

"Women and Crime": The Female Offender

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Source: *Signs*, Vol. 12, No. 1 (Autumn, 1986), pp. 78-96

Published by: The University of Chicago Press

Stable URL: <https://www.jstor.org/stable/3174358>

Accessed: 06-01-2020 18:16 UTC

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## **WOMEN AND CRIME: THE FEMALE OFFENDER**

**MEDA CHESNEY-LIND**

Placing the discussion of women's crime and the response it evokes into an explicitly feminist perspective requires use of what will be for some an unfamiliar approach to crime—one that acknowledges its social context of patriarchy. While criminals are generally thought to be very different from "normal" people, the majority are actually "ordinary individuals who, for the most part, engage in sporadic and unskilled crimes."<sup>1</sup> The role played by social-control agencies—the police, the courts, the prisons—in labeling and shaping the "crime problem" is frequently underestimated. We often also overlook the important role of the concept of criminal as "outsider" in the maintenance of the existing social order.<sup>2</sup> Clearly, harsh public punishment of a few "fallen" women as witches and whores has always been integral to enforcement of the boundaries of the "good" woman's place in patriarchal society. Anyone seriously interested in examining women's crime or the subjugation of women, then, must carefully consider the role of the contemporary criminal justice system in the maintenance of modern patriarchy.

<sup>1</sup> Don C. Gibbons, *Delinquent Behavior* (Englewood Cliffs, N.J.: Prentice Hall, Inc., 1980), quote on 3.

<sup>2</sup> Howard S. Becker, *Outsiders* (New York: Free Press, 1963); and Edwin Schur, *Labeling Women Deviant* (New York: Random House, 1984).

[*Signs: Journal of Women in Culture and Society* 1986, vol. 12, no. 1]  
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## The “liberated” female crook

Undeniably, the most powerful and widely held belief concerning the topic of female criminality is that, as a direct consequence of the women's movement, there has been a dramatic upsurge in women's criminal activity. Women's crime became almost overnight “the shady side of liberation.”<sup>3</sup> This position is not really new; since the 1800s, criminologists have been issuing warnings that the emancipation of women would result in a dramatic change in the character and frequency of women's crime.<sup>4</sup> More recently, when the number of women arrested in the United States climbed by nearly 200 percent between 1960 and 1975,<sup>5</sup> books by two female criminologists linked this dramatic increase to the women's movement. The more widely publicized of the two, Freda Adler's *Sisters in Crime*, directly attributed changes in the number of women arrested to women's struggle for social and economic equality, claiming that “the movement for full equality has a darker side which has been slighted even by the scientific community. . . . In the same way that women are demanding equal opportunity in the fields of legitimate endeavor, a similar number of determined women are forcing their way into the world of major crimes.”<sup>6</sup>

Adler's book was highly readable, but its scholarship was uneven and contradictory. Certainly, it did probe beyond the stereotype of the woman criminal and documented the fact that women and girls were engaging in a wider array of criminal misconduct than had been recognized. Adler's notion, though, that this sort of activity was in some fashion linked to the women's movement—an idea that the national press eagerly highlighted—was probably naive.<sup>7</sup>

Adler was not alone, however, in arguing that the women's movement had caused an increase in female crime. Published the same year as Adler's book, Rita James Simon's *Women and Crime* linked changes in the number of women arrested for property crimes (notably embezzlement and theft) to

<sup>3</sup> Freda Adler, “The Rise of the Female Crook,” *Psychology Today* 9 (November 1975): 42–46, 112–14, quote on 42.

<sup>4</sup> Carol Smart, *Women, Crime and Criminology: A Feminist Critique* (London: Routledge & Kegan Paul, 1976), 71; Otto Pollak, *The Criminality of Women* (New York: A. S. Barnes & Co., 1961), 58.

<sup>5</sup> Federal Bureau of Investigation, *Crime in the United States—1972* (Washington D.C.: Government Printing Office, 1973), 124; and Federal Bureau of Investigation, *Crime in the United States—1975* (Washington, D.C.: Government Printing Office, 1976), 185.

<sup>6</sup> Freda Adler, *Sisters in Crime* (New York: McGraw-Hill Book Co., 1975), quote on 3.

<sup>7</sup> Many new articles appeared in the wake of Adler's book. Features such as Lois DeFleur, “Women Make Gains in Shady World Too” *Honolulu Star Bulletin* (October 23, 1978); and Judy Klemesrud, “Women Terrorists, Sisters in Crime,” *New York Times News Service, Honolulu Star Bulletin* (January 16, 1978) were common.

women's "gains" in employment,<sup>8</sup> and the perspective continues to attract supporters. Richard Deming's *Women: The New Criminals*, portions of two collections edited by Adler, and a number of scholarly articles have appeared in more recent years, and these also have linked the women's movement to the female crime problem.<sup>9</sup>

Challenges to this approach have also appeared. The most important of the early works came from Laura Crites, Carol Smart, and Lee H. Bowker.<sup>10</sup> Marking the beginning of serious feminist efforts to understand female criminality, most such works contained critical reviews of the traditional accounts of women's crime, discussions of discrimination against women in the criminal justice system, and consideration of women as crime victims. Later works would add a concern for women as workers in the criminal justice system, the role of women's victimization in the creation of women's crime, and the history of women's crime.<sup>11</sup>

Clarice Feinman's *Women in the Criminal Justice System* provides a good example of the sort of perspective found in these more recent efforts. She suggests that the ascription of a dual nature to women—the madonna or the whore—has had a unique impact on the women who found their way into the criminal justice system, casting them in roles that not only reinforced this narrow view of femininity but also involved them in its perpetuation. To explain the generally harsh response to relatively trivial female crimes that coexists with the myth of chivalry, Feinman observes that women once cast in the role of "whore" were never the beneficiaries of this orientation. Feinman's work also traces the careers of the criminal justice

<sup>8</sup> Rita James Simon, *Women and Crime* (Lexington, Mass.: Lexington Books, 1975), 46–47. Simon did, however, cite data showing that there had not been an increase in violent crimes committed by women.

