

Where Have All the Women Gone?

The Decline of Women in the Criminal Justice Process*

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*This paper, based on our nearly completed book, includes a **short version of our introduction and theoretical framework**, and focuses on our findings **from the Netherlands only**. Our findings for other countries, which are equally conclusive, as well as additional theoretical elaborations and methodological details were left out, but appear in the full version of the book. For your convenience, we include the abstract and table of contents of the entire book.

** Comments can be addressed to either of the authors, or both, preferably electronically.

Abstract (for the full book)

This project sets out to refute the common criminological assumption that women have always constituted a negligible percentage of those subjected to the criminal justice process. Using a variety of primary and secondary datasets drawn from dozens of European courts, we prove that, in the 17th and 18th century, women constituted a significant proportion of criminal defendants all over Europe, particularly in large, urban areas. Female percentage then dramatically declined over the 19th century. This general tendency transcends local explanations, and cannot be fully accounted for by any traditional historical explanation. We suggest that the decline of women in the criminal justice process reflects the shift in patriarchal patterns before and during the industrial revolution; during this period, women were removed from the public sphere, the labor market and the control of their communities and confined in the private sphere of the home, where their opportunities to commit crime decreased, their socialization into feminine roles increased, and the state's willingness to draw them into the public sphere for criminal trial declined. This pattern can be incorporated into two broader theoretical explanations: Elias' process of civilization, and Foucault's rise of disciplinary structures. We conclude by suggesting the project's value for criminology, feminist scholarship and the dialogue between history and sociology.

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I. Introduction:

Challenging Conventional Wisdom on the Share of Women in the Criminal Justice Process

She was notorious, but we do not know for what. (Spierenburg, 1997)

What percentage of criminal defendants in Early Modern Europe were women? Which types of offenses were they tried for? Has their proportion in the population of those subjected to the criminal justice process changed over time? And, if so, why? This project aims to supply answers to these questions, and by doing so – to challenge the common assumptions about female share in crime.

Until recently, mainstream criminology has exhibited a complete neglect of the subject of gender proportion in crime over time. The conventional wisdom within the field is reflected in Gottfredson and Hirschi's observation that "[G]ender differences appear to be invariant over time and space" (Gottfredson & Hirschi, 1990). Indeed, a survey of traditional criminological literature reveals that the field regards the "maleness" of crime across time to be an established fact (Blumstein, Cohen, Roth, & Visher, 1986). Restatements of criminological theory have regarded male crime, for all purposes, as all crime, and, if discussing female criminality at all, confined it to footnotes; and even current textbooks which discuss female crime do so under the assumption that it constitutes, and always has constituted, a small statistical percentage of all crime (Vold, Bernard, & Snipes, 2002; Williams, 2001). While this conclusion is a more or less well supported in regard to modern crime (Braithwaite, 1989; Heidensohn, 2002), its extrapolation across time remains largely unsupported, and has nevertheless become one of the well-accepted truisms of the discipline.

Various criminological theories aimed, in fact, at explaining female crime as unique and scarce. In the nineteenth and early twentieth century, rigid positivist criminology portrayed the "deviant woman" as a uniquely pathological character (Horn, 2003; Lombroso & Ferrero, 1895; Pollak, 1950; Rafter, 1997), an account which remained undisputed long after the theory had been discredited (Heidensohn, 2002). Later theories

presented various explanations for the scarcity of female crime, arguing that women are socialized to occupy submissive, sexualized roles, and therefore engage in less “ordinary” crime than men (Cohen, 1955; Reiss, 1960; Sutherland & Cressey, 1978). Others attributed the low rates of female criminality to the “chivalrous”, lenient behavior of the police and the courts (Manheim, 1965)¹. The consensus about scarcity of female crime led to a neglect in its research, leaving institutions pertaining to female crime unstudied (O'Brien, 1982; Rafter, 1983) long after expressing academic interest in the equivalent male institutions (Goffman, 1961; Johnston, Savitz, & Wolfgang, 1970).

The scarcity of criminological material on women was a gap which feminist criminology set out to correct. The most notable attempt to explain female crime rates was the work of Freda Adler and Rita Simon (Adler & Simon, 1979), who, based on reported shifts in arrest rates for women in the United States in the 1960s and 1970s, argued for a general trend of increasing criminal involvement. While Adler saw the rise in female crime is an outcome of the emancipation of women in the 1960s and 1970s (Adler, 1975), Simon attributed it to the increased opportunities – legal and illegal alike – awarded to women as they entered the labor force (Simon, 1975). Adler and Simon’s work has been challenged on two levels. Some disputed their findings of an increase in female criminality (D. Steffensmeier, Allan, & Streifel, 1989; D. J. Steffensmeier, 1978, , 1980), and others critiqued Adler’s cause-and-effect equation between sex-role and crime as an oversimplification, arguing that both factors were part of a complex web of socioeconomic, political and historical factors (Smart, 1977). Despite its lack of historical dimension, the work of Adler and Simon was pioneering in offering the possibility of change in female crime rates. By contrast, other feminist scholarship analyzed crime as primarily a male phenomenon (Segal, 1990; Smart, 1989; Tronto, 1993), or called for increasing the visibility of female crime in research despite its scarcity (Daly & Maher, 1998; Heidensohn & Silvestri, 1995; Smart, 1989). It is possible that the dearth of feminist criminological studies on female crime as a whole stems from a disenchantment with quantitative methods, and a focus on qualitative, narrative methodologies (DeVault, 1996; Harding, 1987; Klein, 1973; Press, 1993; Ramazanoğlu & Holland, 2002).

¹ Further research undermined the strength of the "chivalry hypothesis", and showed that leniency toward female defendants is extended only toward women who exhibit stereotypically female behavior, or in regard to their status as mothers (Carlen, 1983; Daly, 1994)

Given this theoretical background, fancy the surprise when one of us found, during a study of The Old Bailey records, an entirely different pattern (M. M. Feeley & Little, 1991). The data revealed that women constituted nearly 40 percent of all defendants in the late 18th century. This percentage then steadily declined over the 19th century, with women constituting less than 10 percent of all offenders in 1950 – a percentage approximating the usual estimates nowadays. This discovery led Feeley to inquire about the generalizability of this finding, seeking data sources from other courts, in other areas and countries which could confirm or refute the tendency. A subsequent publication analyzed secondary data from England, the Continent and North America, which confirmed the pattern of a substantial, and declining, female share in the criminal justice process (M. Feeley, 1996).

Our aim in this project, the culmination of our enterprise, is threefold. Firstly, using our array of data, we seek to refute, or at least challenge, the common held assumption that women have always constituted a small percentage of those subjected to the criminal justice system. We believe our findings demonstrate our success in marshalling a massive amount of primary and secondary data on female crime rates in England, the Netherlands, France and Sweden; the findings drawn from the datasets rivals, and at times exceeds, the detail obtained for London from the Old Bailey Sessions Papers, and thus we have been able to take a much closer and sharper work at the patterns of women's involvement in the criminal process than we were in an earlier study. The findings generally confirm that women's participation as defendants in the criminal justice process was once two to four times larger than it is now, and in several areas, particularly in port cities and other urban settings, it equaled and sometimes surpassed male participation. In the late eighteenth century, however, female percentages begin to decline, and their share in the defendant population gradually continues declining over the nineteenth century, finally reaching its low levels nowadays. As to the question whether our findings reflect a decline in women's propensity for crime, or in law enforcement policies against women, our project remains somewhat agnostic. We argue, however, that similar social forces could account for either of these phenomena, or for both.

Our second task is to use the different datasets to prove that the decline in female participation in the criminal process, elsewhere termed the “vanishing female criminal” hypothesis, is a genuine, general pattern, and cannot be explained away using local circumstances and events. Our examination of female crime raises a double question: is

there a real decline in the level or rate or proportion of women's "involvement" in the criminal process, and, if so, is this decline is due to changes in criminal activity, to the vagaries of enforcement and prosecution, or both.

As to the first question, we are concerned to determine whether the general trend revealed in several different data sets in fact reveals a general decline and is not an artifact of an idiosyncrasy of crime reporting, or whether it is due to what we referred to above as "local explanations," i.e. factors due to distinctive circumstances limited to time and place, such as the moral panics that produced witchcraft in some early modern societies, episodic campaigns against licentiousness, and the like. Using various controls on our data, and looking at the general picture, brings us to the conclusion that the pattern we found is not a factor of changes in jurisdictions or demographic changes. We are also able to conclude that the pattern holds even when "typically female offenses", such as abortion, infanticide and prostitution, are controlled for. In fact, the historical interest in typically feminine offenses (Hufton, 1983), such as witchcraft (Knutson, 1997; Sallmann, 1991), infanticide (Donovan; Faber, 1978), abortion (Donovan; Vlamynck) and prostitution (Donovan; Geremek, 1987; Rosen, 1982), and in sensational accounts of violent crime committed by women (Shapiro, 1996; Spierenburg, 1997)², these offenses actually comprise a small share of the Early Modern crime map, and despite being interesting in themselves, do not account for the general pattern of decline we found.

The amount of the data also leads us to believe that the pattern we have found transcends the specifics of time and place. In this respect, our account differs from those of social historians who encountered high levels of female crime in specific locations and research periods, and explained them in the particular context. Some, like Hermann Diederiks, have attributed the high rates of female crime in Leiden to the preponderance of single-mother households in the local textile industry; with the crisis in the industry, the women turned to crime as a "survivalist strategy" (Diederiks, 1990). Similarly, Anne-Merie Roets explains female crime in Ghent as an outcome of the changing economy of the city, which led lower class women to various occupational strategies, one of which was crime (Roets, 1982). Lucia Zedner's work on female crime in Victorian England takes a different

² Very little attention is paid, in comparison, to less sensational or unique types of crime, or to crime in general, though occasional studies address property offenses (de Boer & Faber, 1989) and food riots (Wiesner, 2000).

approach, and links the declining rates of female crime during that period with the shift from moralistic to scientific perspectives on crime and social control (Zedner, 1991). According to Zedner, women who were previously categorized as “bad” were redefined as “mad”, and, as a consequence, were transferred out of the criminal justice system into the removed, invisible realm of the newly emerging mental system³. These local explanations are due, in great part, to the difference between history and sociology (Jones, 1976), the former focusing on contextual information and data (Record, 1959), and the latter focusing on producing broad narratives (Abbott, 1991; Abrams, 1980; Black, 2000; Braudel, 1958; Tyler, Boeckmann, Smith, & Huo, 1998). While particulars of place and time may somewhat influence crime rates and the share of women, we demonstrate that these cannot fully account for the general pattern of declining female participation in crime.

Our third and final objective is to offer a tentative explanation for the vanishing of women from the criminal justice process. We argue that the decline in female share in crime stems from a shift in the pattern of patriarchy – which, according to social historians, occurred between the late eighteenth- and early nineteenth-century - from a model of loose, public patriarchy where women, albeit socially inferior to men, were an integral part of community life and the labor market, to a model of private patriarchy which removed women from the public setting into segregated gender roles in the household. This shift, we argue, may have influenced the levels of female crime. The removal from the public scene had deprived women of various opportunities, including opportunities for criminal enterprise, and the ideology accompanying it contributed to the socialization of women into segregated patterns of passivity and away from crime. This very ideology may also have contributed to an atmosphere of reluctance, on the part of criminal justice authorities, to pursue women through public state mechanisms, placing them under (arguably tighter) informal familial and therapeutic controls. In our discussion of the findings, we link this theory to two broader theoretical perspectives – Norbert Elias' *Civilization of Society* (Elias, 1978[1939]) and Michel Foucault's *Discipline and Punish* (Foucault, 1979).

³ Elsewhere, one of us offered two criticisms of this elegantly presented explanation (M. Feeley, 1996). First, Zedner's work is limited to observing shifts in conceptions of female criminality within the Victorian era, and thus only captures the end-tail of a decline in the proportion of women long before the beginning of the research period. This limited periodization hinders Zedner's project from understanding the change in its entirety, as only part of it might be attributed to the increase in alternative social control. Second, in order for this explanation to be convincing, one must present convincing evidence that the increase in committing women to the mental health system was disproportionate to the increase in committing men. Finally, the explanation faces the challenge that the increase in psychiatric-therapeutic social control was an addition, not an alternative, to the criminal justice system – a process of “widening the net” of social control.

Our mission in undertaking these tasks is far from providing the final, definitive word on the subject. Our hope is that our data, as well as our exploratory search for explanations for the findings, will constitute a foundation for future research and discussion.

II. Methodology

Our project, as explained above, demonstrates that the decline of women in the criminal justice process is a general phenomenon, which transcends local explanations. For this purpose, we have assembled a large number of primary and secondary datasets from various courts and settings in Europe. Despite the numerous sources, the project is not a “meta-research”; the data were collected wherever they were available, in terms of access, accuracy and legibility, and are therefore not meticulously comparable, as they originate from different countries (with different systems of substantive and procedural criminal law), jurisdictions (higher and lower courts) and geographical settings (urban and rural). Nevertheless, when carefully approached and analyzed, the material can provide, if not stable ground for generalization, at least fertile ground for speculation and for comparing the different settings. We opted for separate coding and analyses for each database, and when offenses from different countries were compared, we interpreted them according to historical context. In our graphic presentation, we avoided aggregate graphs and opted instead to present several datasets on the same axis system (X=year, Y= percentage of females out of all offenders) in a way that made them clearly distinguishable from each other. When we used special controls for certain datasets, we presented them separately. Table 1 shows our datasets for the Netherlands, which is the focus of this paper.

