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Special Section: Crime and Gender

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Introduction to Crime and Gender in History

Abstract

This essay introduces the special section “Crime and Gender.” The first part explains the disregard for women in crime history. The second part summarizes the state of research. The final part describes the aim and introduces the contributions to this special section.

“Why gender and crime?” asked Margaret L. Arnot and Cornelia Usborne in the introduction to their edited volume on gender and crime in modern Europe (1999, reprint 2003). The answer was quite simple: until the 1980s crime historians focused their studies on the criminality of men because women were thought to be “exceptionally law-abiding,” and when they committed crime, their crimes were treated with much more leniency by prosecutors and courts than those of men.¹ Social historians had begun to use judicial sources in order to write a *history from below* and to include common people in their analyses of crime, the working of the justice system, and social control. However, those studies did not include women’s crimes or the issue of gender differences in crime. The pioneering study by John M. Beattie in 1975 on the criminality of women in eighteenth-century England was an important exception, and his work is in many ways still an example to historians writing on female criminality in the early modern period.²

The neglect of women in crime history is related to the quantitative approaches taken by crime historians between the 1970s and 1990s. British, German, and French studies particularly dealt with questions regarding long-term trends and fluctuations in crime. Such studies focused on theories of civilization, violence, modernization, and urbanization that may explain long-term changes.³ Historians such as Randolph Roth, Gerd Schwerhoff, Richard McMahon, and Joachim Eibach criticized the way that crime historians interpreted quantitative data on violence and suggested the need for a qualitative analysis and a better understanding of the social and legal context in order to understand changes in violent behavior.⁴ Roth, for instance, examined a variety of sources to further the quantitative study of homicide and neonaticide.⁵ Most methods used by crime historians estimate only the rate at which homicide came within the purview of the courts, leaving out the most common types of violence committed by men as well as women.

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After the 1990s scholars also began to raise doubts about the methods being used to estimate and reveal women's lives and criminality. Gender historians especially called for the use of other sources and methodologies and the integration of quantitative and qualitative approaches for the proper understanding of gender differences in crime. The influential study by Natalie Zemon Davis, *Fiction in the Archives*, demonstrated the importance of distinguishing between *facts* and *fiction* in the judicial archives. Information found in court records may represent the strategies of judges, suspects, and witnesses in specific contexts rather than the actual crimes committed by those who were prosecuted.⁶ In early modern Holland, many seamen's wives accused of adultery excused their crime by telling the court that they had been abandoned by their husbands. This was indeed a reality for many sailors' wives, but this reality was also used as a pretext in court to explain the adulterous relationship.⁷

The small proportion of women involved in serious crime led to an underestimation of women's criminality. As Garthine Walker explained in 2003: "What tends to happen is that women are counted, and being a minority of offenders, are subsequently *discounted* as unimportant."⁸ The studies by Walker and Trevor Dean (2008) on women's criminality in early modern England and late medieval Italy revealed that the emphasis on quantitative data masked the similarities between men's and women's crimes, obscuring the fact that both men and women committed primarily acts of minor violence.⁹ Such studies also show the importance of the socioeconomic and legal context in which men and women committed their crimes. Walker found that women's crimes were often defined by their roles in social and economic networks and their restricted opportunities in public life.

Other studies have shown that it is important to use a broad variety of sources to grasp women's criminality. British historians have found that women's crimes and the prosecution of their crimes were particularly dealt with by the lower courts, such as Petty Sessions or Summary Justice. Manon van der Heijden's examinations of urban justice in early modern Holland demonstrate that women's violence is much more visible in certain criminal courts, Protestant consistories, and informal forms of conflict resolution than in higher, less accessible criminal courts.¹⁰ More recently, the study by Marion Pluskota and Sanne Muurling on violence and gender in Bologna between the seventeenth and eighteenth centuries indicates that men and women often committed similar forms of violence, though they used the urban space in which they committed their crimes differently.¹¹ Understanding the criminality of women and gender differences across time and space requires a nuanced approach that attends to the socioeconomic context and uncovers the opportunities for women to lead independent lives, defend themselves, and start lawsuits.¹²