<sup>9</sup> Richard Deming, *Women: The New Criminals* (New York: Dell Publishing Co., 1977); Freda Adler, ed., *The Incidence of Female Criminality in the Contemporary World* (New York: New York University Press, 1981), 91–94; Freda Adler and Rita Simon, eds., *The Criminology of Deviant Women* (Boston: Houghton Mifflin Co., 1979) 1–13; George W. Noblit and Janie M. Burcart, "Women and Crime: 1960–1970," *Social Science Quarterly* 56, no. 4 (March 1976): 650–61; Roy L. Austin, "Women's Liberation and Increases in Minor, Major and Occupational Crimes," *Criminology* 20, nos. 3–4 (November 1982): 407–30.

<sup>10</sup> Laura Crites, ed., *The Female Offender* (Lexington, Mass.: Lexington Books, 1976); Smart; Lee H. Bowker, *Women, Crime and the Criminal Justice System* (Lexington, Mass.: Lexington Books, 1978).

<sup>11</sup> Good examples of contemporary feminist approaches to women and crime are Lee H. Bowker, ed., *Women and Crime in America* (New York: Macmillan Publishing Co., 1981); Jane Roberts Chapman, *Economic Realities and the Female Offender* (Lexington, Mass.: Lexington Books, 1980); Clarice Feinman, *Women in the Criminal Justice System* (New York: Praeger Publishers, 1980); Barbara Raffel Price and Natalie Sokoloff, eds., *The Criminal Justice System and Women* (New York: Clark Boardman, 1982); Satyanshu K. Mukherjee and Jocelynn A. Scutt, eds., *Women and Crime* (Sydney: Australian Institute of Criminology, 1981); Nicole Rafter and Elizabeth Stanko, eds., *Judge, Lawyer, Victim, Thief* (Boston: Northeastern University Press, 1982); D. Kelly Weisberg, ed., *Women and the Law* (Cambridge, Mass.: Schenkman Publishing Co., 1982); and Schur (n. 2 above).

madonnas—women police officers, correctional workers, and lawyers—whose entry into the criminal justice system was to a great degree linked to the existence of fallen women in need of saving.<sup>12</sup>

Needless to say, these feminist works have also responded at length to what might be called the “liberation” hypothesis and a few of their points bear repeating. First, since women have not experienced major gains in the economic world, it seems implausible that any wave of female crime could correctly be laid at this door. Jane Roberts Chapman suggests that it is economic discrimination rather than liberation that best explains the character of women’s crime.<sup>13</sup> Second, studies of the characteristics of female offenders showed that they bore no resemblance to the liberated “female crook” being described in the media but were instead minority women drawn from backgrounds of profound poverty who had committed “traditionally female” crimes such as petty theft or prostitution.<sup>14</sup>

Finally, feminist scholars undertook careful examination of the arrest figures and began to question whether there actually had been an increase in serious and violent female crime. They noticed that the dramatic percentage increases in the numbers of women arrested were based on extremely small and possibly unreliable numbers. They also noted that the arrest figures were unadjusted for changes in population composition<sup>15</sup> and that oscillations in the female crime rate are fairly common.<sup>16</sup> Moreover, those who made much of the numbers failed to consider that minor shifts in law enforcement practices could have produced these changes in official rates.<sup>17</sup>

Though a recent book by JoAnn Gora has challenged the liberation hypothesis,<sup>18</sup> the best and most exhaustive evaluation of it is still the work of Darrell J. Steffensmeier. In one paper, he examined the pattern of female criminal behavior for the years 1965–77 and concluded that “females are not catching up with males in the commission of violent, masculine, male-dominated, serious crimes (except larceny) or in white collar crimes.”<sup>19</sup> He did note female arrest gains in the Uniform Crime Report categories of larceny, fraud, forgery, and vagrancy but, by examining these

<sup>12</sup> Feinman, esp. 108–12.

<sup>13</sup> Chapman, 39–76.

<sup>14</sup> Laura Crites, “Women Offenders: Myth vs. Reality,” in Crites, ed., 33–44.

<sup>15</sup> Laurel Rans, “Women’s Arrest Statistics,” *Woman Offender Report* 1, no. 1 (March/April 1975): 2–3.

<sup>16</sup> Carol Smart, “The New Female Offender: Reality or Myth,” in Price and Sokoloff, eds. (n. 11 above), 105–16; and Satyanshu Mukherjee and R. William Fitzgerald, “The Myth of Rising Female Crime,” in Mukherjee and Scutt, eds. (n. 11 above), 127–66.

<sup>17</sup> See Meda Chesney-Lind, “Chivalry Re-Examined,” in Bowker (n. 10 above), 197–224.

<sup>18</sup> JoAnn Gora, *The New Female Criminal: Empirical Reality or Social Myth* (New York: Praeger Publishers, 1982).

<sup>19</sup> Darrell J. Steffensmeier, “Sex Differences in Patterns of Adult Crime, 1965–1977,” *Social Forces* 58, no. 4 (June 1980): 1080–1109, quote on 1080.

gains more carefully, he demonstrated that they were due almost totally to increases in traditionally female criminal activities such as shoplifting, prostitution, and naive check forgery (fraud). He also suggested that changes in enforcement patterns, such as increased willingness of store managers to prosecute shoplifters, the widespread abuse of vagrancy statutes to arrest prostitutes combined with a declining use of this same arrest category to control public drunkenness, and the growing concern with "welfare fraud" might explain changes in female arrests without any necessary changes in the numbers of women involved in these activities.

While it is still a popular viewpoint, the "shady side" of the women's movement has almost without exception eluded serious academic efforts to locate it. Indeed, while it is clear that more women are being arrested and imprisoned, careful analysis of both unofficial and official data fails to support the notion that women have been committing more serious crime during the last two decades.

### **How could she? The nature and causes of women's crime**

On examination of arrest data, one is struck by the fact that the female contribution to serious crime is minuscule. Of those individuals arrested for serious crimes of violence in 1980 (murder, forcible rape, robbery, and aggravated assault), only 10 percent were female. Indeed, women constituted only 15.8 percent of all arrests during that year and virtually all of these were for trivial offenses.<sup>20</sup> Arrests of girls running afoul of the law have been and continue to be for minor crimes (generally shoplifting) and status offenses such as running away from home, incorrigibility, truancy, and other noncriminal offenses for which only minors can be taken into custody.<sup>21</sup> Adult women are also arrested for petty offenses: larceny theft, drunk driving, fraud (the bulk of which is welfare fraud and naive check forgery), disorderly conduct, drunkenness, and prostitution.<sup>22</sup>

This pattern is not restricted to the present. Lee Barbara Hanawalt's work on women's crime in fourteenth-century England and Deirdre Beddoe's description of the backgrounds of women several centuries later who were forcibly transported to Australia document the astonishing stability of women's lawbreaking.<sup>23</sup> The women who were transported, for example,

<sup>20</sup> Timothy J. Flanagan and Maureen McLeod, eds., *Sourcebook of Criminal Justice Statistics—1982* (Washington, D.C.: Government Printing Office, 1983), 410.

