

No-Woman's Land? On Female Crime and Incarceration, Past, Present, and Future

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Abstract

The perception of penitentiaries as male institutions dates back to the late Middle Ages, when urban governments across Europe began constructing prisons as cogs in their growing machineries of justice. Already then, female incarceration contrasted sharply, intentionally, and symbolically with that of men, rendering women prison “incasts” in ways that parallel their marginal and vulnerable situation today. And yet few of the major pains of incarceration afflicting modern female prisoners seem to have been common to the experiences of their medieval predecessors. What made the difference, and how can it inform approaches to female inmates and female criminality in general?

About the Author

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Introduction

Back in the 1970s, both feminists and their foes told Western audiences that the “dark side” of the Women’s Movement would soon materialize as a massive rise in female crime (Adler 1975; Simon 1975; see Chesney-Lind 1986). Those who believed crime was mostly opportunistic argued that women’s greater access to the labor market and to the public sphere generally would allow them to reveal their natural adeptness to deviancy on a similar scale to that of men. Others, faulting the gender biases of officialdom, anticipated that agents of recalibrated law and order systems would soon stop turning a blind eye to female crime, and pursue female offenders with equal efficiency and zeal. Neither prediction was ever realized: despite some growth in female crime, women continue to form a small fraction of those investigated, prosecuted, and incarcerated for perpetrating criminal offenses (Kruttschnitt and Gartner 2003).¹

Statistically speaking, the criminal disparity between the sexes is ancient. No documented region or historical period is characterized by a sustained majority of female offenders. But that does not mean women always and everywhere have been either as particularly law abiding or, rather, as underrepresented in criminal statistics as they are today. In a groundbreaking article Malcolm Feeley and Deborah Little (Feeley and Little 1991) showed that, for centuries before the 1830s, women could comprise up to 45 per cent of those involved in criminal processes in England, with similar supporting data provided for the U.S. and other regions. Thereafter the authors traced a precipitous decline in what they termed “female involvement in crime.” In doing so, they shifted the historical debate from

¹ Women account at present for about 4 per cent of inmates in Continental Europe, 6 per cent in the UK, and 7 per cent in the U.S. (see Kruttschnitt and Gartner 2003: 4-18). Israel is possibly a world leader among democracies: in 2009 501 women were incarcerated there as against 22,224 men, a ratio of 2 to 98 percent. See www.ips.gov.il/Shabas/TIPUL_PRISONER/Prisoners+Info/Comparison_prisoners_sex.htm (last accessed 8 November 2010).

elucidating a seemingly perennial disjuncture between women and crime to exploring how female crime was marginalized in the first place.²

Drawing on and analyzing rich data sets from the early modern and modern periods, Feeley and Little ruled out several logical explanations for the “vanishing female criminal”: jurisdictional and demographic changes, the expanded criminalization of distinctively male offenses, and the influence of war and peace. Instead, they posited “a transformation in the acceptability of women in the criminal process that resulted in a decline in the use of the public criminal justice system as a form of social control of women” (Feeley and Little 1991: 742). Their conclusion posed a major challenge to earlier views on female crime that stemmed largely from a false nature/nurture dichotomy, and which led one influential criminologist ingeniously to assert that women are simply better than men at concealing crime (Pollak 1950: 1-15).

In all this, however, two relevant aspects of the history of female crime fell by the wayside. The first is that the high rates of female involvement in crime Feeley and Little describe probably represent an all-time (rather than merely a modern) peak. Not that the authors explicitly claim otherwise, but one should not assume that the chronological starting point of their data (1687) reflects where societies have hitherto stood. Adopting an even longer perspective than the (already admirably long) period covered by Feeley and Little bears out such a revised view. The second aspect concerns the history of the prison itself, especially the role carved out within it for women, and how that may have shaped female offenders’ prosecution and punishment patterns. I shall deal with both aspects in turn, before suggesting how pre-modern practices can inform current approaches to female inmates and women’s prisons.

Women and the Pre-Modern History of Crime

² “Involvement in crime” is an intentionally loose term coined by Feeley and Little, designed to encompass both (reported) perpetration and actual prosecution of major crimes.

Information regarding women's involvement in crime is not readily available from most areas of the pre-modern world. But one data set that brings us comfortably close to *terra firma* comes from Tuscany, Italy: among the most populous, urbanized, and document-using regions of Europe prior to the Industrial Revolution. Here, in cities such as Florence (estimated population in its pre-Plague peak: 100,000; among the largest in Europe), court records survive that attest levels of female involvement in crime. According to Samuel Cohn, women comprised 22 per cent (223 out of 1023 cases) of perpetrators of crimes in a sample of one decade from before the onset of Black Death in 1347-48, and 17 per cent (40 out of 233) in one sample decade afterwards. He explains women's diminishing (but far from vanishing) participation in crime by newly introduced constraints on their public visibility: less women in the streets, less women in the courts (Cohn 1996: 16-38).