Table 1: Data Sources for the Netherlands

| City | Data Description | Number of cases, sampling | Period | Primary/ Secondary Analysis | Source |
|-----------|--------------------------------|-------------------------------|-----------|-----------------------------|------------------|
| Amsterdam | Schepenbank – judicial records | 4164 cases, entire population | 1490-1552 | Secondary | Boomgaard (1992) |

| | | | | | |
|-----------|---|---|-----------|--|--|
| | <i>Confessieboeken</i> – general court records, including reports on investigations and sentences | 3,304 cases, sampled in 10-year intervals | 1680-1810 | Primary | Data provided by Sjoerd Faber |
| | Jailer’s Account <i>Cipiersrekeningen</i> – including all offenders held in preventive custody, probably the more severe and violent offenders (Diederiks, 1990) | 7,508 cases, entire population | 1732-1790 | Primary | Data provided by Sjoerd Faber |
| | Prosecutor’s Records | 2799 cases, sampled in 10-year intervals | 1840-1910 | Primary | Data provided by Sjoerd Faber |
| Leiden | Confessieboeken | 5586 cases, entire population | 1601-1811 | Primary | Data provided by the late Herman Diederiks |
| | Court records (probably same database we worked on, or similar) | According to Noordam, nearly 5000 cases, entire population | 1601-1800 | Secondary (new configuration of dataset) | Noordam (1985) |
| Rotterdam | Court records: combined data from the <i>vonnisboeken</i> (higher courts) and <i>correctieboeken</i> (lower courts) | 229 cases, sampled in 5-year intervals | 1715-1750 | Secondary | van der Heijden (1995) |
| Delft | Higher court records (<i>vonnisboeken</i>), including reports on more serious offenses | Data broken down into 25-year groupings; unclear as to total number of cases | 1591-1810 | Secondary | Noordam (1989) |
| Friesland | Higher court records | Figures provides for the first and last decades in the study; unclear about the number of cases | 1700-1810 | Secondary | Huunsen |

| | | | | | |
|---------------------|---|--|-----------|--|--|
| 7-city Study | Court records (confessieboeken and sententieboeken) from Waterland, Brielle, Twente, Wasenaar-Zuidwijk, Heerlen, Hof van Holland, and Zierikzee | 2748 cases in total, probably entire population | 1676-1811 | Primary | Data provided by the late Herman Diederiks |
| Ghent | Town judiciaries archives ('schepen van de keure') in Ghent during the 18 th century. | Unclear on number of cases, probably entire population | 1700-1789 | Secondary (new configuration of dataset) | |
| General Netherlands | Records from province courts (11 provinces nationwide) | 2761 cases, entire population | 1850-1890 | Primary | National Judicial statistics |
| | Records from county courts (each province divided into counties) | 70,888 cases, entire population | 1850-1890 | Primary | National Judicial Statistics |

When analyzing primary data, we worked primarily with court records, which had better “odds of survival” than the cases themselves and contained all the information necessary to answer our research question. Coding from the lists, however, required careful attention to historical contexts of extracting the offense category (and, occasionally, to extracting the defendant's gender)⁴, as well as to accurately collapsing the various offenses into manageable categories. In both tasks, we used external background material to assist with ambiguous coding decisions. For the creation of offense categories, after some consideration, we opted for a simple and traditional categorization into violence, property, public order, morals, and other well-established categories of crime, similar to those used by the historians whose secondary data we collected⁵. The supplementary secondary data

⁴ In some databases, gender needed to be carefully established from the defendant's first name, or from the description of his or her occupation.

⁵ Special care was taken to avoid anachronisms: we did not want our modern sensibilities or conventions from sociological research to contaminate and bias the data. One place where such decisions were difficult to make was in deciding what category each offense belonged to, an exhausting process when dozens, and sometimes hundreds, of different offenses appear in the records. For example, certain offenses acquire a different meaning in the particular context of the country. In England and France, poaching offenses (also called “forest offenses”) were more severe than one would suspect from their picturesque names, and were, in fact, regarded as offenses against the king or the state rather than nature violations (Thompson, 1973). Similarly, when interested in punishment methods (which were not the focus of the book), it was difficult to discern the severity of punishment from its nature; given the conditions, for example, in the Dutch Rasphuis, Spinhuis and Tuchtuis – all correctional, labor-oriented facilities – we could not say with confidence that spending several devastating years in any of them was more lenient a punishment than having one's ear cut

enriched our information, but presented some analysis problems. In most cases, the data we found were collected for purposes other than ours, and their coding did not allow for the controls we used on our primary databases. We believe, however, that the amount of primary and secondary data amassed in the project portrays an informative picture of female crime levels, as we hope the following example – our findings from the Netherlands – demonstrates.

III. Findings from the Netherlands

(A) Accounts and Explanations in Literature

During the Dutch “Golden Age” and its subsequent decline, state matters were loosely organized by the weak central government in the Hague, and Dutch economy relied mostly on port cities and their industries (Diederiks, 1990: 59). The involvement of women in the economic world of these Dutch cities has led several historians to link female crime with economic changes.

In his study of eighteenth-century Leiden, a city based on textile industry, Hermann Diederiks argues that female crime changed with the tide and fall of the industry. Many of the employees were women, and many of them were heads of household. Thus, “the share of female workers dropped during the second half of the 18th century. The greater role of female textile workers in the criminal sentences implied indeed a much greater criminality of women registered as spinner” (Diederiks, 1990: 62). The economics of textile created, therefore, a “criminal class” of workers. Furthermore, Diederiks argues that the typology of crime in Leiden conformed to the industrial crisis: while the 17th century was characterized by more violent crime (including women’s violence), the 18th century decline in the textile industry brought about more offenses related to economic distress – a finding which he links to the rising numbers of spinner women involved in crime. Some of Diederiks’ insights about crime and the economy in Leiden are echoed by Kloek, who, in addition to other factors related to women’s crime, emphasizes the relevance of urbanization to the patterns of female criminality (Kloek, 1990). Noordam suggests two

off. We settled for analyzing the type of punishment – corporal, correctional, monetary – rather than making value judgments on its severity.

additional issues pertaining to the high percentages of women criminality in Leiden: the high women-to-men ratio in the city, and the possibility that the government viewed women as independent and powerful (Noordam, 1985).

Ane-Marie Roets (1982) offers a similar analysis of the connection between the economy in Ghent⁶, which also had a textile industry, and female involvement in crime. She observes that, from roughly 1672 to 1759, Ghent (with the rest of Europe) experienced an economic downturn, characterized by an increase in unemployment. However, at the end of this period, from 1746-1750, the economy improved and new capitalist industries sprang up, such as textile-oriented industries (cotton spinners, weavers and pressers), sugar refineries, and tobacco and paper manufacturers. These changes had negative influence on most of population; old, disappearing industries were not immediately replaced by new ones. The tapering off of older industries was accompanied by the “proletarianization” of workers. Even master craftsmen did not escape the effects and suffered a loss of status as they were demoted to ordinary workers. However, the new industries hired a relatively high number of female workers. In 1817, just over half the workers (53%) in the cotton industry were women. The increasing poverty and insecurity experiences by families made the income contribution of women a necessary supplement to the family’s diminishing income, as well as a necessary mean of survival for single women. Roets links this need for female-produced income with emergence of prostitution and drunkenness, particularly committed by widows and deserted wives.

Other Dutch historians also argue that female crime stemmed from economic necessity. As Peter Spierenburg notes,

When women stole, this was connected to their traditional association with providing food and taking care of the family’s needs. If the level of women’s participation in public life influences their tendency to engage in crime, it does so primarily by affecting their share in property offenses. (Spierenburg, 1997: 13)

Property offenses, under *Ancien Regime* systems, were prosecuted and harshly punished regardless of the value of the stolen goods. Sjoerd Faber (1990) tells of Anna Schyffers from Amsterdam, who was tried, in 1795, for finding an empty beer barrel to sit on. Anna was very poor, and her house was, as reported, empty of furniture; nevertheless, she was

⁶ For the purpose of this project, we discuss Ghent along with cities in the Netherlands, due to the similarity in geographical and socio-economic conditions.

sent to two years of confinement. Historians have paid attention to the employment status of particular female criminals, even when there was no direct connection between the nature of employment and the offense, such as infanticide committed by domestic servants (Faber, 1978), a common profession for lower-class women (Wijsenbeek, 1987).

Migration patterns also affected the map of Dutch crime. These are quite complex to examine and code for an economy based on port cities, as “the distinguishing of ‘Amsterdammers’ and ‘Foreigners’ doesn't mean much in a society so dependent on a continual flux of immigrants” (Faber, 1983: 6). Nevertheless, Faber finds that official court records show a more favorable treatment toward established residents in Amsterdam than toward outsiders, a conclusion also shared by Florike Egmond (1993). Demographical changes in the city, particularly those related to a departure of men, are linked to the rise in female criminality: Els Kloek (1990) reports that, in the first half of the 18th century, more men than women left the city of Leiden due to economic hardships, leading to a substantial growth in female crime based on economic hardship⁷.

Ethnicity played an important role in the construction of criminal gangs. In her colorful study of the Amsterdam organized crime underworld, Egmond finds a strong alliance between two groups of foreigners: gypsies and Jews (Egmond, 1993). Criminal bands of the period are described as large-scaled associations, based on collaboration between these two ethnic groups, strengthened, in several cases, through intermarriages and other cohabitation and family arrangements. Such family alliances – often not monogamous, or through a succession of three or four husbands and wives – created links between families, and increased the “membership” in the bands. Women members of these families constituted the familial “glue” of the band, and their participation in criminal families were often seen as participation in crime: "Convicted women were often reproached for their ‘dissolute and abominable way of life’... and their licentious behavior because they were ‘living with famous thieves’". (Egmond, 1993: 7). However, female participation in gang activity was not limited to their role as wives or homemakers. Women owned alehouses, which served for hiding stolen property, and fully participated in other activities of the gang.

⁷ This account is complemented by Diederiks' observation that spinning women – who constituted the main group of women criminals – were often Leiden locals, while other workers were not (Diederiks, 1990).

A gypsy background and even belonging to one of the gypsy families involved in the band did not grant automatic admission. That, at least, is what Johanna Florusse told her interrogators, confirming that no one became a member unless the others approved of it. She had been very young at the time, and her mother had promised the captain on her behalf that she would steal as much as she could. (136)

This image of women as a social and family “glue” in criminal organizations is echoed in Kloek’s analysis of Leiden female criminality (1990). When operating in gangs, Leiden women were mostly assistants to men – standing watch while the crime was being committed, handling stolen goods, or merely prosecuted by association – having a relationship with a male gang member. However, a general analysis of property crime, regardless of the context of gangs, leads Kloek to the conclusion that women seem to have committed more property offenses on their own than men – in fact, in Leiden, “almost half the women appear to have gone stealing on their own” (Kloek, 1990). Women were also suspected of handling stolen property and sending children to steal. Kloek concludes that, contrary to common opinion, most property crimes in which women were involved did not involve “guile” from the woman’s part.

Dutch literature focuses on two aspects of female crime: “typically feminine” crime and violent offenses. The former category includes prostitution, an offense for which only women were prosecuted (Kloek, 1990), and related offenses, such as “night walking” (Faber, 1983). The literature also mentions infanticide as an exclusively female crime (Faber, 1978). The latter category, violent offenses committed by women, is often regarded with a certain surprise (Spierenburg, 1997; van der Heijden, 1995), since any female violent activity violates “the odds”, according to which “among prosecutions for crimes of violence women constitute a tiny minority” (Spierenburg, 1995c: 1). In fact, some of the literature makes a linkage between violence and masculinity through “codes of honor” (Spierenburg, 1998). Nevertheless, the fascination with the subject of (uncommon) female violence leads to a variety of anecdotal material about cases. Even the concise records in the “Schoutstrol” – cases that did not lead into custody – supply us with atypical female behavior such as that of “the wife of Michiel Hage, who had [in 1690] inflicted injury on another woman with a clog, causing a gash in her head; and Marry Symons (alias French Mary) for biting another woman in the head” (Faber, 1983: 5).

The most detailed accounts appear in Spierenburg's work, (Spierenburg, 1997), which demonstrates the fascination of 17th century Dutch society (and modern history) with female violence:

In his 'Black Register of a Thousand Sins' of 1679, Jacobus Hondius, minister at Hoorn, indeed discusses exactly 1000 sins. Many are committed by specific categories of people. Sin nr. 970 involves 'such women, who are members [of the Reformed Church] and nevertheless do not refrain from fighting and flinging publicly and to tear the cap from the head'. This behavior is a disgrace upon the community: 'as men are not allowed to be fighters... much less are women'. (Spierenburg, 1997: 1)

The connection between female violence and respectability reflects a reality in which most of the few cases of female assailants and killers "belonged to a social milieu at the border of the respectable and the unrespectable segments of the working classes" (ibid., 27). The main weapon used by the women was a knife. When used inside the house, the knife was a handy domestic tool; but when carried around in public places, the knife was an imitation of the violent male culture, in which people with a higher social status used sticks, and working class people used knives. Indeed, the women in Spierenburg's Amsterdam study (Spierenburg, 1997) were overwhelmingly lower class. This "knife fighting culture" was often manifested through duels, and involved issues of honor (Spierenburg, 1995b). However, even women who carried knives in public places were not an integral part of the "knife fighting culture". Women tended to assault or kill other women during personal quarrels, or, less often, children, rather than grown men (Spierenburg, 1995b); they were involved in incidents among themselves and took little part in the male culture of violence (Spierenburg, 1997). Similar conclusions are reached by Kloek (1990), who observes that violent incidents involving women were often threats and infanticides, rather than typical male confrontations⁸.

Women identified as criminals were subjected to correctional institutions, such as the Spinhuis, long before the establishment of the prison as a general punitive method (Spierenburg, 1993, , 1995a). These institutions, mostly workhouses, were as much about labor as they were about confinement (Faber, 1990). Confinement sentences made it very difficult to reintegrate in society, as Faber illustrates:

⁸ Infanticides are often excluded from this type of analysis because of their unique nature: "The story behind infanticide is usually that of desperation, shame and conflict with the community's sexual norms" (Spierenburg, 1995b: 707).