State of the Research

Although female criminality still seems to be rather underresearched when compared to women's legal and social position and their role in the labor market, crime historians have made huge advances in the past decade. Partly driven by trends in the history of women, studies on women and crime have introduced new questions, research methodologies, and analytical frameworks.¹³ Such

studies have also added to general knowledge and information on women and crime from the late medieval period onward. English historians undoubtedly are the pioneers in the field of women and crime, and most of the research and scholarly publications on female criminality are delivered by British scholars. The accessibility of the proceedings of the London Old Bailey (1674–1913) have stimulated many historians, legal historians, criminologists, and their students to examine long-term patterns of crime and gender and responses to crime in the urban context.¹⁴ Such digital data have resulted in profound new insights on and assumptions about women and crime, as shown in the work of Peter King, Barry Godfrey, Robert Shoemaker, Tim Hitchcock, and Heather Shore.

King emphasized—like Beattie earlier—the importance of urban and rural differences: the proportion of women in crime between 1600 and 1900 was higher in cities and towns than in rural areas.¹⁵ The English findings are confirmed by data on women and crime on the continent.¹⁶ Social historians Lesley Page Moch and Olwen Hufton have shown the impact of migration and urban life on the opportunities and risks confronting women who lived in towns.¹⁷ Without the protection and support of family members or husbands, many migrant women, widows, and single women were in vulnerable positions and thus more likely to become involved in crime. The proportion of women in crime was particularly high in early modern maritime cities, such as London, Amsterdam, and Rotterdam. In a number of early modern Dutch towns, about half the criminals convicted in court were women.¹⁸

The works on women and crime in the past few decades have also provided general insights into the profile of criminal women in Europe between 1500 and 1900.¹⁹ Most studies indicate that the majority of women appearing before the courts were poor and single, though the latter characteristic is quite complex. Due to various demographic factors, such as high migration levels (temporary and permanent), high mortality rates, the outflow of men in maritime towns, and the surplus of women in towns in general, a considerable proportion of the women were alone. Some of them were married but living single lives because their husbands had left them or were at sea for extended periods. Thus, a considerable percentage of the households in early modern cities were headed by women who had to scrape by without the support of male family members. Given their vulnerable positions, many women in towns were more likely to become involved in crime. Furthermore, the work on women's crime has also brought to light that their crimes were often similar to those of men; they, too, committed primarily petty crimes such as theft, pickpocketing, fencing, fornication, and begging.²⁰ They were also involved in violent crimes, contrary to the early historiography, which considered women mostly as victims, too meek to use violence on their own accord.²¹

Despite their poverty and vulnerability, criminal women did have agency. Several studies have pointed to the independence of and opportunities for women living in the margins of urban life and their use of the judicial system. In her study on criminal women in eighteenth-century Provence, Karine Lambert implicitly calls for a review of the general assumption that urban life caused rural women to lead autonomous and dangerous lives and to behave more criminally than they would have done at home. In fact, the opposite was true: the accused women themselves were attracted by towns and saw them as places of refuge

that enabled them to move away from their place of origin and live more independent and anonymous lives.²² This is confirmed by Anne-Marie Kilday's work on the surprisingly high rates of infanticide in Scotland compared to south of the border. She reveals that women often killed their newborns in a bid to suppress the guilt they felt from carrying to term an illegitimate pregnancy. The heightened guilt and shame of illegitimate pregnancy were imposed on women by the parish council, which dominated the judicial process with very little involvement of law officials.²³