<sup>21</sup> In 1980, over one-fourth (26.5 percent) of the girls taken into custody were arrested for larceny theft (which is largely shoplifting). Arrests of girls for runaway and "other" offenses (also largely status offenses) account for another third of girls' arrests (*ibid.*, 402).

<sup>22</sup> *Ibid.*

<sup>23</sup> Lee Barbara Hanawalt, "Women before the Law: Females as Felons and Prey in Fourteenth-Century England," in Weisberg, ed. (n. 11 above), 165–96; Deirdre Beddoe, *Welsh Convict Women* (Barry, Wales: Stewart Williams, 1979).

were servants, maids, or laundresses, convicted of petty theft (stealing, shoplifting, and picking pockets) or prostitution. The numbers of women transported for these trivial offenses are sobering. Between 1787 and 1852, no less than 24,960 women, fully a third of whom were first offenders, were sent to relieve the "shortage" of women in the colonies. They were shipped in rat-infested holds where the death rate in the early years was as high as one in three and where the women were systematically raped and sexually abused at the hands of the ships' officers and sailors. Their arrival in Australia was also a nightmare; no provision was made for the women, and many were forced to turn to prostitution in order to survive.<sup>24</sup>

The same sobering picture emerges out of the fine first section of Ann Jones's *Women Who Kill*. While Jones seems occasionally overeager to find defiant women killers challenging male patriarchy, her scholarship reveals that many of America's early women murderers were indentured servants. Raped by calculating masters who understood that giving birth to a "bastard" would add one to two years to a woman's term of service, the desperate women hid their pregnancies and then committed infanticide. Jones also provides numerous historical as well as contemporary examples of desperate women murdering their brutal "lovers" or husbands.<sup>25</sup> The less dramatic links between forced marriage, women's circumscribed options, and women's decisions to kill are best explored in Mary S. Hartman's subtly crafted and fascinating *Victorian Murderesses*.<sup>26</sup>

Women murderers, as both Jones and Hartman document, are interesting precisely because of their rarity. Indeed, the large numbers of women arrested for trivial property and morals offenses coupled with the virtual absence of women from among those arrested for serious property crimes and violent crimes has prompted some to observe that women's crime to a great extent parallels their assigned roles in straight society.<sup>27</sup> There is, however, little understanding as to why this is the case.

As Frances Heidensohn noted in an important early article on female deviance, virtually no serious scholarship has been undertaken to explain the dramatic difference between male and female lawbreaking.<sup>28</sup> Even the recent literature is weak. Eileen B. Leonard, Anne Campbell, and Coramae Richey Mann have made perhaps the most determined efforts to date, and their work points up the difficulty of the task.<sup>29</sup> Leonard chooses to

<sup>24</sup> Beddoe, 11–21.

<sup>25</sup> Ann Jones, *Women Who Kill* (New York: Fawcett Book Group, 1980).

<sup>26</sup> Mary S. Hartman, *Victorian Murderesses* (New York: Schocken Books, 1977).

<sup>27</sup> Dorie Klein and June Kress, "Any Woman's Blues: A Critical Overview of Women, Crime and the Criminal Justice System," *Crime and Social Justice* 5 (Spring/Summer 1976): 34–48.

<sup>28</sup> Frances Heidensohn, "The Deviance of Women: A Critique and an Inquiry," *British Journal of Sociology* 19, no. 2 (June 1968): 160–76.

<sup>29</sup> Eileen B. Leonard, *Women, Crime and Society* (New York: Longman, Inc., 1982); Anne

shape her effort around the dominant perspectives in criminology and quickly gets bogged down in the evaluation of each of the theories. Her discussion of women's crime is consequently relegated to considerations of ways in which each perspective might account for the differential. Campbell does only slightly better at escaping the weight of previous criminological theory; she does, however, make occasional interesting reference to her own interviews with delinquent girls. When she narrows her focus and pursues the interview approach further, as she does in *The Girls in the Gang*, the results are far more satisfying.<sup>30</sup>

Mann's work falls prey to another common problem. An ambitious attempt to summarize the contradictory and uneven literature on women and crime, the work oscillates between sometimes chaotic literature reviews and exhaustive considerations of outdated perspectives (such as linking menstruation and penis envy to women's deviance). Thus, though it is a good resource on research results, it ultimately fails to pull them together in a way that advances the understanding of women's crime.<sup>31</sup>

In general, these works suffer from what is emerging as a major problem in the area of feminist criminology: after documenting, sometimes exhaustively, the fact that criminology has been unbelievably blind to gender issues, the work either simply plugs gender into often dated and monosexual criminological theories—the “add women and stir” approach—or it uncritically builds on an existing literature on female criminality that is overly simplistic and sex-biased.

Essentially, too little is known and too much assumed about the nature of women's crime. The results of a few research efforts that question old and pervasive assumptions demonstrate this quite clearly. While delinquency has long been assumed to be “compulsive masculinity,”<sup>32</sup> recent research on female delinquency fails to support the notion that the socialization experiences of male and female youth produce differences in personality, attitudes, or aspirations that are themselves likely to produce female conformity and male deviance. In a national study of self-reported delinquency, for example, Rachelle Cantner found that girls do not report stronger family bonds than boys;<sup>33</sup> and while family conflict plays a direct role in delinquency, Stephan Norland and his associates found it to be

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Campbell, *Girl Delinquents* (New York: St. Martin's Press, 1981); Coramae Richey Mann, *Female Crime and Delinquency* (University: University of Alabama Press, 1984).

<sup>30</sup> Campbell, *The Girls in the Gang* (Oxford: Basil Blackwell, 1984).

<sup>31</sup> Mann.

<sup>32</sup> Ira J. Silverman and Simon Dinitz, “Compulsive Masculinity and Delinquency,” *Criminology* 11, no. 4 (February 1974): 498–515.