There was no question of resocialization: take the case of Grietje Dirks, whose eighth term in the Spinhuis, the women's prison, was actually extended when it finished in 1703. She had been granted permission to remain there on an earlier occasion as well, instead of undergoing the banishment which had been imposed on her. The infamous thief one-eyed-Trijn was also stuck with her low status. On 2 January 1681, when she was 69 years old, she was sentenced to two years in the Spinhuis for violating a banishment order. It was her 26th (and possibly 27th) conviction. This time, she had been 'found in the church'. What was she looking for there? Forgiveness and a little warmth, the present-day observer will say. Acquaintance with her criminal career nevertheless supports assumptions that she was on the lookout once more for a watch or some money, or perhaps even for a few months in the Spinhuis, which by now had become so familiar. (See in detail in: de Boer & Faber, 1989; also see Faber, 1983: 12)

Our following quantitative analysis shows that the patterns of increased female crime described in these studies transcended the local realities of specific cities and industries. While large cities, such as Amsterdam, exhibited the largest percentages of female criminals, female share in crime all over the Netherlands, in various types of offenses, was considerable, far exceeded today's rates, and only declined during the 19th century.

(B) Quantitative Analysis

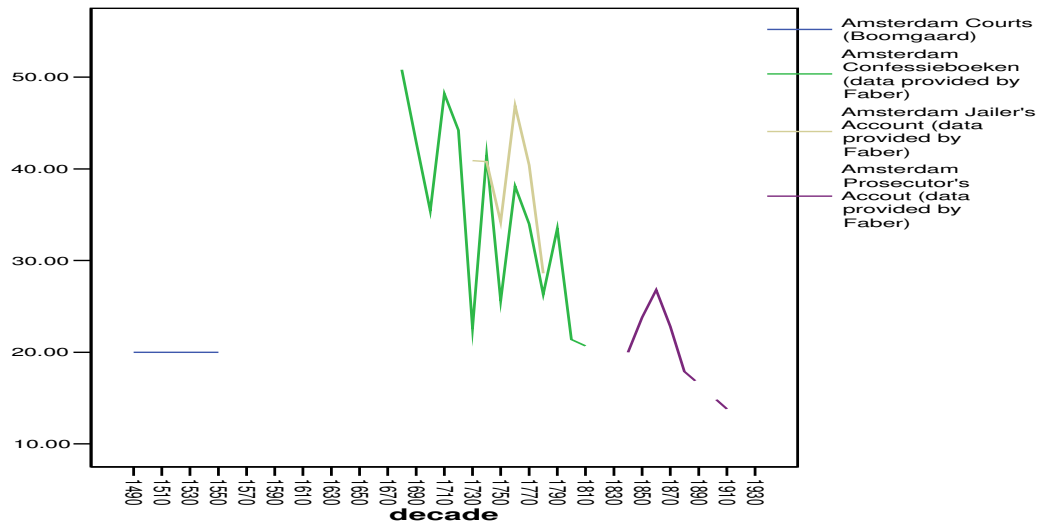
The most substantial presence of women in the criminal justice system was found in Amsterdam, whose working class women were renowned "for their enterprising spirit and gumption" (van de Pol, in Kloek, 1990: 1). Our databases for Amsterdam consisted of secondary data from Boomgaard (1992), covering all offenses tried before the Schepenbank (the judicial authority at the time) for the years 1490-1552 (a total of 4164 cases), as well as primary data from three sources: the *Confessieboeken* – Amsterdam's court records (covering 1680-1810 and containing 3304 cases in 10-year intervals), the *Jailer's Account*, including information on people held in pre-trial custody (covering 1732-1790 and including 7500 cases)⁹, and the *Prosecutor's Account* (covering 1840-1910 and including 2400 cases, sampled in 10-year intervals).

As illustrated in Fig .A1, the percentage of women out of all offenders is particularly high during the late 17th and 18th century, declining in the 19th century. While caution should be

⁹ This database is less general than the *confessieboeken*, and probably included a disproportionate representation of serious and violent offenders; Diederiks (1980) argues that jailer, or warden, records had a higher percentage of violent offenders, and suggests that these may have been considered a flee risk and therefore held more frequently in pretrial custody.

exercised in regarding the four sources as a continuum, the differences in female participation are quite dramatic.

Fig. A1: Percentage of women out of all offenders in Amsterdam



Sources: Boomgaard (1992), Confessieboeken, Jailer's Account, Prosecutor's records (the three latter databases provided by Faber).

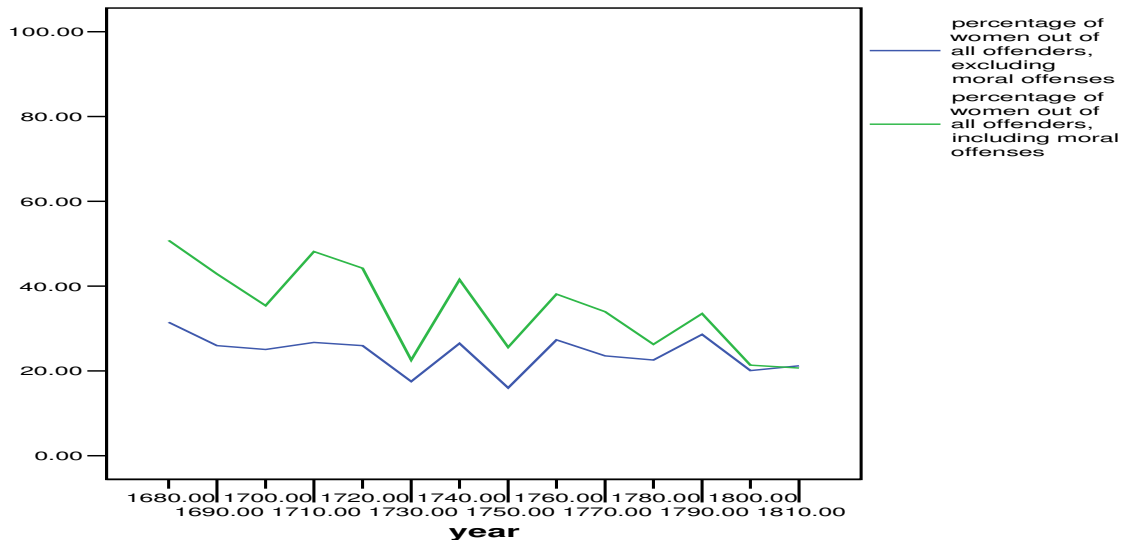
The early data by Boomgaard provides an average figure for the entire period, according to which women constituted 20% of all offenders (814 out of 4164 offenders in the records: Boomgaard, 1992). While women were considerably represented in moral offenses (38.2% of all offenders), they were also a substantial share of economic and religious criminals (37.5% and 29.6% respectively). During this early period, however, women were far less involved in property offenses (17.6%), fiscal crime (14.9%), violence (13.6%), and disruptions of public order (11.6%).

The information revealed in the primary databases for later periods is far more revealing. The Confessieboeken data reveal that, during the period covered by the data, the total number of offenders in the data decreased from 555 in 1680 to 150 in 1810 – a notable decline, albeit dwarfed by the subsequent increase in crime in the later 19th century. Nevertheless, during this decrease another transformation occurred: a rather steady decrease¹⁰ in the percentage of female offenders, from 50.8% to 20.7% of all offenders.

¹⁰ 1730 and 1750 are characterized by a particularly low percentage of women. In 1700 there were 480 female offenders in the data base – quite a substantial number – but the percentage is low due to an unusually large number of male offenders.

Women were heavily represented in various crime categories, such as offenses against life (7 out of 31 homicides), violence (with female share rising from 15% to 45% in the second half of the 18th century), property (declining from 35% to 25% over time), begging (a consistent 38% of all offenders) and offenses against judges or politicians (steadily decreasing from 55% to 20%). The lowest incidences of female criminality were found in offenses against public order, political crimes and economic crimes – 14.8%, 14.3% and 12.7% respectively (with female participation in these categories declining over the period covered by the data). Notably, women’s share in moral offenses, a “typically-feminine category”, does not fully account for the entire decline in female share in crime, as can be seen by our control of this category in Fig. A2¹¹.

Fig. A2: Percentage of women out of all offenders, including and excluding moral offenses, 1680-1810



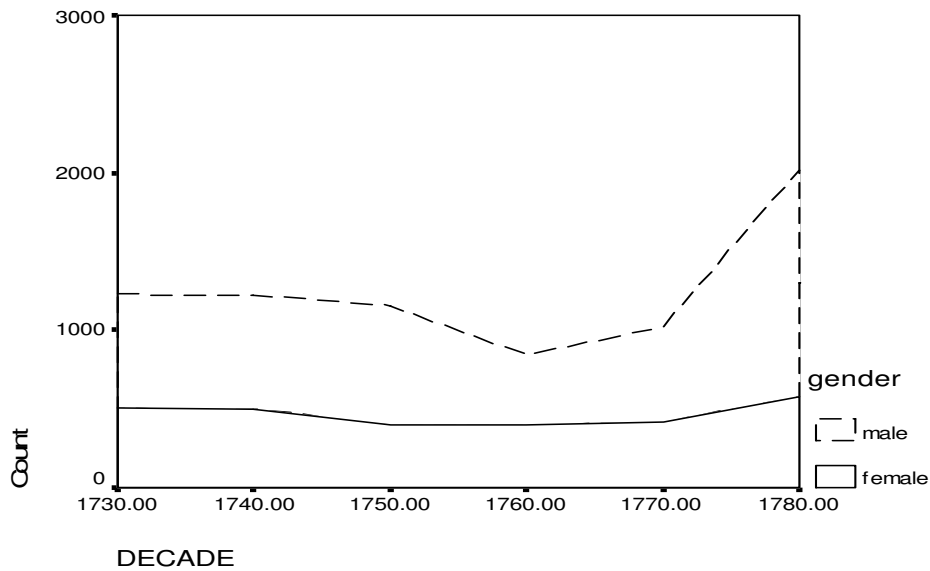
Source: *Confessieboeken* (see above)

¹¹ The offenders’ origins also varied between men and women and over time. Between 1680 and 1740 century, most offenders were Dutch; female offenders were mostly non-Amsterdamer Dutch, while male offenders came from Amsterdam as well as the greater Netherlands. The demographic pattern changed between 1740 and 1780, when most offenders, both male and female, were foreigners (non-Dutch). In the late years of the 18th century, and into the beginning of the 19th century, most offenders were Dutch, with the female population consisting mostly of Amsterdam locals.

The *Confessieboeken* database also allowed us, after a reconfiguration of the data, to examine the difference between genders in respect to punishment; while a detailed discussion of these findings exceeds the framework of this paper, it can be said that, in general, the percentage of women receiving corporal punishments was relatively low, and decreased further, throughout the period covered by the data. However, women constituted a substantial percentage of those punished by various methods of public exposure (presentation on a scaffold or on other devices such as a “wooden horse), and by early institutions of confinement, like the tuchtuis and spinhuis, which mostly subjected their inmates to a regime of labor (Faber, 1990). Other popular punishments for women, which were increasingly in use over time, were banishment and fines.

The Jailer's Account (*Cipiersrekeningen*) supports the *Confessieboeken* findings, and shows a decline in the percentage of female detainees throughout the 18th century; this decline can be attributed to the disproportionate increase in the number of male detainees (Fig. A3). Women in this database were most heavily represented in property and morals offenses, as well as in political offenses and homicide; as with the *Confessieboeken* data, controlling for moral offenses did not fully account for the decline of women in the database.

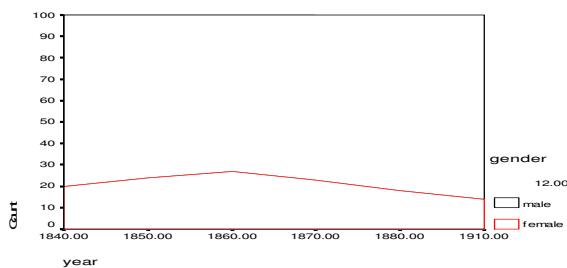
Fig. A3: Total numbers of male and female detainees, 1732-1790



Source: Amsterdam jailer's account of people entered into pretrial custody

Finally, the prosecutor's records for the mid-19th and early 20th century show a much lower, and declining, percentage of women among the growing total numbers of criminal defendants, as depicted in fig. A4. The decline occurs in all offense categories¹².

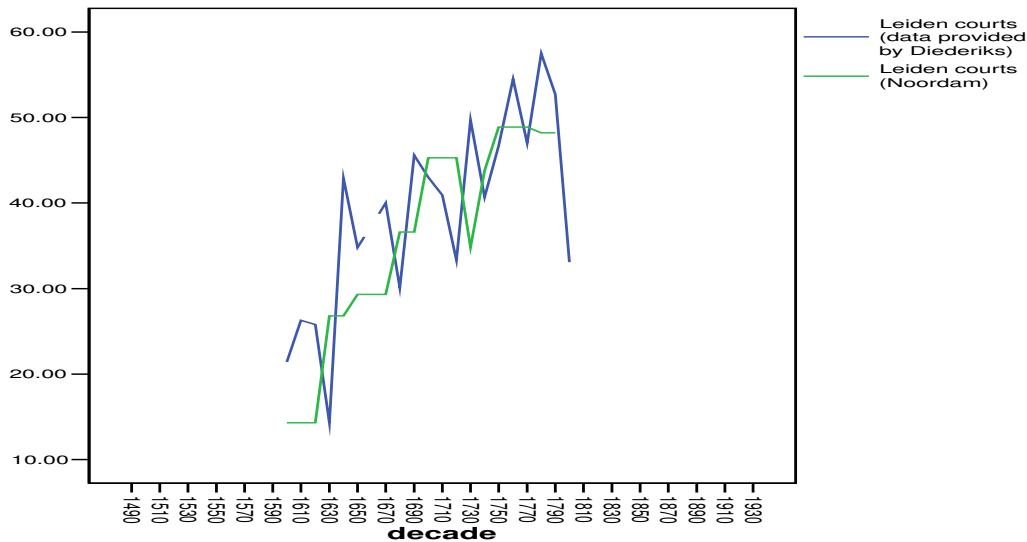
Fig. A4: Percentage of women out of all offenders in Amsterdam's prosecutor's records, 1840-1910



¹² Diederiks (1980) attributes the decline in moral offenses to the changes in definitions of offenses at the time; while this is interesting in itself, our main concern is with the general decline, which cannot be fully accounted for by moral offenses.

