



**WOMEN
IN THE
CRIMINAL
JUSTICE
SYSTEM**

Second Edition

CLARICE FEINMAN

WOMEN IN THE
CRIMINAL JUSTICE SYSTEM
by
Clarice Feinman

SECOND EDITION

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WOMEN IN THE
CRIMINAL JUSTICE SYSTEM
SECOND EDITION

To
John
and to
Jonathan and Shirley

PREFACE TO THE SECOND EDITION

From a history of women in the criminal justice system we gain some understanding of U.S. values and behavior in regard to race, ethnicity, gender, and socioeconomic class. It makes us aware that the blindfold worn by Justice prevents her from seeing that the scales of justice are not balanced but, rather, are weighted in favor of some and against others. I have tried to make this point clearer in this second edition by adding a chapter on incarcerated women and by including information about minority women in all chapters. In addition, I have expanded all the chapters, bringing the information up to date, indicating the many changes that have taken place in the intervening years since the publication of the first edition in 1980. I explain why the changes occurred and what consequences have ensued from those changes. The preface to the first edition remains relevant, with the single exception that more literature exists about women throughout the criminal justice system than there was in 1980.

I would like to thank the women in the criminal justice system, for they have provided me with the incentive and information required to write this second edition. Women in police departments, courts, departments of correction, and prisons and jails in the United States, Israel, England, and Australia have been eager to discuss their experiences as professionals and as inmates. Their accents may be different, but their experiences and aspirations are similar.

I would also like to thank my editor, Lynda Sharp, for her enthusiasm about the expanded edition of the book.

PREFACE TO THE FIRST EDITION

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 the behavior of women is discussed by academe or by government, explanations 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 prison. 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 question 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 to the realities of life in prisons, police stations, and courtrooms.

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PART I

INTRODUCTION

That man over there says that women need to be helped into carriages, and lifted over ditches, and to have the best places everywhere. Nobody ever helps me into carriages, or over mud-puddles, or gives me any best place! And ain't I a woman? Look at me! Look at my arm! I have ploughed and planted, and gathered into barns, and no man could head me! And ain't I a woman? I could work as much and eat as much as a man—when I could get it—and bear the lash as well! And ain't I a woman? I have borne thirteen children, and seen them most all sold off to slavery, and, when I cried out with my mother's grief, none but Jesus heard me! And ain't I a woman?

(Sojourner Truth, "Ain't I a Woman?" in *Feminism: The Essential Historical Writings*, edited by Miriam Schneir [New York: Vintage Books, 1971], pp. 94–95).

1

WOMEN'S ROLE AND PLACE: A HISTORIC DEBATE

Fear of the nonconforming woman has transcended ethnic, racial, and religious bounds in almost all civilizations throughout history. The nonconforming woman can be one who questions established beliefs or practices, one who engages in activities traditionally associated with men, or one who commits a crime. Regardless of the activity, such a woman generates fear and anxiety among both women and men, and is viewed as a threat to social stability. Consequently she is subject to informal and formal sanctions and punishments intended to control her and to serve as a warning to others.

It is not surprising, then, that women in the criminal justice system are often considered as nonconformists and treated with hostility and rejection. The most obvious recipient of society's scorn is the female offender. However, the professional woman is also perceived as dangerous because she questions established beliefs about the role and place of women in society, and enters fields once considered the province of men only. As a consequence, both groups of women, offenders and professionals who seek equality with their male colleagues, continue to face the formal and informal disapproval of many women and men in the criminal justice system, and in society at large, because they are perceived as a threat to the social order and as a challenge to traditional cultural beliefs about women.

MADONNA/WHORE DUALITY

These attitudes derive in large measure from mythology and Judeo-Christian theology that present women as having one of two natures, either madonna or whore. The dual perception seems to have arisen from the two sharply different ways in which female sexuality has 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 therefore 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 the role of either madonna or whore.¹

Implicit in the madonna/whore duality is women's subservience to men, who assumed the role of protectors of the madonna and punishers of the whore. This is clearly stated in the Old and New Testaments. 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."² And Paul declared that "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."³ A good woman is submissive and loyal; Ruth said, "Whither thou goest, I will go,"⁴ A good woman, as in the Song of Solomon, brings life: "Thy belly is like a heap of wheat, set about with lillies."⁵ A good woman is a loyal, submissive wife who serves her husband, and for this she is honored and protected.

The evil woman, on the other hand, destroys man and brings pain and ruin. Eve ate the forbidden fruit and caused the fall from Paradise. Pandora, the first woman, according to Greek mythology, could not resist the urge to open the mysterious box given to her as a marriage gift. Out of it flew all the evils of this world, leaving behind only hope. The evil woman manipulates and ruins man with lies and sex, just as Delilah robbed Samson of his strength and betrayed him. God punished Eve for her transgressions: "I will greatly multiply thy sorrow and thy conception; in sorrow thou shalt bring forth children; and thy desire shall be to thy husband and he shall rule over thee."⁶ The evil woman would be redeemed only by painfully bearing children and by being controlled by her husband.