<sup>33</sup> Rachelle Cantner, *Family Correlates of Male and Female Delinquency* (Boulder, Colo.: Behavioral Institute, 1981).



about as important in male delinquency as in female delinquency.<sup>34</sup> Finally, while negative attitudes toward school and poor school performance were significant in predicting delinquency in both sexes, this relationship was found to be stronger for girls than for boys.<sup>35</sup> Studies that explore the relationship between attitudes toward the women's movement and women's crime fail to support the notion that as women become critical about women's place they will become more delinquent. Indeed, such studies show that delinquent girls and adult female offenders are generally more traditional in their orientations and less supportive of the women's movement than are their conforming sisters<sup>36</sup> and that support for the women's movement actually seems to inhibit girls' delinquency.<sup>37</sup>

Increasingly, explanations of the gender gap in delinquency and crime that embrace what some have called the "oversocialized" view of women are giving way to approaches that examine female deviance as part of women's place in patriarchal society. Promising though preliminary work in this area is beginning to appear. Robert Mawby's study of self-reported delinquency in Britain noted, for example, that elements of female behavior reflecting the greater control families exert over the movements of daughters may have a number of effects on female delinquency. He noted that girls were more likely to "play or muck about" the home while boys would "play or muck about" on deserted land. Girls would steal from homes or schools while boys would also steal from construction sites or by breaking into empty buildings.<sup>38</sup> Obviously, the setting for criminal misbehavior can have a dramatic effect on the ability or even willingness of the victim to press charges; moreover, studies have shown that the propensity of women to deviate in private residences makes them less vulnerable to arrest because of laws governing police behavior in private settings.<sup>39</sup> Clearly, norms that prohibit or discourage female mobility play a role in

<sup>34</sup> Stephen Norland, Neal Shover, William E. Thornton, and Jennifer James, "Intrafamily Conflict and Delinquency," *Pacific Sociological Review* 22 (April 1979): 233-37.

<sup>35</sup> James H. Rankin, "School Factors and Delinquency: Interaction by Age and Sex," *Sociology and Social Research* 64, no. 3 (1980): 420-34.

<sup>36</sup> Crites, "Women Offenders" (n. 14 above), 37; Peggy Giordano and Stephen A. Cernovich, "On Complicating the Relationship between Liberation and Delinquency," *Social Problems* 26, no. 4 (April 1979): 467-81; Gloria Leventhal, "Female Criminality: Is 'Women's Lib' to Blame?" *Psychological Reports* 41, no. 3, pt. 2 (December 1977): 1179-82.

<sup>37</sup> Jennifer James and William E. Thornton, "Women's Liberation and the Female Delinquent," *Journal of Research on Crime and Delinquency* 17, no. 2 (July 1980): 230-44.

<sup>38</sup> Robert Mawby, "Sex and Crime: Results of a Self-Report Study," *British Journal of Sociology* 31, no. 4 (December 1980): 526-43, esp. 540.

<sup>39</sup> Weldon T. Johnson, Robert E. Petersen, and L. Edward Wells, "Arrest Probabilities for Marijuana Users as Indicators of Selective Law Enforcement," *American Journal of Sociology* 83, no. 3 (November 1977): 681-99.

both the lower rate of serious crime committed by women and the even lower official measures of it.

Another restraint affecting women's criminal behavior was first noted by Ruth K. Morris, who documented the fact that female delinquents experience greater social disapproval than their male counterparts from delinquents and nondelinquents alike.<sup>40</sup> The importance of this insight was recently reaffirmed by Pamela Richards and Charles Tittle who, in a national study of people's perceived chances of arrest, found that women gave systematically higher estimates of arrest probability than males. This difference was attributed to the fact that women feel more visible than men and have a greater stake in conformity (meaning they anticipate more negative consequences if they deviate).<sup>41</sup> Finally, it is extremely probable that sexism is as real in the criminal world as it is in the straight world.<sup>42</sup>

Clearly, much more basic research must be undertaken on the character and extensiveness of women's deviance and on the motives expressed by delinquent or criminal women before a theory or theories of women's lawbreaking can be developed. To see the value of such research, one has only to review the few books written by or based on interviews with female offenders themselves.

Perhaps the best of the crop is *The Maimie Papers*. Written during the early twentieth century, these are the letters of Maimie Pinzer, a prostitute, to an upper-middle-class woman whom she had met through a social reformer. The letters span a twelve-year period and go far beyond mere duty notes or pleas for money. The daughter of a middle-class Jewish family plunged into poverty by the death of her father, Maimie uses the letters to express her daily frustrations as she tries and fails to stay on the "path." Hunger, problems with drugs, and ill health (Maimie lost an eye to syphilis), and frequently unemployed husbands and boyfriends haunt each letter. Maimie's largest problem by far was the extremely limiting nature of the few options available to working-class girls of her time—prostitution, marriage, and unskilled menial work. Musing on this, she writes: "When the seasons change as they do now—I feel the smallness of my life and I get terribly discouraged for the need of many things makes me wonder if after all it is worthwhile to struggle as I do."<sup>43</sup>

Much the same dilemma confronted Box Car Bertha, who ran away from home at fifteen to avoid incarceration. In her hard-to-find, fascinating autobiography, she describes the life of a female bum during the early part

<sup>40</sup> Ruth K. Morris, "Attitudes toward Delinquency by Delinquents, Non-Delinquents and Their Friends," *British Journal of Criminology* 5 (1965): 249–65.

<sup>41</sup> Pamela Richards and Charles Tittle, "Gender and Perceived Chances of Arrest," *Social Forces* 59 (June 1981): 1182–99.

<sup>42</sup> Steffensmeier (n. 19 above), 1101–3.