Our data on crime in Leiden show a similar pattern to that of Amsterdam. The data is based on a primary analysis of the Leiden *confessieboeken*¹³, including 5586 cases – the entire population of defendants tried before the general Leiden courts 1601 and 1800 – as well as on the work of Noordam (1985)¹⁴. As shown in Fig. A5, the *confessieboeken* data demonstrate an increase in the percentage of Leiden female defendants, from about 19.5% percent at the beginning of the 17th century, to a figure fluctuating between 30 and 50 percent in the first half of the 18th century. The female share in crime rises to a high of 57.8% in the 1770s, and then begins to decrease toward the end of the century. As can be seen in fig. A5, Noordam’s data follows a similar pattern for the data period.

Fig. A5: Percentages of women out of all offenders in Leiden, 1601-1800



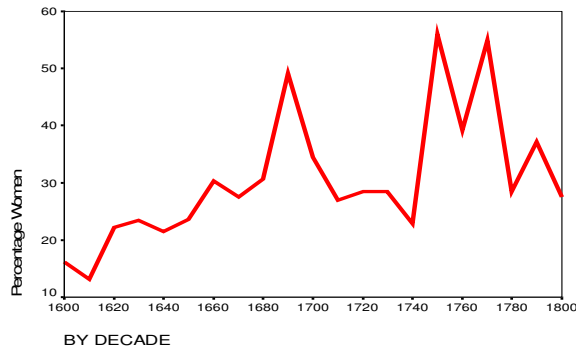
Sources: Leiden *confessieboeken*; Noordam (1985)

Women’s share in crime was particularly notable in property offenses and in ban-breaking, which was committed, according to Noordam, when banished women could not live, or find work, outside of Leiden. As with the Amsterdam data, excluding moral offenses from the database did not alter the pattern (see fig. A6).

Fig. A6: Percentages of women out of all offenders in Leiden, excluding indecency offenses, 1601-1800

¹³ The data was provided to us courtesy of Diederiks, who conducted his own analysis in connection with his work on the textile industry’s crisis and its contribution to the criminal map (Diederiks, 1990).

¹⁴ It is very probably that Noordam and Diederiks worked with the same database; we are not a hundred percent certain of this, and until we can ascertain it, we include both analyses in our account.



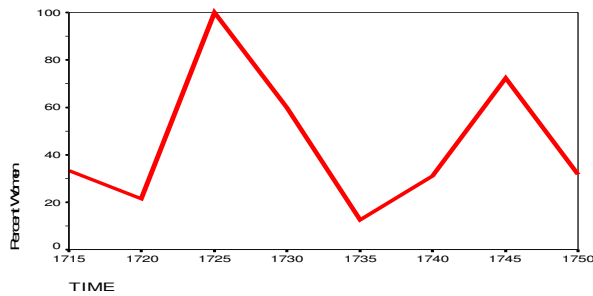
Source: Leiden Confessieboeken (database provided by Diederiks)

Noordam claims that economic distress, though a factor in changing women's involvement in crime, does not fully account for the increase in women's share in all offenses; economically motivated crime would include mostly prostitution and property crime, and the data show an increase in other offenses as well (Noordam, 1985). She suggests that the increased level of crime also reflects an increase in government policy toward disciplining workers (including independent women and children).

The analysis is supplemented by secondary sources for two other big cities – Rotterdam and Delft (figs. A7 and A8 respectively). For Rotterdam, we rely on the work of van de Heijden (1995), analyzing a small sample (229 cases in 5-year soundings) from the *Vonnisboeken* (higher courts) and *Correctieboeken* (lower, local courts) between 1715 and 1750. For Delft, we rely on Noordam's study of the city's *Vonnisboeken* between 1595 and 1810. Caution should be exercised when drawing conclusions from the scant Rotterdam data¹⁵; however, the Delft data clearly indicates high percentages of female offenders, particularly in comparison with the Interpol figures on Delft crime rates between 1910-1930 which Noordam includes in her analysis.

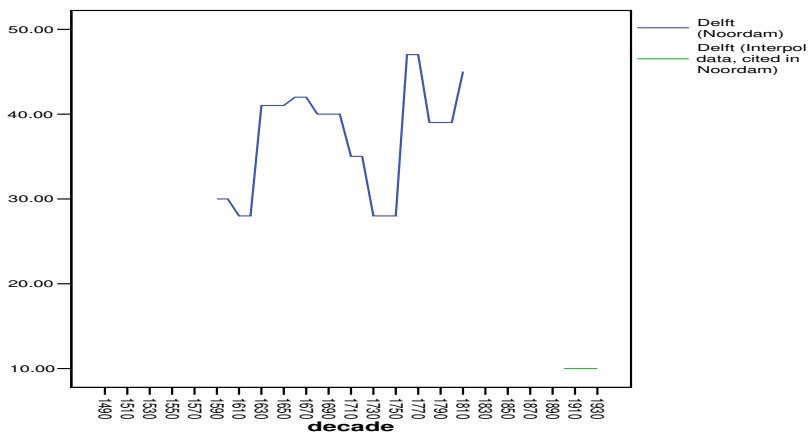
Fig. A7: Percentage of women out of all offenders in Rotterdam's correctieboeken, 1715-1750

¹⁵ For example, only one offender – a woman – was sampled for 1725, creating the 100% figure for this year.



Source: van der Heijden, 1995.

Fig. A8: Percentage of women out of all offenders in Delft's court records, 1595-1900



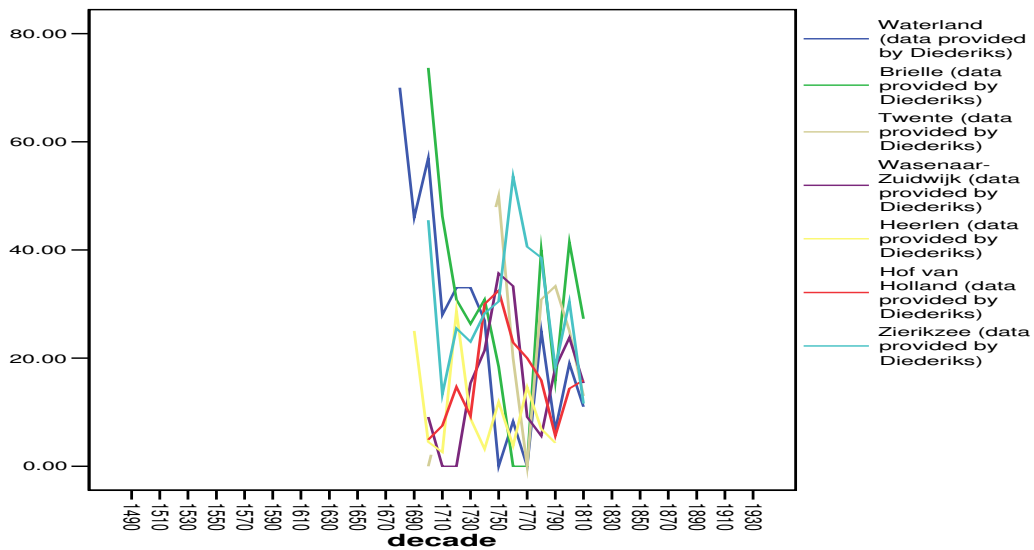
Source: Delft *Vonnisboeken*, adapted from Noordam, 1989

The decline in female share in crime is also notable, albeit to a lesser extent, in rural areas. Our data includes an analysis of criminal court records in seven middle-sized and small provincial cities between 1676 and 1811¹⁶. In total, the data consists of 2,748 cases, constituting the entire population of cases for the seven sampled cities. While the numbers of defendants listed for the different cities were sometimes too small to draw conclusive conclusions, an overview (provided in fig. A9) seems to reveal an overall decline in the percentage of women, albeit more pronounced in some communities than others – particularly in those for which the dataset provided more cases. Furthermore, these graphs show that the decline was most marked between 1740 and 1780. The most significant shifts are found Waterland and Brielle, communities in which women constituted over seventy percent of those charged with crimes in 1680 and 1700 respectively, and then declined to near zero by the mid eighteenth century. Zierikzee also experienced a marked decline from a high of over fifty percent, but unlike the other communities in the latter

¹⁶ The database, collected by Diederiks and used by him for different purposes (Diederiks, 1992), was graciously shared with us, and we conducted primary analysis. The cities in the study are Waterland, Brielle, Twente, Wasenaar-Ziudwijk, Heerlen, Hof van Holland and Zierikzee.

part of the eighteenth century. Figures for the other communities are more difficult to interpret since at their highest women did not constitute such a large proportion of criminal defendants, and there was considerable fluctuation in their percentages over time.

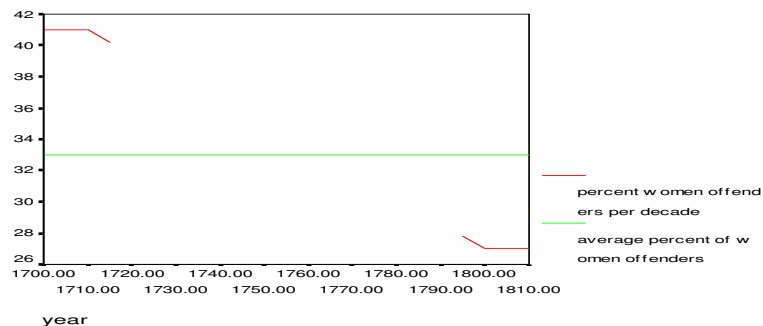
Fig. A9. Seven city study – percentage of women out of all offenders in each city (composite graph)



Source: Confessieboeken and sententieboeken for the 7 cities

Secondary data from Huunsen’s work on the criminal court of Friesland between 1700 and 1810 (Huunsen) include only three summary statistics: the average percent of women defendants for the entire period (33%) and two percentages for the first and last ten-year periods in the study (41% and 27% respectively). While we wish the pattern was available in ten-year increments, the data supplied by Huunsen (represented in fig. A10) is consistent with the pattern of decline.

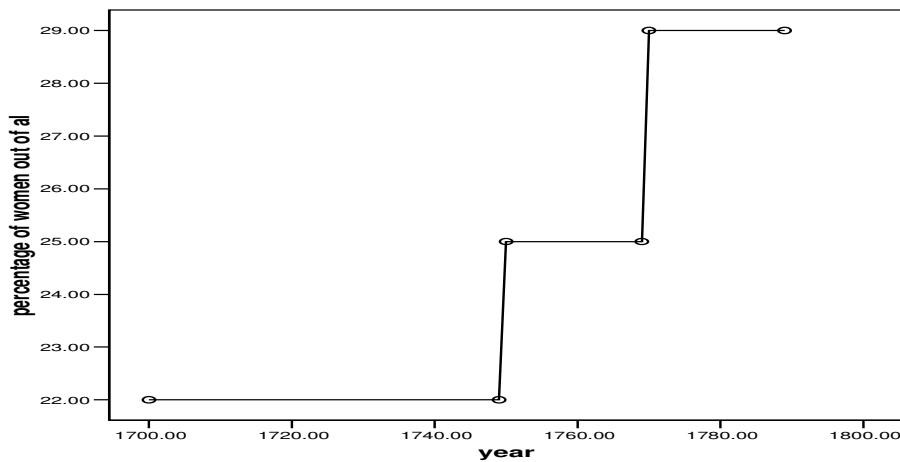
Fig. A10: Percentage of women out of all offenders in Friesland, 1700-1810



Source: adapted from Huunsen

The one anomalous finding is Roets' study of female criminality in the 18th century Ghent (1982)¹⁷. In contrast to the marked pattern that emerges from the various sources for the Netherlands that are discussed above, Roets found that women's involvement in crime increased throughout the eighteenth century, increasing from a low of around 22% of those charged at the beginning of the century to 29% by century's end (see fig. A11). In the data provided by Roets (not reflected in the graph) she accounts for this increased presence of women largely in terms of the rise of the numbers of cases involving charges of sexual offenses; she reports the proportion of those charged with sexual offenses who were women rose from 17% in 1700 to 62% in 1770 of all offenders, mainly due to the increase in prosecution of 'crimes against the public sensibility' (Roets, 1982). Still, the overall percentage of female crime for the research period far exceeds modern statistics.

Fig. A11: Percentage of women out of all offenders in Gent, 1700-1789



Source: Roets, 1982

Finally, we conducted analysis of more recent data sources, in order to observe the patterns in female criminality over the *longue duree*. Naturally, the events of 1811 radically transformed the criminal law, the jurisdiction of the criminal courts, and basic

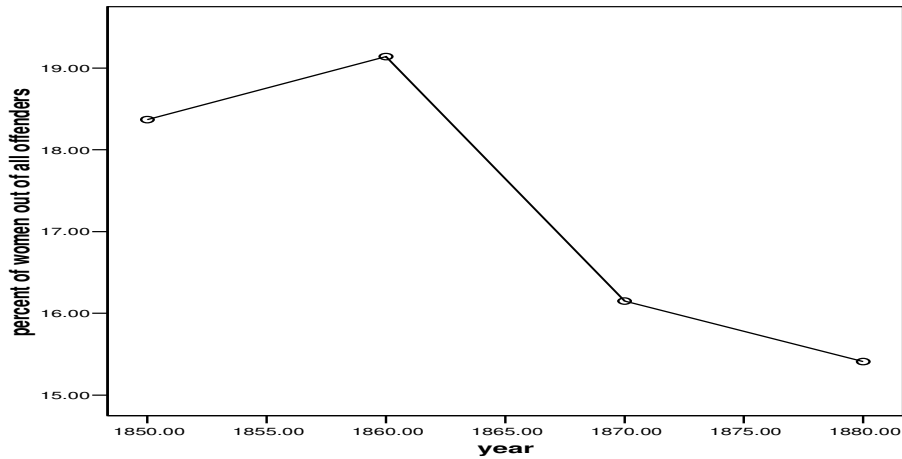
¹⁷ While Gent was not part of the Netherlands even in the Early Modern Period, its geographical proximity and similar features make it relevant here.

administrative units within the Netherlands, all of which make it difficult extend the analysis into the 19th century; however, beginning in the 19th century, in the Kingdom of the Netherlands, as in most other European countries, national statistics began to be collected and published. These sources, albeit not in neat continuity from the 18th century data, nevertheless provide some basis for extending our inquiry over a still longer period. National publications provide statistics on charging, convictions and sentencing of criminal defendants on an annual basis and break down figures of individual communities and types of courts (e.g. upper level and lower level criminal courts).