Other pre-modern historians working in Italy as well as in England and France have likewise sought to profile female criminality and women's criminal prosecution. And although their methodologies and foci diverge, none so far have found that women were anywhere and at any time more involved in crime than in fourteenth-century Florence (Hanawalt 1974; Cohen 1980; Dean 2008; Neville 1998; Sims 2005). In sum, records from several regions and major cities across Europe demonstrate that, compared with Feeley and Little's data, female involvement in crime during the late Middle Ages was, on the one hand, *significantly lower* than in the early modern period, and, on the other, *significantly higher* than in the modern period.

What requires explanation, then, is not only the precipitous decline traced by Feeley and Little, but the *substantial increase* of female crime sometime during the early modern period. Since I am a historian of neither period, I won't venture into any specific hypotheses regarding the latter process, but I suspect it may be linked to the centralization of state apparatuses (legal codification, efficient courts, police forces) and to major shifts in social

structure attendant upon urban migration, such as great age disparities between men and women seeking marriage, the development of nuclear families, and people's limited access to traditional networks of support.

Women and the History of the Prison

A second and related aspect usually absent from modern discussions of female criminality is the development of incarceration practices or the so-called birth of the prison. Contrary to popular opinion, which is largely based on outdated scholarly consensus, prisons were not the fruit of post-Enlightenment penology (Foucault 1975). Although admittedly imprisonment never became the basis of state penal systems prior to the nineteenth century, the proliferation of the prison itself, especially in cities, dates back at least to the late thirteenth century (Geltner 2008a).

The ramifications of this revised chronology are substantial, for if we shift our focus from crime to processing offenders and eventually to punishment, the trajectory of women's (and of course men's) criminality can be traced in a well-grounded way already from the late Middle Ages, and not only from the early modern or modern periods. The point, however, is not simply one of dates but of the nature of the institution itself, and the extent to which it may have shaped female crime and punishment over time.

Unlike their modern heirs, medieval prisons were custodial and mostly coercive places; that is, they were used to extract debts owed to private people or the state rather than as penal institutions. The medieval prison's key function as an instrument of debt collection was no accident. Governments established it as a way to address cities' burgeoning commercial traffic and its increasing reliance on access to credit. Imprisonment was thus designed to accommodate the social, political, and professional needs of propertied businessmen during what could often be a self-inflicted sojourn, a strategy to renegotiate the terms of a private loan or a tax assessment. As one incarcerated Tuscan merchant wrote his

wife in the late fourteenth century, “I shall abide in prison until we can pay” the newly assessed tax he so abhorred; noting, amused and reassured: “I shall be in good company here, for I think a great many others [i.e., merchants] will have to go there too” (Origo 1957: 146).

The prison, then, was in fact an extension, another arena of merchant life, not an obstacle to it. A modern parallel can be seen in both gangs and organized crime, which not only flourish in prisons, but sometimes stem directly from their internal dynamics. Much like today, inmates of means in the past could upgrade their accommodations inside the prison walls, purchase various services and supplies, and stay in constant touch with their families and business partners. The main difference is that they did so legally, and in a manner designed to reflect and bolster the continuity of their high normative status in free society. When late-medieval governments planned their prisons, this was the typical inmate they had in mind.

Penal incarceration was proscribed by Roman law, which shaped many of Continental Europe’s law codes. And yet, in the face of jurisprudence and despite the prison’s original rationale, judges soon began employing imprisonment for confining men and women (and sometimes children) who violated many other laws than those governing the settlement of loans. Gradually, diverse and unintended populations began to inhabit a space designed for “white-collar,” propertied male offenders. And although prisons’ structure and administration were sometimes modified in recognition of the fact that imprisonment exceeded its original demographic, the tension was never fully resolved.

Medieval Female Inmates

Women stood to be the most adversely affected inmate population of the prison’s institutional inertia. True, they were given, to paraphrase on Virginia Woolf, a cell of their own. And in itself the creation of women’s wards is somewhat remarkable, since female culprits were previously—and rather randomly—incarcerated in nearby nunneries. But the

lumping of all women into one space contrasted sharply with the spatial division common among male inmates, a separation meant to organize prisoners according to socioeconomic (and somewhat related political) criteria. If dividing prisons spatially sought to safeguard male hierarchies in a potentially egalitarian space, the women's ward eliminated such hierarchies altogether: prostitutes shared the same quarters with propertied middle-class debtors, violent peasants, and misbehaved domestic servants of all ages and ethnic backgrounds. Women, in short, were cast into a social limbo.

