protection, the Mississippi Supreme Court in 1966 upheld the state law "absolutely" excluding women from jury duty. In the court's opinion, "The legislature has the right to exclude women so they may continue as mothers, wives, and homemakers, and also to protect them (in some areas they are still upon a pedestal) from the filth, obscenity and noxious atmosphere that so often pervades a courtroom during a jury trial."<sup>17</sup>

Just as the proper woman, the madonna, had to be protected from the world, so the offender, the whore, had to be punished. But the punishment had to be fitted to the unique nature of women. Thus, traditional attitudes about the nature of women influenced state laws aimed at the sentencing and rehabilitation of women offenders. According to these laws, it was mandatory that women "must" be sentenced for an indeterminate term, whereas men "might" be sentenced for either an indeterminate or a determinate term upon conviction for the same type of crime.

One of the best known examples of such discriminatory legislation was the Muncy Act of Pennsylvania, which stated that any female pleading guilty to or convicted of a crime punishable by imprisonment of one year or more must be sentenced to the state prison for women, and that her sentence "shall be merely a general one... and shall not fix or limit the duration thereof."<sup>18</sup> This meant that compared to men convicted of similar crimes, women often served longer sentences and had to wait longer before becoming eligible for parole.

The rationale for the different treatment of men and women was based on the old view of different natures. This is evident from the opinion of a lower Pennsylvania court, which said in upholding the Muncy Act:

...the legislature reasonably could have concluded that indeterminate sentences should be imposed on women as a class, allowing the time of incarceration to be matched to the necessary treatment in order to provide more effective rehabilitation. Such a conclusion could be based on the physiological and psychological makeup of women, the type of crime committed by women, their relationship to the criminal world,