Our exploitation of these sources has just gotten underway and so we cannot offer any detailed assessment of them. However, we have undertaken a preliminary analysis of some of these sources. In particular we have looked at nation-wide figures for two sets of courts, provincial “courts of justice”, located in each province (until 1880 – 12 provinces, and since then – 5 provinces), and were responsible for handling the most serious criminal offenses, and national figures for local or county courts, which are “intermediate” level courts located in larger cities. In both cases we have looked at the total figures reported in the published crime statistics at ten-year intervals from 1850, the first year that published statistics were systematically presented, to 1890.

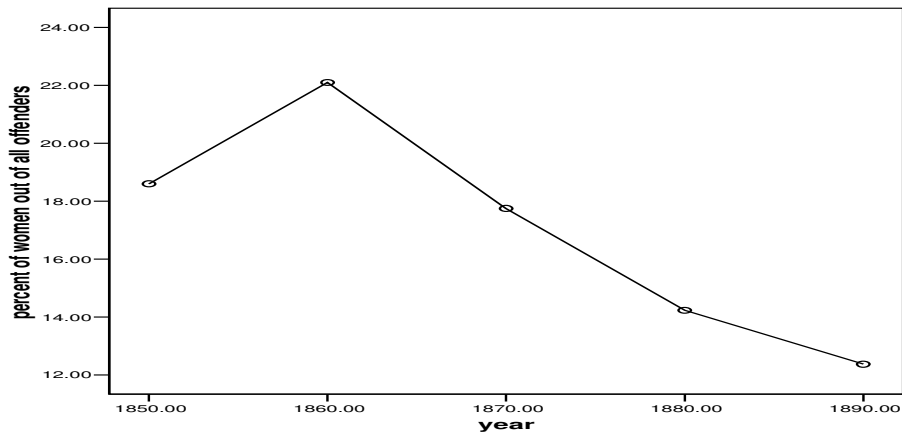
When examined in light of the discussions above about practices during the eighteenth century, these figures suggest continuity. These materials suggested a mixed though decided trend downward, towards less involvement of women in the criminal process. The figures for the mid-nineteenth century presented in Figs. 12 and 13, showing that women constituted just over eighteen percent of those charged with *serious* offenses, are consistent with the pattern and trend suggested by the earlier analysis.

Fig. A12: Percentage of women out of all offenders, Netherlands provincial courts, 1850-1880



Source: Judicial statistics of the Kingdom of the Netherlands (geregtelijke statistiek van het Koninkrijk der Nederlanden) 1850-1860-1870-1880

Fig. A13: Percentage of women out of all offenders, Netherlands county courts, 1850-1880

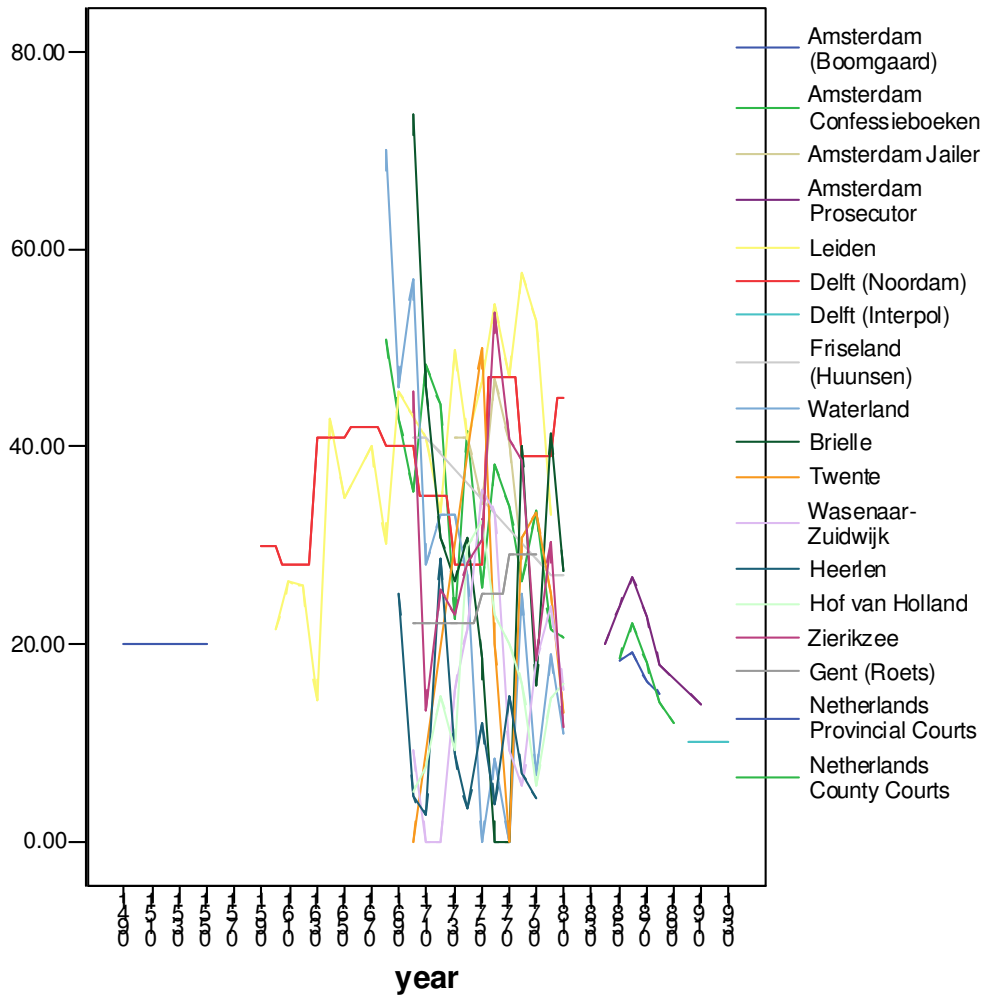


Source: Judicial statistics of the Kingdom of the Netherlands (geregtelijke statistiek van het Koninkrijk der Nederlanden) 1850-1860-1870-1880-1890

The different datasets for the Netherlands reveal a picture of high female involvement in the criminal justice process as defendants for the 17th century, culminating in mid-18th century. Female share in crime, as revealed by court records, involves various types of offenses, and is not limited to, or accounted for by, “typically feminine” offenses. From the end of the 18th century, the various databases indicate a marked decline in the percentage of women defendants, continuing over the 19th century. The following

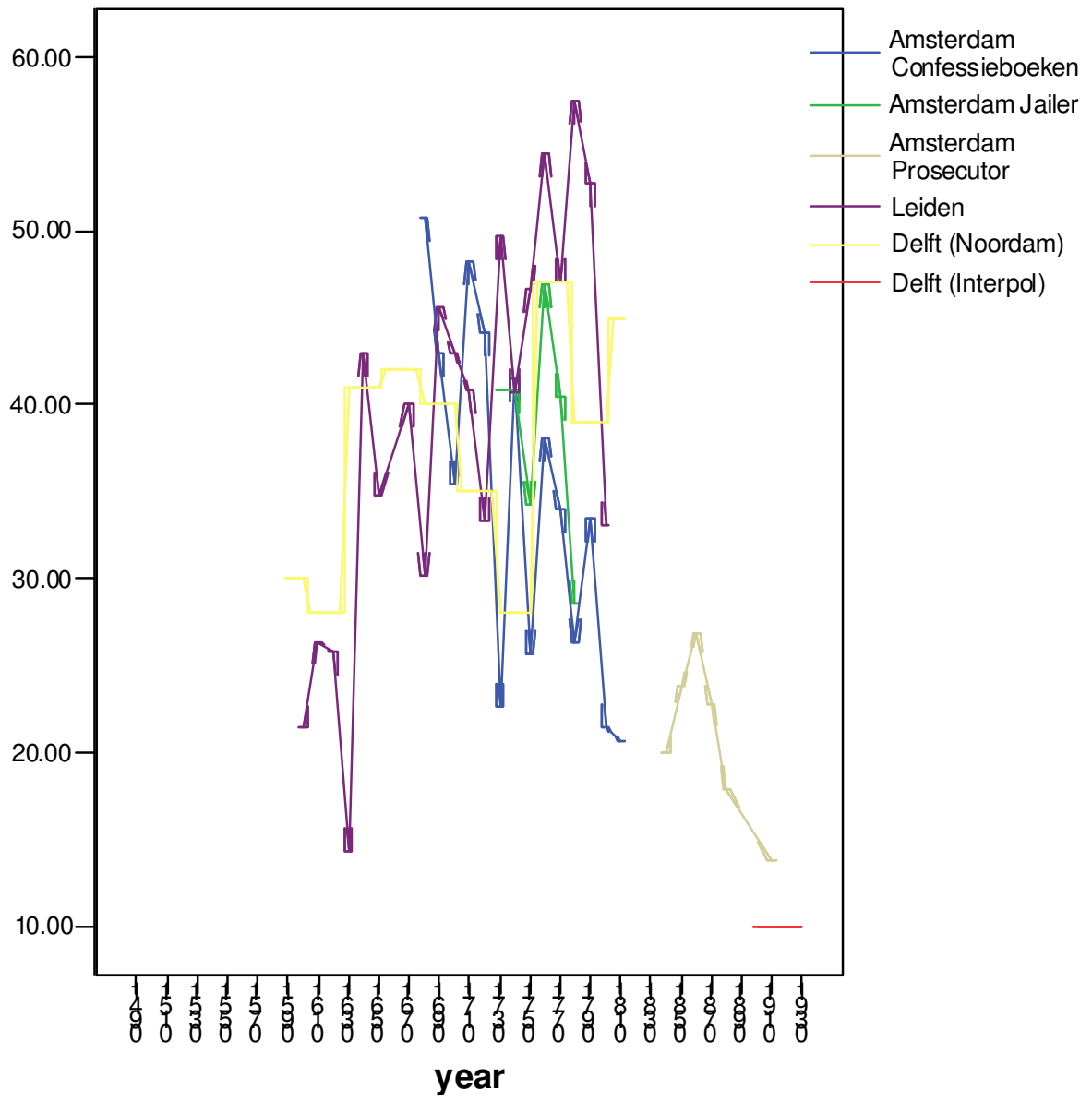
composite graph presents all our findings from the Netherlands on the same grid (fig. A14). Rather than arguing for neat continuity between the different databases, we offer the graph as an indication of the pattern we wish to explore.

Fig. A14: Percentages of women out of all offenders – all Netherlands databases



The pattern is more explicit for the large urban areas, which were also supported with a larger amount of data (fig. A15)

Fig. A15: Percentage of women out of all offenders – Amsterdam, Leiden, Delft



IV. Summary of Findings

When adding the data from the Netherlands to our findings from other countries, a general pattern emerges, showing a decline in female participation in crime, from the second half of the eighteenth century to the early twentieth century. The levels of female crime in the seventeenth and eighteenth centuries are, almost invariably, two and a half to four times higher than those in later periods. In the late eighteenth and early nineteenth century, the data show the beginning of a gradual, substantial decline in the percentage of women out of all offenders, finally reaching, in the late nineteenth and early twentieth century, the low percentage we see in contemporary systems. For some studies, such as the Dutch data, the most dramatic decline occurs at the beginning of the nineteenth century; in other databases, such as the French data, the decline continues steadily throughout the nineteenth century.

We have found some evidence, in several countries, to suggest that the level of women's involvement follows a curvilinear pattern; databases from the fifteenth and sixteenth centuries, when available, show less involvement of women, though, for all databases and particularly for France, generalizing from the data is rather problematic because it reflects tribunals and offenses for which female participation was low to begin with (military tribunals and violent offenses). The few studies and small number of cases make this finding speculative, and we hope further research might illuminate the quantitative aspect of women's involvement in the criminal justice process only insofar as additional, reliable and reasonably sized data can support it.

Women's participation in the process seems substantially greater in large urban areas, and in particular in port cities. Our data on London, Surrey, Amsterdam, Leiden, Delft, Paris, Lyon and Stockholm show a much clearer pattern of high (and subsequently declining) pattern of female share in crime than in smaller, more rural areas, such as rural Sussex, the Seven Cities in the work of Diederiks, Provence, and the small Swedish provinces of Asker and Njurunda.

In regard to crime typology, we did not find differences between the patterns in more or less severe offenses, when the data allowed us to distinguish between them. In much of the

earlier data, major and minor criminal activity are indistinguishable in court records, particularly in the area of property crime where petty thefts were treated much like more severe property crimes. The difference in punishment, and the usage of corporal punitive methods, was another hurdle in establishing offense severity based on a “scale” of punishment. However, for 19th century data, we found the decline to occur for severe offenses as well as for technical, regulative, economic offenses. The one important outlier is violence. The decline in female participation in homicide and other violence offenses is less apparent than in other offenses, mainly because women’s involvement in such offenses is much lower to begin with.