There was, to be sure, a relative paucity of female inmates, since medieval regimes' reluctance to incarcerate women surpassed even their unwillingness to prosecute them. Consequently, women were as small an inmate minority in the fourteenth century as they are today. To recall, according to Samuel Cohn, women comprised around 20 per cent of those prosecuted by the Florentine government in one decade on each side of the Black Death divide. Yet my own data show that throughout that period women consistently averaged only 3.5 per cent of the prison population as a whole.³

These figures speak for themselves, yet in a world where money and status too talked rather loudly, ignoring both (as well as criminal hierarchy) cannot be viewed simply as a practical solution. More likely, by casting women, both physically and metaphorically, into prison as a group that merits no internal differentiation, urban governments were acting deliberately. The gender-bias inherent in such an approach implied that the prison was, as Pat Carlen put it in a modern context, "a no-women's land" (Carlen 1983: 155). Female wards thus ironically and symbolically rejected women from a space of deviancy mostly reserved for and thus shaped by men. And entering it presented women with a particular form of

³ Archivio di Stato di Firenze [=ASF], Soprastanti alle Stinche [=SS], Entrata e Uscita [=EU] 376 (1355): 15 female inmates; 380 (1359-60): 10; 381 (1362-63): 15; 382 (1367-68): 9; 388 (1376-77): 25; 394 (1395): 17 (minimum figure). These are the earliest surviving registers until 1400, with the exception of one illegible volume.

humiliation, one, moreover, that entailed increased risks to one's body, mental health, and reputation.

It is at this point that the story may begin to sound familiar to modern ears: on the one hand, female inmates being considered more of an administrative nuisance than an integral part of the prison world; on the other, seeing those who *do* end up incarcerated as a population that deviated, not only from the normative expectations of society in general, but also from a specifically female social script. Take modern "Mother and Baby" wards, for instance, prison units where some young mothers can spend up to 18 months with their newborns.⁴ These spaces embody the same nexus in the way they try to redress the separation brought about by sometimes unwilling and potentially unqualified mothers from their newborns: a solution that gestures at conservative family values while simultaneously underscoring the dire consequences of female deviants' unwomanliness.

As for the administrative challenges introduced by the presence of female culprits, this attitude is often manifested much less subtly. According to Pamela Baldwin, modern cells for women and female wards are still appropriated ad hoc today, sometimes without ensuring real gender segregation, and they hold all types and ages of offenders (Baldwin 1988: 53-69). Needless to say, such practices ignore the strict rules of classification so rigidly applied in the case of men. The systematic refusal or neglect to treat women as "real" prisoners pushes female inmates into a virtual fourth estate.

Women' Experiences in Medieval Prisons

But how did female inmates actually fare in the late Middle Ages? Before exploring their experiences, it is necessary to defamiliarize ourselves with modern prison realities.

From an institutional perspective, two key differences between medieval and modern incarceration are the prison's location and its accessibility, or rather permeability. Unlike

⁴ www.hmprisonservice.gov.uk/prisoninformation/prisonersmagazine/index.asp?id=5730,18,3,18,0,0 (last accessed 8 November 2010).

today, and for reasons of both efficiency and political wisdom, medieval prisons were routinely located on the main city square, usually in or near the main government compound and the court. Many of these facilities relied on constant external intervention for the inmates' material relief, business and legal transactions, and religious services, making the almost casual ebb and flow of human traffic a distinct characteristic of medieval incarceration.

Consequently, from a social standpoint, pre-modern prisons were never severed from the world at large. Indeed, these facilities' semi-exclusive nature explains the relatively mild outcomes of incarceration. Judging inmate coping by the prevalence of escape, rebellion, and self injury, the emerging picture is one of relative tolerability, even within institutions (and prison regimes) caught unprepared for handling unintended populations (Geltner 2008b).

It is somewhat surprising that the same observation holds—and perhaps even to a higher degree—among female inmates as well. My analysis of 131 cases (an average of 37 cases per year) of women incarcerated at Le Stinche, Florence's main prison in the late fourteenth century, suggests that, despite their *prima facie* higher risk of conflict and suffering, these women were rarely victimized, either physically or emotionally. After examining the well-preserved registers of the prison's oversight committee, only two cases came to light: in 1367, nine male inmates were fined for approaching the women's ward "to chat" (*ad parlandum*);⁵ and nine years later another inmate, Nuccio Agnoli, was likewise fined for a similar offense.⁶ The brief list ends here, despite Le Stinche's modest size and the inmates' proximity to one another. Yet the women's strict enclosure within the compound and their surveillance by the personnel seem to have been effective, at least as a protective measure from external threats.

A search for similar instances in other medieval prisons yielded an equally meager crop: in 1363 a prison worker named Luchetto forced a female inmate in Bologna to have

⁵ ASF, SS, EU 382, 4r (30 October 1367).