<sup>43</sup> Ruth Rosen and Sue Davidson, eds., *The Maimie Papers* (New York: Feminist Press, 1977), 179.

of this century. Calling herself part of a “strange, motley sorority,” she vividly describes her struggle to survive on the streets and in the jails of her day. Perhaps most unusual is the account of her involvement in anarchist union activities.<sup>44</sup> The more contemporary autobiography of another female status offender, Linda Marie, is definitely less lively and upbeat. The book follows the events after Linda is raped by her stepfather and his friend. Incarcerated, initially in “protective custody,” she bounces from one repressive institutional setting to another and gradually makes the transition to delinquent.<sup>45</sup>

Books that are based on in-depth interviews with women in the system also provide important sources of information on women offenders’ perceptions of their behavior and their options.<sup>46</sup> In all of these biographical works, the women speak powerfully and quickly contradict the notion that they are either plundered waifs or venal liberated crooks. Brutalized by life, their experiences illustrate how women’s crime is inextricably linked to women’s status. Many begin as youthful victims of family abuse or neglect and, once on the streets, are forced to turn to crime in order to survive. Society’s lack of concern for their victimization—undoubtedly a product partially of their triple or quadruple invisibility (young, female, poor, and nonwhite)—is not lost on them. As one young status offender who had been the victim of repeated physical neglect and abuse put it, “One of these days I’ll have to kill myself before you guys are gonna listen.” Elsewhere she muses, “Males have it alot easier in our society . . . I got sent up to an institution because I was messing around. (My brother) went out and got some girl pregnant. He was only seventeen and he never got into any kind of trouble for it. She did, but he didn’t . . . that’s just how it is.”<sup>47</sup>

### **Official responses: Chivalry or paternalism?**

Prior to the onset of the women’s movement, the exclusion of women from discussions of crime and responses to crime was generally justified in two ways. First, readers would be reminded that only a small number of

<sup>44</sup> Ben L. Reitman, ed., *Sister of the Road: The Autobiography of Box Car Bertha* (New York: Gold Label Books, 1937), 7.

<sup>45</sup> Linda Marie (Pillay), *I Must Not Rock* (New York: Daughters Publishing Co., 1977).

<sup>46</sup> Carol Peacock, *Hand Me Down Dreams* (New York: Schocken Books, 1981); Debby Rosenberg and Carol Zimmerman, *Are My Dreams Too Much to Ask For?* (Tucson: New Directions for Young Women, 1977); Pat Carlen, ed., *Criminal Women* (Cambridge: Polity Press, 1985); Claude Jaget, ed., *Prostitutes: Our Life* (Bristol: Falling Wall Press, 1980); and finally Kate Millet’s early and important work *Prostitution Papers* (New York: Ballantine Books, 1973).

<sup>47</sup> Rosenberg and Zimmerman, 114.

women deviated, and then they would be reassured that those few who did escape the bounds of domesticity were treated "chivalrously."

"Men hate to accuse women and thus indirectly to send them to their punishment, police officers dislike to arrest them, district attorneys to prosecute them, judges and juries to find them guilty and so on," intoned Otto Pollak in his 1961 work on women and crime.<sup>48</sup> This chivalry hypothesis found its way into virtually every standard criminology text,<sup>49</sup> and its widespread acceptance meant that systematic study of the treatment of women and girls who came into the criminal justice system was rarely undertaken.

Perhaps because the incongruities were greatest in the treatment of girls, a number of early articles and, later, three books raised serious questions about the juvenile justice system's past and present handling of female delinquents.<sup>50</sup> In these works, concern is expressed that self-report studies of male and female delinquency do not reflect the dramatic differences in misbehavior found in official statistics. Specifically, it appears that girls charged with such noncriminal status offenses as running away from home, incorrigibility, and being a "person in need of supervision" (PINS) have been and continue to be significantly overrepresented in court populations.

Since roughly 40 percent of the girls in court are charged with these offenses,<sup>51</sup> researchers have concluded that the vague language found in the relevant statutes seems to invite "discretionary" application of their provisions and "allows parents, police and juvenile court authorities, who ordinarily decide whether PINS proceedings should be initiated, to hold girls legally accountable for behavior—often sexual or in some way related to sex—that they would not consider serious if committed by boys."<sup>52</sup>

<sup>48</sup> Pollak (n. 4 above), 151.

<sup>49</sup> See Etta A. Anderson, "The Chivalrous Treatment of the Female Offender in the Arms of the Criminal Justice System," *Social Problems* 23 (1976): 349–57.

<sup>50</sup> Important early articles on sexism and juvenile justice were Jean Strouse, "To Be Minor and Female," *Ms.* (August 1972): 70–75; Florence Rush, "The Myth of Sexual Delinquency," *Women: A Journal of Liberation* 3, no. 3 (1973): 38–40; and Meda Chesney-Lind, "Judicial Enforcement of the Female Sex Role," *Issues in Criminology* 8, no. 2 (Fall 1983): 51–70. More recent books exploring this issue are Ruth Crow and Ginny McCarthy, eds., *Teenage Women and the Juvenile Justice System* (Tucson: New Directions for Young Women, 1979); Sue Davidson, ed., *Justice for Young Women* (Tucson: New Directions for Young Women, 1983), esp. 61–64; and Barbara M. Brenzel, *Daughters of the State* (Cambridge, Mass.: MIT Press, 1983).

<sup>51</sup> National data indicate that 39.7 percent of the females in court (compared with 14.7 percent of the males) were referred for status offenses in 1977 (U.S. Department of Justice, *Juvenile Justice: Before and after the Onset of Delinquency* [Washington, D.C.: Government Printing Office, 1980]).

<sup>52</sup> Alan Sussman, "Sex Based Discrimination and the PINS Jurisdiction," in *Beyond Control: Status Offenses in the Juvenile Court*, ed. Lee H. Teitelbaum and Aidan R. Gough (Cambridge, Mass.: Ballinger Publishing Co., 1977), 179–99, quote on 179.

This pattern is not of recent origin. Steven Schlossman and Stephanie Wallach's paper on the Chicago and Milwaukee family courts notes that "boys' delinquencies were roundly condemned but were rarely, as often was the case with girls', regarded as indicative of innate moral perversity."<sup>53</sup> Their research documents both the fact that in the early years of these courts young women were prosecuted almost exclusively for "immoral conduct," a category that "defined all sexual exploration as fundamentally perverse," and the fact that the courts sent enormous numbers of women to reformatories for such behavior. For example, they noted that in Chicago between 1899 and 1909, one-half of the women but only a fifth of the young men who came before that city's juvenile court were institutionalized.<sup>54</sup>

It has gradually become clear that because court officials have participated in the double standard of juvenile justice, girls charged with status offenses were often more harshly treated than their male or female counterparts charged with crimes. They were certainly more likely to be held for long periods of time in often brutal detention centers, and until recently, they were overrepresented, compared to their percentage of arrests, in both training-school and detention-center populations.<sup>55</sup>

In the mid-1970s, this discriminatory pattern was indirectly challenged by correctional reformers concerned about juvenile courts' abuse of the status offense category.<sup>56</sup> Their well-documented work resulted in the passage of the landmark federal Juvenile Justice and Delinquency Prevention Act of 1974, which required that states receiving federal delinquency prevention monies begin to divert and "de-institutionalize" their status offenders. Despite erratic enforcement of this provision of the act by the Office of Juvenile Justice and Delinquency Planning, girls were the clear beneficiaries of the reform effort. Incarceration of young women in training schools and detention centers across the country fell dramatically. Between 1974 and 1979, for example, the number of girls admitted to public detention centers fell by 39.4 percent.<sup>57</sup> Encouraging, too, were studies of court decision making, which found less clear evidence of discrimination against girls in parts of the country where serious diversion efforts were underway.<sup>58</sup>

<sup>53</sup> Steven Schlossman and Stephanie Wallach, "The Crime of Precocious Sexuality," in Weisberg, ed. (n. 11 above), 45–84, quote on 49.