Our conclusions regarding a visible, general decline in women as defendants stand in direct contradiction to the criminological consensus on the matter, which we discussed above. We therefore wanted to assure it was a real, genuine decline, and could not be explained away as a fake, apparent phenomenon. This concern was evident from the onset of the project, where other possible explanations, according to which the decline was more apparent than real, were suggested and rejected. We now raise these explanations once more, in light of the data amassed for the current project, and conclude that the decline we found cannot be explained away as merely apparent. While the secondary datasets do not easily allow for the controls we would like to have in order to reject these alternative explanations, we were able to test and reject them using our primary data.

The first explanation argues that the “decline” in women’s involvement stems from shifts in court jurisdiction, which transfer certain types of offenses (disproportionably involving women) to lower level courts and thus falsely “hides” them from the higher-court record. If this were the cause for the decline in higher courts, it should have been accompanied by an increase in the proportion of women in lower courts. Our data, whenever such comparisons are possible, does not show such a pattern, and demonstrate quite the opposite: that the decline occurs in higher and lower courts alike. As argued in “The Vanishing Female”, the examination of crown and magistrate courts did not support this possibility; data collected by Beattie and Landau also disprove it. There is some evidence to suggest that in the Old Bailey, for a few lesser property offenses, some of the decline of women in the 19th century stems from a change in jurisdiction, but many other studies we examined show the opposite tendency. The studies of Dutch courts show data from various instances, for example, the *Vonnisboeken* and the *Confessieboeken*; the decline

remains consistent across jurisdictions. Moreover, our own study of 19th century French courts followed the *Cours d'Assises* and the *Tribunaux Correctionnels* for the same period, and the decline was present for both jurisdictions, and especially for the lower court. We must therefore conclude that this explanation should be rejected.

The second explanation argues that the decline can be attributed to changes in the offender population; namely, that the decline in proportion of women stems from an increase in the rates of men. This explanation requires an analysis of offender rates, which we were able to provide for some of the datasets described above. While some datasets, such as the Amsterdam *confessieboeken* and the *Tribunaux Correctionnels*, showed an increase in male offenders, others, like the Leiden data and the *Cours d'Assises* records, did not. We conclude that the increase in male offenders does not provide sufficient explanation of the decline. Moreover, we maintain that the question is not as important as it may seem. While, indeed, the world of crime and the institutions of criminal justice have grown and proliferated with time, there would be no reason why this growth should be disproportionate across gender. Therefore, even in the cases where the decline in share of female defendants stems from an increase in the rate of male defendants, the question remains: why did the numbers of women grow in proportion to those of the men?

A similar rationale allows us to reject the third explanation, which argues that the decline in female offender proportion is due to a decline in the enforcement of “typically feminine offenses”. Indeed, as our data shows, women were overrepresented in several crime categories, mainly in witchcraft, infanticide, abortion, prostitution and other moral offenses. However, as we have shown for all countries in the study, these offenses constitute a small percentage of the broad group of offenses for which the populations we studied were tried. Given this fact, it is not surprising that, when we controlled for moral offenses, the pattern of decline was not substantially altered. Moreover, it is unclear to what extent the moral panics and erratic patterns in prosecution for “typically feminine offenses” could be perceived as a decline. As we argued in chapter II above, the patterns in these “women’s crimes” are interesting in themselves, because they may be connected to the system’s general willingness to spend time and resources to try women.

The fourth explanation accounted for the proportion of women by arguing that a disproportionate amount of them acted as accomplices to male criminals, and that perhaps

at certain times women accomplices were more vigorously prosecuted than in others. For the Old Bailey study, Feeley and Little were able to control for female accomplices and showed that the exclusion of these cases did not significantly alter the pattern. Similarly, in the work of Petrovich, the proportion of women acting as accomplices (57.7% of all accused women in 1775, 60% of accused women in 1785) was not much different from that of men as accomplices (49.5% in 1775, 51% in 1785). We find it difficult to argue, therefore, that patterns of complicity can account for the disproportionate decline in female proportion. In addition, the different datasets in the Netherlands, France and Sweden show female involvement in a variety of offenses, including scenarios where they could not have been accomplices of men.

The fifth explanation argues that women's involvement in the criminal justice process was particularly high in times of war, when men were removed from civil society into the army, and women occupied center stage in the ordinary criminal justice process. This explanation would expect to find high percentage of women among defendants when the men are absent, and high percentage of male defendants following wars, when the men are released from service and dislocated. As mentioned in "The Vanishing Female", in the Old Bailey data this explanation accounted for some, but not all, of the fluctuation. In light of the new data for a variety of countries, we maintain that the pattern is too general to be explained away based on particular wars.

While some of these factors account for some of the variation in some of the databases provided in this project, none of them provides a full explanation for the general pattern we demonstrate. As we argue in the introduction, a few local explanations, such as the theory of economic hardship advanced by Diederiks and Roets, and the "from bad to mad" theory advanced by Zedner, are plausible and attractive explanations for patterns perceived in specific times and places. In each of our findings' subchapters, we offered the explanations local historians used to account for the patterns they observed for the confined locations and limited timelines in the studies. However, the consistency of the findings across the geographical variation suggests that the picture is more complex, and, while specific circumstances in each area probably accounted for some of the patterns regarding female crime, they are insufficient for explaining the prevalence of the decline patterns for countries so different in their geographical, socio-economic and cultural conditions. While local explanations do not account for the general phenomenon, we

believe some of them, like the works of Diederiks and Zedner, can be incorporated into a broader framework. We believe that the research points to the necessity of a general theory that would account for the decline; our next chapter outlines a theoretical framework, which, we think, is helpful in connecting the issue of criminality of, and law enforcement against, women, with general theories of patriarchy and with broad understandings of changes in social control.

V. The Suggested Explanation: A Change in Patriarchy

Rather than offering a definitive explanation for our findings, we wish to present some speculative directions for a plausible general explanation. Our puzzlement stems from the conditions during the research period, which included oppressive criminal justice systems as well as crime-inducing factors for both men and women. The eighteenth century is generally known as the time of the “Bloody Codes”, when over 200 crimes, particularly property crimes, could be prosecuted upon private initiative (Diederiks, 1980; Phillips, 1983; Reinhardt, 1983; Rock, 1983; Soman, 1980) and were legally punishable by death (Hay, Linebaugh, Rule, Thompson, & Winslow, 1975; Thompson, 1975).

During these intensely punitive times, the pressures toward criminality were similar to those in the twentieth century – unemployment, underemployment, destitution. In London, “a considerable proportion of the work force depended on casual labor that was irregular in supply, to some extent seasonal, always capricious” (Beattie, 1986). Events like war, a rise in food prices, interruptions in export trade, seasonal layoffs, and the movement of upper-class families in and out of the city, could change the lives and fortunes of those in a city over stocked with workers (Emsley, 1987). This is significant because, much of the urban workforce, at least in London (George, 1965) and Paris (Hufton, 1974) was seasonal. In the Low Countries, changes in industry continuously led to radical changes in the economic status of both men and women (Diederiks, 1990; Roets, 1982) and to the creation of an economic and ethnic underclass (Egmond, 1993). These socio-economic conditions provided the general pressures toward criminal involvement in the late seventeenth and eighteenth century. Why did women become equally subject to them during this period? And why did their involvement decline over the next 100 or 150 years?

Our explanation, following Mitchell (Mitchell, 1966) and other gender theorists, relies on the notion that female involvement in the criminal justice system crime varies with the level and type of patriarchal controls over women's lives. Patriarchy, a system by which men dominate women, is multidimensional and can be manifested in narrow or broad social settings and in various areas; it can be part of an economic, sexual, or moral regime (McKeon, 1995), and varies historically both in form and intensity (Walby, 1990).

Feminist analysis, as well as control theories, of female crime, have focused on the impacts of patriarchy in two primary areas: the realm of work and production, and the realm of family, where much of sexuality, reproduction, and socialization takes place (Chodorov, 1978; Connell, 1987; Hartmann, 1976). Hagan, Simpson, and Gillis (1989) explain gender differences in crime through the socialization in the context of family. They ascribe the lesser inclination of women toward crime to the “gender based power structures of patriarchal families that characterize industrial societies” (p. 302), which socialize women and men into separate roles, including the propensity for crime. While this perspective only addresses patriarchy in the family (Chesney-Lind, 1989), other theorists have broadened their framework to discuss production (Heidensohn & Silvestri, 1995). According to control theory, all of us repress our deviant tendency through internal and external controls (Hirschi, 1969); women's social location, in particular, subjects them to a myriad of factors constraining criminal activity, to a greater extent than men (Heidensohn, 1985).

Both Adler's work on sex role theory (1975) and Simon's work on the increase in opportunities (1975) build on the concept of patriarchy, and reflect the theoretical notion that the level of female crime rises as social controls and limitations over women lessen. We broaden this theoretical notion in four ways. Firstly, we examine the historical aspect of patriarchy, arguing that the shifts in patriarchal intensity and style over time can account for contemporary shifts in patterns of female crime. Secondly, our examination of patriarchy goes beyond looking at women's participation in the labor market, and encompasses additional aspects of patriarchal patterns, such as the nature of marriage and the division of labor within the family. Thirdly, we make a theoretical connection between the changes in patriarchy (and subsequent changes in female crime) and broader theoretical models about social development and social control, focusing on Norbert Elias' *Civilization of Society* (Elias, 1978[1939]) and on Foucault's *Discipline and Punish*

(Foucault, 1979). Finally, our analysis allows the possibility that the change in patriarchal styles had an impact on either the extent to which women committed crime, or the extent to which they were brought to trial for their crimes, or both, and is therefore a helpful framework in explaining our findings whether they reflect change in crime levels or in prosecution policies.

Our argument attributes the decline in female participation in the criminal justice process to a historical shift from public to private patriarchy, documented by social historians of gender and the market. According to this literature, between the late eighteenth- and early nineteenth- centuries, as European societies shifted from feudal, rural forms of production to capitalist industry, a change (and, arguably, intensification) occurred in the exertion of patriarchal controls over women. The economic, political and domestic structure shifted from a model of public patriarchy, where women were active participants in their communities, to focused, private patriarchy, during which women were gradually removed from the public sphere and confined to private control in the microcosm of the home, where they were controlled by increasingly segregated gender roles and confined to prescribed roles, such as household responsibilities and childrearing. As Michael McKeon writes,

by the middle of the eighteenth century, the distinction between "inside" and "outside" work, based upon a flexible sexual division of labor, had gone a long way – at least in the higher social orders – towards ossifying into the familiar, culturally ramified opposition between the domestic and the public realms. The completion of this ideological process in the following century would entail not only further rigidification and universalization across class lines, but also a revaluation of domestic work as not so much lesser as different: economically unproductive, but charged with the office of spiritual cultivation and maternal nurture. (McKeon, 1995, p. 300).

The change in patriarchy patterns influenced two aspects of female involvement in criminal justice: it diminished women's propensity of committing crimes, as well as the tendency of criminal justice authorities to subject women to the public institutions and tools of criminal law.

Alice Clark, in her pioneering 1919 book examining the impact of the economy of women's roles in England, traced the impact of changes in the modes of production on the position of women in the seventeenth and eighteenth centuries (Clark, 1982[1919]). She

posited a three-stage process of economic development. The first stage of preindustrial economy was a “domestic economy”, a form of production in which “goods were produced largely for the use of the family and were not therefore subject to an exchange or money value”. This was followed in the seventeenth and eighteenth century by the “family economy”, the “form [of economic production] in which the family becomes the unit for the production of goods to be sold or exchanged” (p. 7). The final, advanced stage was “capitalistic industry or industrialism”, in which “production is controlled by owners of capital and the labors or producers... receive individual wages” (p. 5).

Examining the changes in the mode of production in agriculture, textiles, the crafts, trades, and the professions, Clark traces the shift from family industry to modern wage-labor industrialism. She argues that the middle stage – the period of family economy – was a period of significant economic participation by women. During this period, “the part which women played in industrial and professional life was in addition to a much greater productive activity in the domestic sphere than is required of them under modern conditions” (p. 32). Furthermore, “if women were upon the whole more actively engaged in industrial work during the seventeenth century than they were in the first decade of the twentieth century, men were much more occupied with domestic affairs than they are [in the twentieth century]” (ibid). All this changed with industrial capitalism, “which broke away from the family system, and dealt directly with individuals, the first fruit of individualism being shown by the exclusion of women from the journeyman’s association” (p. 301).

While historians no longer characterize the shift to industrialization in such a schematic three-stage movement, Clark’s argument that women played a central role in production for the family has been generally accepted. In fact, some, like Hans Medick, who studied German and other continental markets, state the proposition even more strongly (Medick, 1976). Not only did both men and women engage equally in agricultural work, but both were engaged in household work to the point of “sex role reversal”. Similarly, James B. Collins argues that, in seventeenth century France, patriarchal measures against women rose as a response to a genuine threat posed by women to the patriarchal market: the increasing numbers of female heads-of-household, and the sharp rise in the number of female entrepreneurs, particularly in urban settings, were seen as a response (Collins, 1989). The intellectual perspectives and legal measures against women's employment

during the *Ancien Regime* were defense mechanisms against women's substantial presence in all areas of the economic market, and aids to unmarried men whose ability to enter the labor market and join guilds was hindered by the preponderance of women in the market. Although Medick's and others' views, and those of various proponents of "proto-industrialization", are controversial, there does appear to be widespread agreement that the period just prior to large-scale industrialization (embraced at different times in different places and for different industries) was a period in which women were much more involved in a wide variety of tasks in the labor force than they were once the factory system was widely adopted.