⁶ Arch. cit., 1r (4 October 1376).

sexual relations with him; and in 1366 a guard in the same prison entered the women's ward with several accomplices, and raped at least one of the inmates.⁷ In 1395 Le Puy, France, a passerby named Gaillart tried to intervene on behalf of a female inmate, arrested on murder charges, whom he suspected was being mistreated by the jailer. (The latter's dismissal of Gaillart's pleas precipitated a mob assault on the prison) (Moranvillé 1894: 74). Once again, a very short inventory. We would be justified in wondering whether the extant records conceal more than they reveal, yet nowhere do they suggest a prevalence of sexual victimization anywhere near its present rates: since 2001, for instance, 92 of the 93 U.S. Federal prisons were sites for alleged sexual abuse of inmates by staff members (Johnson 2009).⁸

Incidents of violence among women seem to have been equally scarce. On 2 July 1367 a certain donna Angela confided that she had seen two other inmates, donna Giovanna and donna Maxiana conspiring against a fourth inmate, donna Tommasina.⁹ And on 11 June 1379 a brawl broke out between two other female inmates.¹⁰ But otherwise documentary silence envelopes the social dynamics of Le Stinche's female ward. It is once again a suspicious silence, since it contrasts sharply with male prison violence as well as the common phenomenon of female-on-female violence in free society (Spierenburg 2009: 114-42).¹¹ Suspicious, that is, unless the medieval prison actually had a restraining effect on violent tendencies, especially among women.

⁷ Archivio di Stato di Bologna, Curia del Podestà, Giudici ad Maleficia, Libri Inquisitionum 197, Reg. 4, fol. 83r-v (20 October 1363); 203 Reg. 5, fols. 66r-68v (9 September 1366).

⁸ Online at www.washingtonpost.com/wp-dyn/content/article/2009/09/10/AR2009091004135.html (last accessed 8 November 2010). Johnson notes that forty per cent of the staff members prosecuted for sexual abuse has been convicted, and their prosecution records reveal numerous violations of security and administrative procedures in order to have sex in prison. One staff member even shot and killed those coming to arrest him with a gun smuggled into prison. Since 2003 the prevention of rape in prison has become a top priority for the Federal Bureau of Prisons.

⁹ ASF, *Atti dell'Esecutore degli Ordinamenti di Giustizia*, 501, 18v-19r.

¹⁰ Arch. cit., 1099, 13v.

¹¹ Spierenburg acutely notes (120) the perennial dismissal of female-on-female violence by the authorities as not "real" violence.

How can we account for the emerging discrepancy? Part of the explanation has to do with the inmates' accessibility to the outside world, which allowed them to avoid some of the major pains of modern incarceration (including staff harassment) and resist what modern sociologists call prisonization. Another important aspect to consider is inmates' social constitution. No one familiar with the demographics of modern incarceration will recognize its ancestor in the social profile of Le Stinche's female inmates. Today's prisons are mainly filled with young, poor, uneducated, and unmarried mothers from ethnic minorities or of foreign provenance, who are imprisoned for drug-related offenses and often carry a history of mental disorder (Glick and Neto 1977; Figueira-McDonough et al. 1981).¹² Le Stinche's women, by contrast, were mostly mature, married, and propertied locals or otherwise socially well-embedded individuals (Geltner forthcoming).

Conclusions

The view of the modern prison as "no place for a lady" has a rather old pedigree. Already during the first major proliferation of municipal prisons, in the late thirteenth century, incarceration participated more aggressively in the maintenance of gendered social scripts than in the defense of normative boundaries and hierarchies: an approach that continues to cast its long shadow today. At the same time, the medieval prison's permeability, location, and social constitution protected women from the potential abuses of "incasting." Those interested in addressing the problems of modern female inmates may wish to consider "getting medieval" on current prison regimes by emulating—insofar as possible—pertinent conditions of incarceration (Geltner 2010).

None of this, however, should diminish from the fact that prisons, since their nascence, were by and large constructed, identified, and run as male spaces; spaces, moreover, to which women were often an unwelcome addition. From this perspective, perhaps the most

¹² The number of female inmates in Michigan has grown by nearly 300 per cent since 1977 (which is *below* the national average rate), without however changing its profile significantly. See www.wpaonline.org/institute/hardhit/part1.htm#_ftnref14 (last accessed 8 November 2010).

fundamental aspect of modern female incarceration in need of reform is the prevalent understanding of the prison as a no-women's land, and the patronizing view of female criminals as grossly disobeying a gender-biased script. Redefining female prisons and female criminality in terms that challenge entrenched, non-egalitarian values may set the path for a more authentic representation of women in our criminal justice systems. At the very least it should free female inmates (and prison systems) from the dead weight of needing to rehabilitate themselves back to some arcane form of womanhood.

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