The agency of plebian Londoners is a central topic in a recently published book by Tim Hitchcock and Robert Shoemaker on the lives of the London poor between 1690 and 1800. They use the appealing term "pauper agency" in their analyses of London justice and come to the conclusion that changes in policing, justice, and poor relief were shaped by those who used such institutions: common Londoners.²⁴ This focus on the agency of offenders is most visible in the new microhistory of crime. A recent volume edited by Anne-Marie Kilday and David Nash has highlighted the relevance of microstudies of crime and the law to give "a rounded and fully nuanced history of crime."²⁵ The authors warn against too much focus on general models of explanations to carve out the shared reality of one's encounter with the law. They emphasize the impact of the specific historical context on the subjects' behavioral choices. This approach parallels Martin Dinges' understanding that judicial systems are formed by the people who use the courts, and the extent to which they have access to justice, which he referred to as *Justiznutzung* or *Uses of Justice*.²⁶ Dinges observed that people often used a court complaint as a means to exercise social control or as a form of conflict regulation. Several studies have shown that women were particularly visible as accused and plaintiffs before the lower courts and informal forms of conflict regulation. Richard McMahon on prefamine Ireland has explained how women victims, and perpetrators, of domestic violence were regularly using the courts to claim their rights, even though they were not assured of a benevolent hearing.²⁷ Joanne Turner has observed that female offending in nineteenth-century Stafford was largely a matter of the Petty Sessions, and the women who came before the magistrates were often alcohol dependent, poor, and destitute. Her study also shows that female crime statistics partly represent prosecution policies. In the course of the nineteenth century, the numbers decreased because women's involvement in crime became less of a concern to the police.²⁸

Turner's examinations of Stafford touch upon a central question in the historiography of women and crime: did the proportion of women decline in the criminal process in the eighteenth and nineteenth centuries? In two articles in 1991 and 1994, criminologists Malcolm Feeley and Deborah Little stirred up the debate by arguing that throughout Western Europe until about 1750 women committed many more crimes than present-day women. In the seventeenth and eighteenth centuries, women accounted for 30–50 per cent of criminal cases, and this dropped to 5–15 per cent after industrialization (between 1750 and 1850). According to Feeley, women's lives became confined to the domestic sphere, a development that had two major consequences for the prosecution of female crime. First, women were less likely to be prosecuted and convicted because a new vision of women's roles led public prosecutors to take women's crimes less seriously. Secondly, the ideology of the private roles of women led to a real decrease in crime committed by women.²⁹

Much has been said about the “vanishing female,” but most scholars reject the main argument of Feeley and Little and agree that there was no clear-cut decline in female crime in the period between 1750 and 1850. Data on crime patterns in England and Holland suggest continuous fluctuations in female crime rates until the end of the nineteenth century, rather than a sharp drop.³⁰ In addition, there is no clear evidence for a connection between changes in the percentage of female offenders and processes of industrialization. Jurisdictional changes in the eighteenth and nineteenth centuries make prosecutions or indictments as a measure of crime unreliable or at least very problematic. Also, Feeley’s analyses did not account for differences between cities and rural areas or for regional differences within Europe with regard to the proportion of crimes committed by women.

Historians may not agree on the exact timing and cause of the decline of women in the criminal process, but Feeley’s bold assumptions did put women’s crime on the scholarly agenda again. It is also to his credit that today historians acknowledge that women’s share in crime is not a static phenomenon and that it was in some periods much higher than generally assumed.

Aim of this Special Section

In the last decade historians have gained a much clearer view of the profile of criminal women in the early modern and modern period. However, there is still little knowledge about the structural impact of local and regional contexts on female crime. Is there a general European pattern of women’s crime in the early modern period? How can we explain differences across time and space? When did women’s share in crime decrease and how quickly or gradually did this happen? Such questions remain unanswered. Much more research on crime patterns is required before any final conclusions can be reached about continuity and change in female crime throughout the period between 1600 and 1920.

The aim of “Crime and Gender 1600–1920” is to link new strands in the history of women’s crime to the debates described above. Two of the articles focus on the early modern period, while the other three deal with the long nineteenth century. Geographically, they include Germany, Italy, France, the Netherlands, England, and Australia. The contributions to the special issue are innovative in two ways. First, all the authors adopt a comparative perspective that shows the significance of social and legal contexts for understanding women’s crime and the prosecution of their criminal acts. Secondly, this special issue contributes to the vanishing female debate by examining the period of transformation (1800–1920) and presenting new factors that explain women’s crime in this period.