This concern with the potentially destructive and carnal nature of woman provided the basis for persistent beliefs that woman was inferior to man morally, physically, and intellectually. Zeus, for example, showed his superiority over woman by giving birth to Athena and Dionysis, usurping from female divinities their unique procreative powers.⁷

Thus did mythology and Judeo-Christian theology establish the basic principles of theories concerning women that remain so deeply engrained in the cultural perceptions and values of almost all societies. As a potential force for destruction, women had to be controlled by men and kept in their ordained role and place: to serve their husbands and bear children. If women remained within their prescribed sphere, men, families, and communities would remain orderly and safe.

WOMEN'S CRIMES AND PUNISHMENTS

The madonna/whore duality and the socioeconomic class of a woman were major factors in defining the nature of female criminal behavior and punishment. In classical Greece and Rome and medieval Europe, the primary role of a woman of the propertied class was wife and mother, and she was especially honored if she produced a legitimate male heir for the continuance of her husband's name and estate. A virgin maid was valued because, through a marriage contract, she became a medium of exchange for wealth and power. Consequently, a "spoiled" maid could be killed, banished, or confined in a convent by her father or other male guardian. Adultery was a very serious crime for a woman in a propertied marriage, since it threatened the purity, and therefore the legitimacy, of the next generation and heir. 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.⁸

Different standards prevailed among the lower-class women and among slaves, many of whom were prostitutes or "loose" women. Prostitution was condoned by Greco-Roman society as long as the women were of lower-class or slave origins. Prostitutes and mistresses were tolerated by the medieval church when titled and propertied men, whether married or unmarried, were those who kept mistresses and frequented brothels. In fact, brothels operated quite openly in many countries in medieval Europe. In England, as late as the eighteenth century, proponents of public brothels argued that such establishments would protect respectable women and their 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.⁹

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 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 over on him or her. If the mother was married and living with her husband, she was rarely punished, except perhaps with a public reprimand. The unmarried mother might be labeled a witch, and could be stoned to death or buried alive.¹⁰

Another group of offenses affecting women emerged in the sixteenth century, as the growth of commerce and cities 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, for example, 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 spun and carded wool or did mending. Unmarried mothers were sent to houses of correction as a punishment because their illegitimate children were charges of 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 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, during this period women of the propertied class who violated civil or criminal codes continued to be treated differently from lower-class women. They were allowed to do penance or serve the church in lieu of confinement in a workhouse and thus were able to remain free and live with their families.¹¹

WOMEN REFORMERS

In addition to punishment, women offenders were subject to attempts at reform. The reformers, women of the propertied class, concentrated on the most fallen of women, the prostitutes. Basing their program on Christian teaching and exhortation, they offered their own exemplary lives as models. In order to accomplish their goals, women reformers tried to isolate the sinners from corrupt elements, primarily men. Residences were established where the women offenders could live and learn, and where unsullied women would 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, there opened in Vienna a Magdalen Home 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, appeared in other European cities, and in 1830 the Magdalen Society established a residence in New York City.¹²

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 fulfilled a necessary function by 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 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 in order to protect 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."¹³ (It followed that certain areas of life could be entered by women only under carefully controlled circumstances. This was true of 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. Its decision was based on the traditional belief that woman's biology, her sexual cycle, made her dependent on man. According to Justice David Brewer, "That woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence is obvious."¹⁴

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 them from receiving the same work experiences, promotions, and financial rewards as men.

(The belief that women had to be protected from the sordid aspects of life in order to preserve their purity led to their exclusion from jury duty, and

even today automatic exemptions are available in many jurisdictions. Exclusion was based on the English common-law precedent that gave the right to serve on juries only to men. In 1879 the U.S. Supreme Court supported the common-law exclusion by deciding that states could constitutionally limit jury duty to men only. Not all states took advantage of this option; Utah gave women the legal right to serve on juries in 1898.¹⁵

Although women gained the right to serve on federal juries by the Civil Rights Act of 1957, states continued to impose restrictions. In 1961, in *Hoyt v. Florida*, the U.S. Supreme Court upheld Florida's law that "permitted" but did not "require" women to serve on juries. Justice John Harlan, delivering the opinion, 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."¹⁶ The Mississippi Supreme Court in 1966 upheld the state law "absolutely" excluding women from jury duty, despite the federal court decision that year, in *White v. Crook*, that held exclusion from jury duty to be a violation of women's Fourteenth Amendment right to equal protection. In the Mississippi Supreme 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."¹⁷

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 despite the 1975 U.S. Supreme Court decision in *Taylor v. Louisiana* that women could not be excluded from jury duty solely because of sex, four states provided automatic exemptions for women.¹⁸ However, in the decade that followed, states revised their laws on jury duty in compliance with federal antidiscrimination legislation and no longer excluded women from jury duty. The new laws no longer singled out women, but dealt with issues or specific reasons for exemptions that were gender-neutral. For example, persons legally responsible for the care of children could be exempted from jury duty for the period of time that was necessary to care for the children. Exemptions were to be temporary and not be meant to exclude anyone. However, in practice women could be encouraged to apply for exemptions or discouraged from taking an opportunity to apply for or accept jury duty.

Just as the proper woman, the madonna, had to be protected, 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 governing the sentencing and rehabilitation of women offenders. According to these laws, women "must" be sentenced to an indeterminate term, whereas men "might" be sentenced to either an