<sup>54</sup> *Ibid.*, 53.

<sup>55</sup> Alan Conway and Carol Bogdan, "Sexual Delinquency: The Persistence of a Double Standard," *Crime and Delinquency* 23, no. 2 (April 1977): 131–35.

<sup>56</sup> Richard Allinson, ed., *Status Offenders and the Juvenile Justice System* (Hackensack, N.J.: National Council on Crime and Delinquency, 1978).

<sup>57</sup> Barry Krisberg and Ira Schwartz, "Re-Thinking Juvenile Justice," *Crime and Delinquency* 29, no. 3 (July 1983): 333–64.

<sup>58</sup> See, e.g., Katherine S. Teilmann and Pierre H. Landry, Jr., "Gender Bias in Juvenile Justice," *Journal of Research in Crime and Delinquency* 18, no. 1 (January 1981): 47–80. It

Recent legal developments and other research results caution against optimism, however. The decline in female admissions to detention centers leveled off between 1979 and 1982, and the gains made against judicial sexism are very much in jeopardy. The National Council of Juvenile and Family Court Judges, which had always resented the federal attempt to curb their authority, went to Congress and in 1980 effectively gutted the act by gaining permission for judges to classify youth who violated a court order as delinquent. This meant that a young woman who ran away from a court-ordered placement such as a halfway house or foster home could be labeled a delinquent and locked up.<sup>59</sup> Moreover, federal agencies that once monitored compliance with the act are now concentrating virtually all their attention on the "serious juvenile offender."

Students of police and court behavior are recording little shift in the official attitudes that have permitted the double standard of justice. Linda Hancock's content analysis of police referral in Australia, for example, noted that in, 1975, 40 percent of the referrals of girls to court made specific mention of sexual and moral conduct compared with only 5 percent of the referrals of boys.<sup>60</sup> Because of legal challenges the bias may often be less overt; Anne R. Mahoney and Carol Fenster found in their courtroom observations that many of the girls taken into custody for crimes had actually exhibited behavior that would have been classified earlier as status offenses. Girls who had, for example, broken into their own parents' homes and taken food and clothing to prolong their runaway status were being charged with burglary.<sup>61</sup> Linguistic changes such as these, coupled with the now legal reclassification of status offenders as delinquents, could well obscure the judicial sexism that has marked the family court since its inception.

Evidence that adult women were being treated "chivalrously" has always appeared much more compelling. Adult women are generally about 15 percent of those arrested, but they constitute a much smaller proportion of the nation's jail or prison population. In 1982, for example, they were 6.5

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should be noted, however, that these researchers found that status offenders were still being sanctioned more harshly than law violators at certain levels of court processing; it was simply that this was true for both male and female status offenders.

<sup>59</sup> Barry Krisberg, Ira M. Schwartz, Paul Litsky, and James Austin, *The Watershed of Juvenile Justice Reform* (Minneapolis: Hubert Humphrey Institute of Public Affairs, 1985), esp. 22. See also Meda Chesney-Lind, "Girls and De-Institutionalization: Is Sexism and Juvenile Justice a Dead Issue?" *Journal of Criminal Justice Abstracts*, in press.

<sup>60</sup> Linda Hancock, "The Myth that Females are Treated More Leniently than Males in the Juvenile Justice System," *Australian and New Zealand Journal of Sociology* 16, no. 3 (November 1981): 4-14.

<sup>61</sup> Anne R. Mahoney and Carol Fenster, "Female Delinquents in a Suburban Court," in Rafter and Stanko, eds. (n. 11 above), 221-36.

percent of the jail population and only 4.4 percent of the prison population.<sup>62</sup> Researchers, notably Stuart Nagel and Lenore J. Weitzman, who studied judicial decision making (usually at higher court levels), also found evidence for the chivalry hypothesis, noting that women were less likely than men to be sentenced to prison.<sup>63</sup> Though widely cited, this study like other early efforts was seriously flawed by the researchers' failure to consider several factors, the most significant of which was the less serious character of female criminality. Nicolette Parisi, in her review of these studies, concludes for example that when the effects of such things as "prior record" are taken into account, most of the female advantage dissipates and "contradictory results appear." Specifically, she notes that, while the direction of the bias is most often advantageous, "it occasionally appears that negative (punitive) treatment is accorded females for "manly crimes."<sup>64</sup>

Indeed, at least two studies have suggested that certain types of female defendants receive preferential treatment while others do not fare as well. Examining sentencing patterns in a typical New York court for a wide range of cases (excluding prostitution, rape, and abortion), Ilene H. Nagel and her associates found that, while males generally received harsher sentences, certain variables were related to considerable differences in the court's responses to males and females and also to different classes of female defendants.<sup>65</sup> Although the severity of the offense (felony or misdemeanor) was strongly related to the likelihood of a male's being imprisoned, this variable had no significant effect for females; however, there was a strong adverse effect for females charged with personal crimes as compared with property crimes, and marital status—a variable not significant among male defendants—had a strong effect on the probability of a woman's being sentenced to prison, with married women receiving preferential treatment.

Nagel's findings relating to judicial paternalism have received recent confirmation by Candace Kruttschnitt, who in her research on women probationers in California found that women who were economically dependent on someone else and were "respectable"—that is, without records of prior psychiatric care, drug or alcohol use, employer censorship, or peer deviance—received less severe dispositions than did their independent, "freer," and less "respectable" counterparts. Indeed, a woman's degree of

<sup>62</sup> *Bulletin: Jail Inmates, 1982*, 1, and *Bulletin: Prison Inmates at Midyear 1982*, 3 (Washington, D.C.: Department of Justice, Bureau of Justice Statistics, 1983).