Louise Tilly and Joan Scott (1978) argue that marriage, in the eighteenth century, was an economic partnership. Everyone worked, including women and children. In rural areas women farmed, engaged in dairy work, and sold home-manufactured products in local markets. In urban areas, where much of the production of food and clothing had moved outside the home, women spent more time in consumption activities (shopping) to meet the subsistence needs of their families. Women in families of craftsmen or shopkeepers assisted in the craft or shop. While occupational designations were male, when husbands died guild memberships passed to their wives. Some women practiced independent trades, such as bakers, grocers, innkeepers, milliners, butchers, and the like. When their husbands were unskilled laborers, women worked in the informal economy as petty traders and hawkers, or sold their labor, carting goods or water, sewing, or doing laundry. In London, where the widest range of occupations was practiced, women were expected to work, and they engaged in the full range of productive activities (George, 1965). Even before the eighteenth century, poor women were encouraged to acquire vocational skills, particularly in the fields of tending the sick and dispensing care for the poor, and received salaries from public authorities for doing so (Willen, 1988). In London, widows who did not inherit a guild membership had a difficult time, and many had to send children to charities, unable to support them with low-wage work. However, many widowers had similar problems, suggesting that two adults were necessary for the economic well being of a family (Tilly & Scott, 1978).

This is not to argue that women were equal to men in the eighteenth century. As Sonya Rose reminds us, women were low-waged labor, paid much less than men even before industrialization (Rose, 1988). Women were denied membership in many guilds as long as

their husbands were alive. Additionally, husbands were the legal heads of the household, with rights to physically chastise women and children. Women's work outside the house was, therefore, additional to their work at home, and did not award them any advantages in the realms of social status, leisure time, and participation in male activities (Stone, 1977). Nevertheless, Stone acknowledges that economic changes that led to the wife having greater participation in the household economy and control over certain aspects of production did give some eighteenth-century women a measure of autonomy and power. Regardless of the legal status of dependency, a wife was an economic asset to the family, and this undoubtedly lessened patriarchal control over her. Moreover, food was the major component of a family's costs, and women controlled this part of the budget. A wife's ability to provide through work and careful budgeting could mean the difference between eating adequately and not eating at all (Tilly & Scott, 1978), and her responsibility for this aspect awarded her real power in the family.

Clark concludes that as industry shifted from the family-based household to the individual-oriented factory, two things occurred. First, the new form of organization required specialized knowledge and training, which men had already begun to monopolize (Hill, 1989; Middleton, 1985). Second, there was the development of the "doctrine of the subjugation of women to their husbands" (Clark, 302). Industrial capitalism "freed men to some extent from economic dependence on their wives, and from henceforth the ideal of the subjugation of women to their husbands could be pursued, unhampered by fear of the dangers resulting to the said husbands by a lessening of the wife's economic efficiency" (302). These factors, Clark continues, led to a theory of "inferiority" that was reinforced by the emerging political theory of the times (which had little to say about women). The result, in her view, was that industrial capitalism exerted a "momentous influence" on the economic position of women that contributed to a substantial decline in their economic well-being and opportunities, from which they have still not recovered.

This change in the economic status of women in eighteenth- and nineteenth-century is also stressed by Ivy Pinchbeck, in her classic 1930 study of women's work during the industrial revolution. Pinchbeck marshals an impressive – and unequalled – array of data to support a contention that in industry after industry – textiles, the domestic industries, the mines, crafts, and business – employment for women shrank dramatically throughout this period (Pinchbeck, 1977[1930]). Focusing in depth on the textile industry, she argues

that in the late eighteenth century “a total revolution occurred” (p. 148). Just preceding the rise of the factory, she argues, “many women were accustomed to assisting their husbands and fathers at the broad loom which required two workers before the use of the flying shuttle” (p. 257). Thus, up until the mid-eighteenth century, women and children pursued work alongside their husbands and fathers, combining spinning and the like with housework. Unlike men, however, women did not specialize. With the rise of wage labor, these jobs were transferred out of the house and into the factory, and “the industry fell naturally into the control of men” (p. 126). By 1830, this industry had been entirely removed from the cottage into the factory, “and was now performed by a class of skilled workmen on complicated machinery” (p. 117). In the case of London, the movement from the putting-out system to the factory meant that silkwinding and silk-throwing, occupations that employed large numbers of women, disappeared as production moved to textile factories outside of London. Thus, as production shifted from the family as a joint economic unit to a wage-labor economy, women were squeezed out of economic participation as a “whole host of factors” restricted the best-paying jobs to men.

The work of Clark and Pinchbeck work has been tested, and supported, by later generations of scholarship. In her 1989 update of Pinchbeck’s work, Bridget Hill reviews a mountain of material published since 1930, and concludes that Pinchbeck’s thesis has withstood the test of time (Hill, 1989). Thus, there continues to be substantial support for the argument that women participated to a large degree in a wide range of economic activities prior to and during the early period of industrialization, and that it was only later that most of this productive work became the exclusive domain of men. With the rise of capitalist forms of production, the range of occupations open to women narrowed. Hill concludes, “Side by side with the ‘masculinization’ of some tasks and trades went the feminization of others. By the end of the century, female blacksmiths, carpenters, bricklayers, and coopers had become rarities. On the other hand, domestic service was in the process of becoming feminized”. (p. 262). Similar conclusions are presented by Ellen Jordan (1989), who illustrates various ways in which different industries gradually excluded women. Hill, Jordan and others, like Clark and Pinchbeck, attribute these changes to shifts in the mode of production – away from the family-based industry which minimized role differentiations between husbands, wives, and children, and often allowed widows to maintain themselves in the absence of husbands – to the wage-labor system and an increased division of labor that quickly came to discriminate against women and

greatly restricted their participation in work. These transformations of the external, public reality of work and industry were met with changes in the character of consumption and demand within the household, which Jan de Vries terms "the industrious revolution" (1994). According to de Vries, the industrialization of the market (and its increased supply of marketed commodities) was accompanied by a growing demand for market-supplied goods, which was manifested in a process of household-based resource reallocation. Even without discrimination against women, the transition to a family wage economy in which households needed cash and not labor meant that women's capacity to make a productive contribution was now limited by their domestic childbearing and childrearing duties.

The restriction of women's participation in industry continued throughout the nineteenth century. Trade unions used exclusionary practices to keep women out of some areas of employment (Hartmann, 1976; Rose, 1988). The development of the "family wage", as well as the dramatic arrival of protective labor legislation for women and children onto the legal scene, further restricted female employment (Honeyman & Goodman, 1991). Accompanying these restrictions was the rise of the "cult of domesticity" in the middle classes, which portrayed women's proper role as a subservient, virtuous, and pious wife and mother.

In many urban areas in Europe, this process was both less dramatic and more gradual. In an urban area in which trades, crafts, and casual employment predominated, women did not experience the rapid transition from putting-out to factory work so carefully detailed by Pinchbeck for agricultural workers. Some women continued to work in their husbands' trades well into the nineteenth century. However, probably less than 10 percent of the women in London were married to tradesmen (Alexander, 1983). Moreover, as work moved from the home to the workshop and male tradesmen acquired capital, they began to hire larger numbers of male journeymen and apprentices, excluding their wives from participation in the trade. Thera Wijssenbeek, who studied the changes in female employment in eighteenth-century Delft and The Hague, notes the gradual exclusion of women of all social classes from public employment (Wijssenbeek, 1987). All women's possibilities were narrowed: "less women of the rich classes had the possibility to find a job at the end of the 18th century compared with at its beginning" (p. 206) and middle- and lower-class women were excluded from public positions. Similar changes befell women in the textile industry in Leiden (Diederiks, 1980) and in Delft (Roets, 1982). Toward the late

eighteenth century, women's employment possibilities, in all levels of the social structure, were significantly diminished.

These changes in the gender structure of the workplace were strongly supported by ideological narratives. According to Honeyman and Goodman, in their overview of women's work in Europe between 1500 and 1900, the industrial revolution brought about a resurfacing of anti-female sentiments, in the form of increasing protective legislation.

While the rhetoric and the exclusionary strategies were redolent of an earlier age, the gender conflict of the nineteenth century embraced new social concerns. The marital status of women took on a new significance as protective legislation, the cult of the family wage, and the ideology of domesticity interacted to emphasize gender inequality in the labour market and to establish a hierarchical structure of employment that persists to the present. Thus, in nineteenth-century European labour markets, as married women became more overtly marginalized, young women and single women predominated in the visible urban trades. In the textile factories, for example, they commonly accounted for the bulk of the unskilled workforce, and they dominated domestic service occupations and some sectors of garment-making in the towns and cities of England, France, Italy and Germany. (Honeyman & Goodman, 1991, p. 615).

Protective legislation was fuelled by the belief that certain work was “unsuitable, unfeminine, and inclining to immoral habits because it required being in close proximity to men” (Hill, 1989, p.102). When women worked, only occupations that coincided with their “natural sphere” were encouraged. As Hill observes, “[f]ar from industrialization meaning the emancipation of women, for many the first phase must have meant a greater servitude and conditions where they had no defence against the arbitrary yielding of patriarchal power”. (p. 263).

The gradual separation of home and work meant reduced opportunities for women to learn skills or contribute equally to their family's economic well-being. Women's trades passed into male hands. In addition, although new industries were created, women were excluded from the. Sally Alexander details a host of occupations in which women did not work by the 1820s, such as shipping industries, public utilities, transport, semi-processing and extractive industries, professions, civil service, clerical work, scientific trades, and the old craft guilds (Alexander, 1983). When women did work, they participated in women's jobs, like domestic and household labor, childcare and training, the distribution and retail sale of food and other articles of regular consumption, and manufacturing based on the sexual division of labor in the household. In fact, "[m]arried women workers in nineteenth-century Europe were so concentrated in urban domestic industry that it is no exaggeration

to speak of its feminization as one of the principal components of European industrialism" (Honeyman and Goodman, 1991, p. 616).

The technology of industry continued to evolve in ways that excluded women. As Honeyman and Goodman argue, the design of factory machines was "constructed with the gender of their occupants in mind, ensuring that women were crowded into low paid jobs which emphasized their previously established gender role as supplementary wage earners" (621). Industrial work was primarily "slopwork", in which a division of labor broke jobs into semi- and unskilled tasks and then exploited cheap labor. Women were especially exploited here, with long hours and extremely low wages. Slopwork also contributed to the demise of women's occupations because it occurred in trades that had previously been occupied by skilled women, trades like dressmaking and needlework. Overall, then, the rise of slopwork, the increase in out-of-home work, the exclusion of women from new trades and occupations, and the competition of slopwork with traditional women's trades, led to both declining wages for women and an overall reduction in the range of work available to women. In summary, between 1700 and 1900, women in Europe lost their ability to contribute equally to the household and became economically dependent upon men.

This analysis leads to the conclusion that, in the eighteenth-century transition from feudal household modes of production to capitalist forms, some of the patriarchal controls over women were temporarily weakened. For at least a brief time, women had the power that economic contribution gave them vis-à-vis male household heads, but they increasingly worked outside of household controls. This period was relatively short lived, however, because in the course of transition to capitalism men took over the full range of productive work and women were relegated to the home. Over the next century, the sexual division of labor in the working class underwent significant changes. Some women continued to work in their husbands' trades as full participants in the household economy or pursued their own trades. Others had to look for wage work. From a situation of marital partnership in a household economy, women moved to a weaker economic partnership working out of the household, and finally to no economic partnership and economic dependence on men. This transition, which took place over the course of the eighteenth and early nineteenth centuries, coincided with a decline in female involvement in criminality.

The decline in women's status in the workplace was accompanied by similar processes in the areas of family, social status, sexuality and reproduction. As Michael McKeon argues, eighteenth-to-nineteenth century ideology and politics evolved around a theme of gender differentiation and segregation, supported by narratives of pathology and gentility (McKeon, 1995).

Gender segregation was scientifically advanced through anatomic segregation. McKeon reminds us that "only in the eighteenth century... female bodies ceased to be seen as aberrant versions of a unitary male body, and were viewed instead as physically and naturally different" (p. 301). Although women and men had always been distinguished through their external attributes and through birth, the increasing attention to anatomy of women and its fundamental differences from that of men supplied a scientific perspective to justify the increasingly segregated ideologies and practices toward women.

One of these ideologies was the emerging bourgeois ethos of gentility in the treatment of women in late eighteenth century England. Middle classes increasingly saw female idleness as a virtue, and began to measure female accomplishments in grooming, art and music. More traditional female roles in the household were trusted into the hands of cheap labor (McKeon, 1995). While this model was not applicable for lower class families, in which both husbands and wives turned to (segregated) wage labor, the ideology permeated and led to a rich body of literature which reflected (albeit critically) the ethos of middle-class women as delicate, pious, and mostly idle creatures, like the heroines and anti-heroines of Jane Austen, George Elliot, and Mrs. Gaskell¹⁸.

These ideologies of segregation and differentiation played an important role in the evolving definitions of courtship and marriage. As Lawrence Stone notes, the early eighteenth century witnessed the acceptance of the idea of the "companionate marriage", in which marriage came to be regarded as a decision to be made by the couple in accordance with their own feelings, thus temporarily easing patriarchal controls over marriage (Stone, 1977) (646).

¹⁸ McKeon finds further evidence for the increasing polarization of masculinity and femininity in the labeling and medicalization of homosexuality. Male "effeminate" behavior which defied the male-female polarity was gradually pathologized, beginning with the creation of the molly and the molly house in the early eighteenth-century (McKeon, 1995), and culminating in the nineteenth century with the reclassification of "sodomy", as a form of behavior, to "homosexuality", as a personality trait (Foucault, 1977).

Hill's discussion of courtship relations among the laboring classes (which were different from middle and upper class women) concludes that women in the lower classes seem to have enjoyed a good deal of freedom in choosing a mate. A real period of courtship occurred in which couples evaluated each other's character and ability to contribute economically to the marriage. Because there was no property to be inherited, however, the laboring classes had a more tolerant view of premarital sex than did the propertied classes, and thus had higher illegitimacy cases, as reported by Stone.

During the second half of the century, however, sexual and familial controls over women tightened. In his analysis of the Hardwicke Marriage Act of 1753, David Lemmings (1996) interprets the shift toward companionate marriage and the legal caveats against economic exploitation in marriage as an intensification of patriarchal controls over women. The Marriage Act, which introduced marriage as a romantic decision, to be controlled by parents, and added safeguards to ensure that young women in love would not be swindled into unsuitable marriages, downplayed the economic partnership aspect of the marriage, highlighted the vulnerability of women and increased parental controls over marriage.