The notion that comparing histories of crime is relevant to crime history is not new. In 2003, Barry Godfrey, Clive Emsley, and Graeme Dunstall observed that “broad, comparative, single-authored studies of either crime in general or of particular varieties of crime have been relatively infrequent.”³¹ Several historians have produced useful overviews that compare crime across time and space, though these have generally covered the period before 1750 and have thereby neglected the period of important judicial and social transformations. Scholars working on violence carried out some comparative work, but they focused more on revealing general long-term patterns of violence and less on

regional differences. Pioneering comparative work has been done by Ted Robert Gurr, who compared crime and repression in four cities over two centuries.³² He was followed by Pieter Spierenburg, who worked on the relations between changing sensibilities and state formation and the changes in punishment and the rise of carceral institutions.³³ Finally, some studies on violence have pointed to “cultures of violence” and a north-south divide with regard to the importance of male honor in violence and the relatively high level of violence in Mediterranean cultures.³⁴ The implications of “cultures of violence” for differences between male and female violence remain implicit. And there is little evidence for important differences between the north and the south with regard to male honor and the level of violence.³⁵

Despite the attempt of Godfrey, Emsley, and Dunstall to further comparative research, there have not been many follow-ups. In his study on crime and justice in late medieval Italy, Trevor Dean includes a range of cities across different areas of Italy, but his broad comparative approach is exceptional.³⁶ Crime historians remain reluctant to use comparative perspectives because they have doubts about proper comparative methods. John Carter Wood pointed to the problem of parameters when comparing violence across time and space: what is being compared? How do we determine temporal and geographical scales and what are the methodological consequences of such choices and selections? The focus on “cultures of violence” in the 1990s was partly a response to uncertainty about violence statistics and the complexity of cross-cultural comparisons.³⁷ Bronwyn Morrison raised the problem of the nature of comparative research and questioned the relevance and applicability of comparative analyses. She posed the question: “What are we really hoping to achieve?” In their comparative work, crime historians seem to aim at cross-cultural generalization and trends rather than at variations and diversity of crime patterns.³⁸

In addition, comparative approaches have rarely been used to measure female crime rates or to explain diverging patterns of women and crime across time and space. There are a few exceptions, however. Feeley’s work included various cities in different parts of Europe although not with the purpose of comparison but to reveal a general decline in female crime. Mary Gibson systematically examined gender differences in the penal code and the organization of prisons in Italy at the end of the nineteenth century. Although her work does not include geographical comparisons, it does question the generalizability of the application of the penal code on the continent.³⁹ The literature on the development of prisons and the judicial system in the nineteenth century has not directly addressed the question of differences between countries on the continent or between Britain and the continent. Our own comparative study of the prosecution of female violence in England and the Netherlands in the nineteenth century suggests that there were significant differences between these two countries. While in England women’s violence was increasingly treated with leniency, there were no gender differences in the treatment of men’s and women’s violence in Holland.⁴⁰ More research is needed to arrive at decisive conclusions, but we suggested that such a divergence could be explained by disparate judicial systems: common law in Britain versus the penal code in the Netherlands.

This special section contributes to the subjects raised above in various ways. Four articles offer geographical comparisons of women’s crime and the prosecution of their crimes in the early modern period and the nineteenth century.

Each of these comparisons shows the impact of the socioeconomic and legal context on gender differences in crime and the prosecution of crime. Ariadne Schmidt and Jeannette Kamp compare the prosecution of illegitimacy and the use of justice in Holland and Germany in the period between 1600 and 1800. They find remarkable differences with regard to control mechanisms between the two regions. While the German authorities aimed at strict control over the regulation of moral conduct, the Dutch authorities provided more freedom to settle moral issues through extra-judicial arrangements. Nonetheless, women employed the same strategies in both regions: they used the courts to strengthen their positions and they were regularly successful in doing so. Their study reflects the importance of the notion of “pauper agency”: judicial systems were not only shaped by the aims and strategies of authorities but also by those using the courts to their own advantage, in this case, unmarried women who found themselves in a precarious situation.