<sup>63</sup> Stuart Nagel and Lenore J. Weitzman, "Double Standard of American Justice," *Society* 9, no. 5 (March 1972): 171–98.

<sup>64</sup> Nicolette Parisi, "Are Females Treated Differently?" in Rafter and Stanko, eds., 205–20, quotes on 215.

<sup>65</sup> Ilene H. Nagel, John Cardascia, and Catherine E. Ross, "Sex Differences in the Processing of Criminal Defendants," in Weisberg, ed. (n. 11 above), 259–82.

respectability appeared to be as significant as previous involvement with the law.<sup>66</sup>

Taken together, these research findings suggest that the criminal justice system has been involved in the enforcement of traditional sex-role expectations as well as, and sometimes in place of, the law. For girls, there is clear evidence that court officials are monitoring adherence to the sexual double standard. For women, the emphasis seems to shift to a concern that they not commit any unfeminine offenses, particularly if they cannot prove obedience to the standards of traditional womanhood: marriage, economic dependency, and respectability. For both groups, the evidence for lenience and chivalry is certainly less than compelling.

### **Sisters under lock and key**

The most consistently accurate information on the female offender, past and present, comes from work on women's prisons. Many early correctional institutions, in contrast to other segments of the criminal justice system, maintained extensive records on inmates and institutional practices. These have proven invaluable to researchers such as Nicole Hahn Rafter, Barbara M. Brenzel, and Estelle B. Freedman, who are seeking to construct the history of women's imprisonment. Rafter's *Partial Justice*, for example, uses these to trace the evolution of a dual prison system for women and documents that, while each type of institution had a different view of women offenders, neither accorded them treatment equal to that accorded to men.<sup>67</sup> The first prison system for women, women's penitentiaries, literally grew out of men's institutions starting in the early 1800s and was generally an afterthought. Chiefly custodial institutions with male guards, the conditions in the women's sections were often markedly harsher than those found elsewhere in the prison. Beginning in the 1900s, partially in response to repeated scandals about idleness, brutality, and sexual abuse in these settings, the second prison system for women—

<sup>66</sup> Candace Kruttschnitt, "Women, Crime and Dependency," *Criminology* 19, no. 4 (February 1982): 495–513, "Respectable Women and the Law," *Sociological Quarterly* 23, no. 2 (Spring 1982): 221–34, esp. 232. Since so few of these studies examine decision making for the sorts of crimes women commit most often (especially prostitution), the evidence for evenhandedness is even weaker. Studies that examine the earlier stages of judicial processing are also needed; a Honolulu study found, for example, that at the law enforcement level, women were more likely than men to be prosecuted and that, at the court level, females were more likely to enter a guilty plea. See Moheb Ghali and Meda Chesney-Lind, "Gender Bias and the Criminal Justice System," *Sociology and Social Research* 70, no. 2 (January 1986): 164–71.

<sup>67</sup> Nicole Hahn Rafter, *Partial Justice: Women in State Prisons, 1800–1935* (Boston: Northeastern University Press, 1985).



reformatories—was established. Their purpose was entirely different. Separate institutions with female personnel, the reformatories sought to “save” women—particularly young women and white women—from lives of licentiousness and petty crime.

The regime that these young women found in the reformatories, or “training schools,” is also illuminating. Brenzel’s *Daughters of the State* provides an exhaustive and detailed history of the first of these institutions (the Lancaster School in Massachusetts) and documents that, while these schools had set out to provide a “loving family circle” for the impoverished daughters of Irish Catholic immigrants, their benevolent enthusiasm for domesticating young women had slowly eroded. Ultimately, Lancaster and schools like it became simply places of punishment and incarceration for young women considered morally threatening to social stability. They were “stubborn,” “wayward,” “immoral”: the status offenders of their age.<sup>68</sup>

What of the women who worked in these institutions or in other parts of the criminal justice system? Freedman’s *Their Sister’s Keepers* and portions of Feinman’s work document that most were conservative social reformers who embraced the assigned role of “woman as sexless guardian of the moral sphere” as a vehicle for entry into the male world.<sup>69</sup> Ironically, this orientation provided entry but not genuine opportunity; it led to the development of either female-only hierarchies (in corrections) or dead-end departments dealing with women and children (in police departments). More haunting than this is the realization that without women to “save,” the criminal justice madonnas might not have been able to enter the labor force. Moreover, their uncritical moral zeal was unquestionably central in the development of the harsh and puritanical approach that has come to characterize much of the system’s response to the female offender.

That the contemporary woman inmate is still the beneficiary of this repressive legacy is forcefully illustrated in Kathryn W. Burkhardt’s and Sara Harris’s valuable early exposés. Containing detailed descriptions of the medieval conditions and the woefully inadequate rehabilitational programming found in women’s jails and prisons in the 1960s (e.g., the notorious Women’s House of Detention in New York), these books also showed how routine institutional practices such as the strip searching of women—including vaginal examinations ostensibly to check for contraband or venereal disease—have functioned as part of the systematic sexual degradation of women inmates. Both also contained compelling case studies of female offenders that emphasized the influence of poverty, racism,

<sup>68</sup> Brenzel (n. 50 above), 160–67.

<sup>69</sup> Estelle B. Freedman, *Their Sisters’ Keepers* (Ann Arbor: University of Michigan Press, 1981); and Feinman (n. 11 above).

and sexual discrimination in propelling women into minor criminal behavior.<sup>70</sup>

These journalistic impressions were confirmed in 1977 in Ruth Glick and Virginia Neto's national study. They reported that the typical woman inmate was young, poor, nonwhite, a high school dropout, unmarried, and a mother.<sup>71</sup> More recent work confirmed this pattern but indicated that the contemporary female offender was more likely than her counterpart of the 1970s to be a minor property offender with a history of drug problems and that there was increasing evidence that she was or had been a victim of family violence and had a history of sexual abuse.<sup>72</sup>

A look at her employment history fails to support any notion that increased occupational opportunities led to her criminal misconduct. On the contrary, women in prison who had been employed had worked in low-skill occupations often at temporary or part-time jobs.<sup>73</sup> In fact, some researchers are now speculating that the severe economic discrimination all women confronted in the last decade was particularly hard on young, single, minority women, perhaps propelling them into property crimes.<sup>74</sup> Chapman argues this case persuasively, directly linking women's crime with their disadvantaged economic position. She also provides an exhaustive and valuable review of innovative community and institutional programs responsive to this aspect of women's crime.<sup>75</sup>

As Chapman herself notes, however, the funding for most of these projects is both fragile, since they exist outside of the traditional correctional bureaucracy, and inadequate. This, unfortunately, has always been the story of women's correctional programming. Early papers by Linda R. Singer and by Helen E. Gibson carefully documented that the insistence on separate women's facilities combined with the smaller number of female inmates was used to justify fewer institutions and little segregation of women by seriousness of offense.<sup>76</sup> Because of the small number of institu-

<sup>70</sup> Kathryn W. Burkhart, *Women in Prison* (New York: Popular Library, 1976); Sara Harris, *Hellhole* (New York: E. P. Dutton, 1967).