The retreat of women into rigidly prescribed roles was also influenced by the protective legislation against children's work (Honeyman and Goodman, 1991). For lower class families, as children were removed from productive work, women were obligated to spend increasing amounts of time in childrearing duties. And as women were removed from productive work, their responsibilities in the home and restrictions over their sexuality were increased. Middle class women enjoyed domestic service, over which they and their husbands had control, but were still expected to reign over the household, their prescribed realm.

This is not to say that women's familial roles were disregarded prior to the shift from public to private patriarchy. Olwen Hufton's analysis of women's history between 1500 and 1800 follows the Dutch "ladder of life", which classified women's lives into phases according to their family status: daughter, wife, mother and widow (Hufton, 1996). However, within these familial definitions women's role was not polarized to that of men,

and did not imply detachment from the public sphere, idleness, need for protection and exclusion from the workplace.

How did this shift in patriarchal styles affect women's crime? Our data indicates a decline in the percentage of women among criminal defendants, which may stem from either a decrease in actual crime committed by women, or from lesser prosecutorial activity against women. The change from public to private patriarchy provides a possible theoretical framework for explaining either phenomena, or both.

In his study of the family in England between 1500 and 1800, Lawrence Stone proposes that one test of changes in the nature of the control of women would be shifts in women's crime rates. "[W]hether or not the crimes they committed were similar in scale and type to those of men" would be, he asserts, a test for the "independence displayed by women". (Stone, 1977, p. 201). With this test in mind, he concludes that for the late sixteenth century women were not independent, but rather "submissive" and "dependent", because as compared to men they had a minimal share in crimes of theft, commercial fraud and violence. He goes on to note that in this period, a part form showing some independence in leading food riots and adhering to dissident religious opinions, women involved in violence were typically only "aiding their menfolk" (ibid.). While this argument that female criminality is a test of female independence sounds like the modern liberation hypothesis, his comments that female criminality may differ when there are shifts in patriarchal controls is consistent with the concern of this project.

Stone's characterization of women's involvement in crime in the sixteenth century is quite different from the picture we have found for the early eighteenth century. This is not an anomaly, but is due in part to the changes that Stone and others have documented for England and elsewhere. Not only was this a period when women were more involved in "productive activities", and more highly valued as economic assets, but it was also a time in which patriarchal controls were lessened and women constituted a higher proportion of those involved in the criminal process. Throughout the eighteenth and nineteenth centuries, however, a new version of the family was constituted, one that was far more private and patriarchal. Over this same period, as the findings of our study show, women's criminality appears to have declined.

If we are to take our findings as indications of women's propensity to commit crime, we can speculate that the lesser economic and social opportunities, and the gradually narrowing of women's space to the household, influenced their tendency toward committing crime. Using control theory terms, the shift in patriarchy intensified both the external and internal controls over women, which kept them from committing crime. In regard to external controls, the removal of women from the public sphere may have hindered them primarily from offense types that had to do with public order, the labor market, and the economy. This speculation is supported by our data on the decline in these common offenses, as opposed to the erratic changes in "typically feminine" offenses and the consistently low participation of women in violence offenses.

Regarding personal, internal controls, the ideologies surrounding women's place in the family and the labor market probably produced strong pressure towards a rigid, limited socialization of women into a prescribed passive sex role. Even for lower class women, who had to work for a wage, were surrounded by a narrative which delineated their difference from men. This ideology of passivity, inward-related productive efforts, and confinement to the private sphere was not conducive to criminal enterprise. It should be noted that, in this analysis, sex roles and crime are not simply cause and effect; both stem from the socio-economic patterns and conditions under which women lived and were perceived.

It should be noted that this explanation appears to be congruent with, or at least not opposed to, the more local explanation provided by Hermann Diederiks, who attributed the higher percentages of female crime to a period where women's economic necessities led them to crime as a "survival strategy" (Diederiks, 1980). The validity of this explanation depends on the assumption that crime was not only necessary, but an available opportunity to women under the circumstances. While our argument states that during the more "public" phase in patriarchy women had more freedom in the labor market and in the family, we did not argue that their economic situation was always favorable. Indeed, we agree that economic necessity is one of the basic pressures toward crime. However, class differences and economic hardships were prevalent throughout the research period, and many women lived under unfavorable circumstances of necessity in the subsequent period of private patriarchy, and yet their share in crime declined. We can therefore accept the

"economic necessity" argument only insofar as it applies to periods when crime was not only a necessary measure, but also a viable option for women.

Why, then, has women's share in crime not increased back to its former levels in the twentieth century? According to some social historians, the shift we described was followed by a subsequent transformation from private to "public" patriarchy. The shift reflects a change toward the control of women by men as a group, acting primarily in the state (Boris & Bardaglio, 1983; Brown, 1981), or in the state and the economy (Walby, 1990). As we asserted earlier, fully developed private patriarchy in the nineteenth century encompassed the exclusion of women from the productive and political spheres and their relegation to housework and childcare in a private home. During the twentieth century, individual male control as head-of-household was gradually reduced as state intervention into the family gave women and children rights vis-a-vis individual men and as women began to enter the industrial workplace. Based on our theory of patriarchal change, this shift would predict a rise in female share in crime. However, the decline of the patriarchal power of male household heads was offset by the rise of the power of the state and the market over women. Thus, it may be that the entry of women into the workforce in the mid-twentieth century did not lead to higher female property crime because there was no real lessening of patriarchal controls. While increased participation in production did mean greater female autonomy and independence vis-à-vis individual men, women entered the workforce in the context of a new form of capitalist public patriarchy, in which women are controlled as a group through things like segmented labor markets, the job segregation of women in primary low-wage and low-power work, the continued treatment of women's work as "supplemental" to the male wage, and the like.

The findings of our study can also be understood to reflect changes in criminal justice policy rather than changes in criminal propensity. As we stated in our introduction, it is plausible that women's tendency to commit crime had not decreased during the research period, and their underrepresentation in the criminal justice process stems from an unwillingness, on the part of the state, to allocate its resources and efforts for the prosecution and punishment of women. Such tendencies on the part of the state can also benefit from an explanation relying on the shift in patriarchy.

We suggest thinking of this aspect of the decline in the context of the new norms and ideologies which supported, and were in turn supported by, the shift in patriarchy. As we argued above, the increasing gender segregation was supported by a strong differentiation between women and men, which led to a sentiment of gentility and protection toward women. These sentiments had actual, genuine impact on state policies: they led to the emergence of protective labor legislation which brought women and children back to the private sphere of the home, and to the amendment of marriage legislation shaping it as a companionate unit rather than an economic partnership. It is not unlikely that these very sentiments influenced state policies by creating a sentiment of distaste towards the prosecution of women. The mechanisms of prosecutorial and judicial leniency toward women, which Donovan explored in the context of abortions (1984), infanticide (1987), and adultery (1991), may have operated for "normal" offenses as well as for "typically feminine" ones.

Criminology has examined the possibility that the criminal system extends an ethic of "chivalry" towards women, thus treating them more leniently than men. Empirical research examining individual cases has rendered the "chivalry hypothesis" only partial support, reaching the conclusion that women are treated gently only when they conform to stereotypically female roles. However, the concept of chivalry may be helpful for understanding broad tendencies toward women as a population over time.

The development of an ethic of gentility and subtlety can be seen as part of the process of civilization, purported by Norbert Elias (Elias, 1978[1939]). In the first volume of what is arguably his most influential book, *The Civilizing Process*, Elias analyzes the shifts in etiquette and social mores between the twelfth and eighteenth century, focusing on the end of the period. As Elias argues, toward the early modern period behavior standards are influenced by an inclination towards delicacy and subtlety, which he elsewhere terms a "society of courtiers" (Elias, 1997). These more "refined" standards of behavior include a change in table manners, approaches toward bodily functions and lovemaking, and attitudes toward warfare.

Elias' civilization theory has received substantial support in historical research delineating the decline in violence in Early Modern Europe (Gatrell, Lenman, & Parker, 1980; Johnson & Monkkonen, 1996; Spierenburg, 1984). Our findings may indicate yet another

way in which his theory can be applicable to changes in the field of crime – this time, in the prosecutorial reluctance to expose women deviants to the public sphere of criminal justice. Part of the changes embodied by the concept of "civilization" involves an increasingly courteous, genteel manner toward women, which may have made authorities unwilling to handle women in the harsh lights of justice, and preferred to shy away from interfering with the informal controls their fathers and husbands could exert to their behavior¹⁹.

An alternative, and not necessarily contradictory, explanation for the prosecutorial reluctance to inflict the criminal justice process of women can rely on Foucault's analysis of the change in social control, as he relays it in *Discipline and Punish* (Foucault, 1979). Foucault's well documented account differentiates between the usage of justice and punishment as a public, crude, corporal "festival", or spectacle, of sovereign power, and the subsequent model of justice applied on the soul, rather than the body, in various disciplined, therapeutic, and even self-inflicted micro-settings (Garland, 1990; Hunt & Wickham, 1994). The second model, illustrated by Bentham's panopticon, is characterized by an increasing importance of the disciplines, which gradually developed measures for normalcy and therapeutic, scientific technologies for correction.

Our inquiry into the changing nature of patriarchy indicates that, during the private patriarchy phase, women were exposed to hidden, tight controls within the microcosm of the home. Excluded from the public market, and thus from community mechanisms, women's freedom was limited by strict, normalizing, gender roles and expectations, applied by the individual male patriarchs and by the self. These measures did not necessarily inflict physical, visible suffering as their previous submission to the public systems of criminal justice, but instead were aimed at correcting women and shaping them in the mold of their rigid gendered duties. Thus, the decline in women defendants did not necessarily mean lesser control over female deviance, but rather the infliction of a myriad

¹⁹ The application of Elias' civilization theory does present one difficulty, which lies in the situation prior to our research period. Our data on female crime before the seventeenth century tends to be scarce and speculative. We therefore cannot clearly state whether the data reflects a curvilinear development in female crime, a decline from a prior period of constantly high crime percentages, or the end tail of an even longer decline. Civilization theory looks at sublimation and delicacy as a continuous process since the twelfth century, and would therefore be a better framework for explaining the latter cases than for interpreting a curvilinear development.

of invisible controls, measures and pressures which addressed social and criminal deviance as a pathology necessitating correction.

It should be noted that positivist criminology held a special place for deviant women. The Lombrosian perspective on offenders awarded women a specific, segregated place as a particularly pathological atavistic creature (Lombroso & Ferrero, 1895). This particular criminological discourse emerged during the culmination of private patriarchy (Horn, 2003), and can be viewed as an example of an extreme form of female segregation and of the tendency toward medicalization and normalization.

Using Foucault's framework also allows for the incorporation of Zedner's work on women in Victorian England in our theoretical analysis. As we described above, Zedner attributed the decline in female defendants to a reclassification of female deviance as mental pathology (Zedner, 1991). Had we evidence that women's hospitalization in mental health facilities occurred in greater incidence than men's, we could argue that the nature of private patriarchy made women more easily subjected to hidden, discrete technologies of control, such as the madhouse, as opposed to the public scene of trial and punishment.

Until recently, the social accounts of Elias and Foucault were perceived to be contradictory. This view may have stemmed from the contrast of the linearity in the civilizing process and the nonlinear, deconstructive, genealogical Foucauldian account. Also, while Elias' model of increasing civility was perceived as benevolent, Foucault's account was read as more sinister. More recently, however, some theorists find the two accounts to complement each other (Smith, 1999; Spierenburg, 2004). For our purposes, it appears that the sentiment of gentility toward women, manifested in avoiding public infliction of the criminal justice system, does not preclude a parallel process of intensifying gendered controls in the context of the household. Moreover, the shift from visible, corporal "festivals" of punishment to seemingly subtler micro-controls of the soul occurs in both theories, and is particularly discernible for women, whose fate first resembled that of men and who later disappeared from the public stage.

Whether these broad theories indeed reflect the change in patriarchal patterns, and whether patriarchal patterns provide a genuine explanation of the findings, is a question we would like to see provoking interdisciplinary discussion. Our aim in providing the broader

historical context is merely to introduce an exploratory search into general frameworks that would account for our findings. We hope that the findings, and some of our ideas about their social context, will rescue female criminal patterns of the past out of oblivion, and introduce the question so long avoided by criminology: Where have all the women gone?

This question may have different implications for the various disciplines. For criminology, some questions which need answering refer to the ways in which the consensus regarding the "maleness" of crime shaped the development of criminological theory, and particularly its essentialist, positivist schools. The historical dimension can also lead to question the ways in which levels of crime in the present can be examined. For feminism, the preponderance of female crime in the past might provide fertile ground for exploring the patterns by which women were brought to trial for regular offenses, not merely for "typically feminine" crime, and may lead to a lesser degree of essentialist theorizing, in the sense that crime (as opposed to violence) is not, *ipso facto*, endemic to men. Finally, our hope is that this project will facilitate an open-minded dialogue between social history and sociology. The "truth" about female crime in Early Modern Europe may lie not in specifics or in broad theories, but rather in the "blind spots" in each discipline's vision (Teubner, 2005). To conclude, In Norbert Elias' reconciling words:

Without endeavoring to construct [models of social change], we cannot discover whether and to what extent we can observe in the development of human societies, seen in long-term perspective, particular structures of succession and disintegration, for example, persistent directions or trends which, despite all changes, lead from the past and through the present, and – when this is the case – how this unplanned and correspondingly aimless and purposeless directionality of social development can be explained. Only when we can better define and explain these more encompassing unplanned developmental structures – and with them the play and counter-play of long-term dominant trends and their counter-trends, which in turn become dominant under certain conditions – than is currently the case, will we be able to develop diagnostic models of the, always limited, scope of the unplanned developmental potential of human groups that will indicate the direction in which further development may be possible. (Elias, 1997, p. 371).

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