Sanne Muurling and Manon van der Heijden use a comparative approach to examine assumptions of crime historians about gender and different cultures of violence in the early modern north and south of Europe. They argue that significant differences between Bologna (Italy) and Rotterdam (Holland) are not sufficiently explained by divergent cultures of violence but are linked to the socioeconomic and legal positions and opportunities of women. Women’s legal opportunities impacted the prosecution of male violence as well as the proportion of women in violent crime. Thanks to their varied legal options and better social position, women in Holland had greater opportunities to bring abusive husbands to the criminal court. Furthermore, Dutch women’s proportion in prosecutions for fighting was considerably higher than in the Italian case. Due to various contextual factors, such as the built environment, labor opportunities, and restrictions pertaining to women’s movement in the public space, women’s violence is much less visible in the Bologna court records. In addition, the violence of Bolognese women was more confined to houses or their immediate vicinities. Finally, in the Italian case there was greater reluctance to prosecute domestic violence, particularly violence committed by males.

Marion Pluskota takes the bold approach of comparing gender bias in judicial practice in three European cities in the nineteenth century: Amsterdam, Le Havre, and Bologna. She questions the assumption—mainly based on British examinations—that gender had a strong impact on the prosecution of criminality. By looking at the judicial records in three different cities on the continent, she finds that there were important differences between the common law setting / jury system and the penal code system. In contrast to courts using a jury system, such as the London Old Bailey, there appears to have been no clear bias toward one or the other gender in the sentences handed down by the correctional courts of Amsterdam, Le Havre, and Bologna. Her study demonstrates that gender bias was less prevalent in the prosecution of courts adjudicating on petty crime than courts dealing with serious or indicted crime. Trials involving serious crime attracted journalists and gave judges as well as the accused scope to play with gender norms. The presence of a jury encouraged suspects to emphasize their compliance to gender norms. Pluskota’s conclusions may stimulate other historians to look more closely at the legal context in relation to the notion of gender.

The examinations by Alana Piper and Beate Althammer likewise offer interesting perspectives on the notion of gender in the prosecution of petty criminality in the long nineteenth century. Alana Piper compares the prosecution patterns and public perceptions of male burglars and female pickpockets in Melbourne between 1860 and 1921. Her examinations include the constructions of victims as well as those committing these crimes. Although both crimes were the subject of community concerns, the conviction rates for burglary and pickpocketing differed dramatically. Female defendants accused of pickpocketing were able to reposition themselves as victims, whereas male burglars became much more associated with serious and threatening crime. These findings seem to confirm Pluskota's argument regarding the impact of the jury system on gender bias in the prosecution of criminality. The jury system of Melbourne gave female pickpockets the opportunity to present themselves as victims, and judges and juries apparently believed female defendants' claims of victimization.

The final article of this special section presents a new explanation for women's declining appearance in the criminal process in the course of the nineteenth century. Beate Althammer examines the shifting proportion of men and women in vagrancy cases in various parts of Europe (England, Germany, and France) and finds that in the course of the nineteenth century women disappeared from the prosecutions for begging and vagrancy. She suggests that the decline of women in the crime statistics reflected a real decline in female crime, though this was attributable to other factors than those mentioned by Feeley. The emergence of the welfare state resulted in institutions that provided women and children in particular with a much broader range of social facilities and support. The category of women who traditionally had turned to begging and vagrancy declined for several reasons: there were better survival options, and women became less inclined than men to break the vagrancy laws.

In conclusion, this special section aims to show the relevance of comparative methodology in crime history, notably with regard to legal and socioeconomic contexts. Building on the transnational trends highlighted in the following articles, we hope to encourage fellow historians to cross their national boundaries and to explore more comparative and global perspectives in crime history.

Endnotes

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37. John Carter Wood, “It’s a Small World After All? Reflections on Violence in Comparative Perspectives,” in *Comparative Histories of Crime*, eds. Barry Godfrey, Clive Emsley, and Graeme Dunstall (Devon, 2003), 36–52.

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39. Mary Gibson, “Women’s Prisons in Italy: A Problem of Citizenship,” *Crime, History & Societies* 13 (2009): 27–40.

40. Manon van der Heijden and Marion Pluskota, “Leniency versus Toughening? The Prosecution of Male and Female Violence in 19th-century Holland,” *Journal of Social History* 49, no. 1 (2015): 149–67.