<sup>71</sup> Ruth Glick and Virginia Neto, *National Study of Women's Correctional Programs* (Washington, D.C.: Department of Justice, 1977).

<sup>72</sup> Chapman (n. 11 above); Josefina Figueira-McDonough, Alfreda Inglehart, Rosemary Sarri, and Terry Williams, *Females in Prison in Michigan, 1968-1978* (Ann Arbor: University of Michigan, School of Social Work, 1981); Linda Hancock, ed., *Prisoner and Female: The Double Negative* (Victoria: Victoria Council of Social Service, 1982); Pat Carlen, *Women's Imprisonment: A Study in Social Control* (London: Routledge & Kegan Paul, 1983).

<sup>73</sup> Figueira-McDonough et al., 139.

<sup>74</sup> Peggy Giordano, Sandra Kerbel, and Sandra Dudley, "The Economics of Female Criminality," in Bowker, ed. (n. 11 above), 65-81.

<sup>75</sup> Chapman (n. 11 above).

<sup>76</sup> Linda R. Singer, "Women and the Correctional Process," *American Criminal Law Review* 11, no. 2 (Winter 1973): 295-308; Helen E. Gibson, "Women's Prisons: Laboratories for Penal Reform," in Crites, ed. (n. 10 above), 93-120.

tions, they often have been located far from a woman's family—a particular hardship since so many inmates are single mothers.<sup>77</sup> Recent work by Nancy Stoller Shaw added concerns about the overuse of psychotropic drugs in women's jails and prisons, estimated to be two to ten times higher than in male prisons, coupled with woefully inadequate health care.<sup>78</sup> Women's prisons have also offered few genuine vocational programs. A 1980 report by the Government Accounting Office noted, for example, that "women in correctional institutions do not have access to the same types of facilities, job training, jobs in prison industries and other services as men prisoners."<sup>79</sup>

The "passivity" of women inmates as well as the unique social organization of women's correctional institutions have been the traditional explanations for the failure of female inmates to challenge these patterns in court.<sup>80</sup> A slightly different picture emerged, however, in Katherine Gabel's recent book. She found that, while the women inmates expressed serious legal concerns, prison officials generally felt that women's needs were not that keenly felt and were largely "emotional." The book also documented the substantial obstacles that women inmates confront in seeking legal resources.<sup>81</sup>

The interest in women's prisons that flourished during the early days of the women's movement has declined. This situation is all the more poignant because concern about the conditions of women's prisons has never been more necessary and timely; between 1974 and 1982, the number of women in prison jumped 119 percent, while for males the increase was a sobering but far less dramatic 70 percent.<sup>82</sup> This increase must be analyzed with an awareness that women's contribution to the nation's problem of serious crime has not increased, despite rhetoric to the contrary.

## Conclusion

The serious study of women's crime and of society's response to it is still in its infancy. After a false start, it now seems likely that research will focus

<sup>77</sup> Phyllis Jo Baunach, "You Can't Be a Mother and Be in Prison . . . Can You?" in Price and Sokoloff, eds. (n. 11 above), 155–70.

<sup>78</sup> Nancy Stoller Shaw, "Female Patients and the Medical Profession in Jails and Prisons," in Rafter and Stanko, eds. (n. 11 above), 261–76.

<sup>79</sup> General Accounting Office, *Women in Prison: Inequitable Treatment Requires Action* (Washington, D.C.: Government Printing Office, 1980), 1.

<sup>80</sup> See David Ward and Gene Kassebaum, *Women's Prison* (Chicago: Aldine Publishing Co., 1965); and Rose Giallombardo, *Society of Women* (New York: John Wiley & Sons, 1966).

<sup>81</sup> Katherine Gabel, *Legal Issues of Female Inmates* (Northampton, Mass.: Smith College, School of Social Work, 1982).

<sup>82</sup> U.S. Department of Justice, *Prisoners at Midyear 1982*, 3.

increasingly on the role of women's subordination in the causes of and responses to their criminal acts. It is clear that few women commit serious crimes and that those who violate the law do so largely out of desperation and in relatively minor ways. Women's general conformity to social norms is not mysterious nor does it appear to be a product of "femininity"; research indicates that women are closely monitored. The few women who escape domestic discipline find themselves confronting powerful correctional forces.<sup>83</sup>

The response of the criminal justice system to women's deviance falls far short of chivalrous despite rhetoric to the contrary. It is increasingly evident that both the construction of women's defiance and society's response to it are colored by women's status as male sexual property. Once a female offender is apprehended, her behavior is scrutinized for evidence that she is beyond the control of patriarchy and if this can be found she is harshly punished. For this reason, continued study of the role of women's punishment as criminals in the enforcement of female subservience seems vital. It is possible, for example, that definitions of and responses to women's deviance are informed by a concern that any success women have in challenging the bounds of domesticity might ultimately jeopardize the entire structure of women's oppression.

The attention of feminists must also be drawn to the important policy issues that the recent literature reveals. The deinstitutionalization of status offenders has meant a dramatic decrease in the incarceration of girls, but this victory is shallow and fragile given federal budget cuts and more punitive attitudes toward criminals. Adult women have also been the victims of this latter trend. Buoyed by discussions of "liberated female crooks" and the tougher national sentiments, judges have been sentencing women to prison in record numbers. The irony is that at a time when the needs of the female offender have never been more acute, many in the women's movement have shifted much of their interest to the female victim of crime. Both are clearly important and the two are in fact related; but at this critical time the movement must renew its commitment to the female offender and thereby rediscover the wisdom in its early, perceptive slogan, "free our sisters, free ourselves."

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<sup>83</sup> Carlen (n. 72 above), 16.