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CRIMINAL RESPONSIBILITY OF WOMEN

Val Beyer Satterfield

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The evolution of the legal attitude toward women is strongly interwoven with the reforms respecting juvenile delinquency and the creaking progress of the "criminal responsibility" juggernaut. A brief analysis of the historical background is necessary to point out that modification is the prime characteristic of the legal attitude toward women and the general topic of criminal responsibility.

A review of the ethnological studies that demonstrated the maternal dominance of primitive society is unnecessary as the material is well known. There is wide acceptance of the doctrine that the female mind for reasons of biologic necessity is particularizing, realistic, practical and concrete, being pervaded by desire for a settled working security. The male for reasons of biologic necessity is restless, generalizing, abstract and investigating.

Several philosophies have promulgated the doctrine that women settled the world while men developed, elaborated and confused it. In any case, in historical times, a schism between Eastern and Western evaluation of women became evident. From the Hebrew source material, from the Hindu Smriti and the Hittite and Hammurabi Codes, it was evident that, although, the female was poetically elevated, her rights and liberties were displaced. In Greece, Rome and Egypt, before the fall of the Roman Republic, a woman had approximately the same status as she now possesses. As Eastern ideas prevailed in the West, her lot deteriorated and the only citadels of feminine rights were to be found among the savage Teutonic races, the Goths and Kelts. The Russian, Prussian and Napoleonic Codes furthered the incapacity of the female. In England in 1620, a Puritanical House of Commons declared the incapacity of the female to appear as a witness in court. As Blackstone said (11 Comm. 445), she was stricken with incapacity "for her protection and benefit" and "to show what a great favorite is the female sex of the laws of England." In spite of her incapacity, the female offenses against coinage were punished by death by burning in the reign of Edward III, although if pregnant, she was permitted to deliver before being burned.

As the male type of society elaborated upon itself we come upon the

strange doctrine of the *femme sole* and the *femme couverte*. At common law a woman who committed a crime in the presence of her husband was presumed to have committed the act under his coercion and therefore only he was responsible.¹ An extension of this theory occurred in consideration of the crime of incest. If a daughter admitted voluntary and enjoyable participation with her father she could not be an accomplice, nor could a sister who sat and witnessed the act, because of the theory of paternal coercion. These attitudes were derived from a social sense of husband and father power. Such absurdities could not hold and by steps treason, murder, homicide and some misdemeanors that were considered feminine in inclination were excluded, namely: The keeping of houses of prostitution, gambling and illicit dram shops. In the United States, robbery and murder have been considered coercive in origin. The coercion could even be constructive without the presence of the husband.

Further deterioration of the sense of power of husband and father led to the theory that the woman must prove she was coerced, the presumption of coercion being only *prima facie*. Now many courts consider that the various Married Women's Acts have removed the presumption. In New York State the presumption has been abolished by Statute.² In the same spirit, the husband no longer has a right to physically chastise his wife except *that* "reasonably required" to control her in the management of the home, to restrain her from sexual connection with another man or to enforce right of sexual connection with her, and the above measures are at his own risk.

In the law of the Roman Republic there was a fairly enlightened attitude toward juveniles of both sexes. A boy at fourteen and a girl at twelve were freed from their guardians, considered to have understanding and to have reached manhood, womanhood and the age of discretion. They could marry and were considered responsible for their acts. In the Institutes of Justinian and in those of Ulpian, it was considered that juveniles could not have "malicious intent" although Ulpian believed theft might be an exception. This concept deteriorated and in England under Edward III, the age of presumption held only under seven, although between seven and fourteen, strong evidence to dismiss the presumption was required. In spite of these rules a Special Committee reported to the House of Lords in 1835 that two hundred and fifty-eight youths between the ages of ten and sixteen had been com-

1. *Smith v. Schoene*, 67 Mo. App. 604.

2. Penal Law of New York, Section 1092.

mitted to the prison hulk "Euryalus" and that some had been there confined for over two years.

A dramatic insight into the severity of early English Law and the remarkable modification that occurred in the last half of the past century can be found in an article on "Criminal Statistics" published in 1896 in the *Law Magazine and Review* at London. This article states that in 1836 twelve percent of convictions for indictable offenses were of individuals under sixteen and in that year one in four convictions received the death penalties or seven or more years confinement. In 1896, twenty-two percent of those convicted were under sixteen and only one sentence in two hundred and fifty carried a sentence of seven years imprisonment or death.

At this writing the age of presumption is eight in England, nine in Texas, ten in Illinois and Georgia, twelve in Arkansas and prima facie to sixteen in New York and Oklahoma.

In this day of enlightenment a juvenile is to be taken before a juvenile court which has broad discretion to parole, to give custody to parents, parole officers, or suitable institutions. The juvenile is not to be confined with regular prisoners nor tried in regular courts. It is noteworthy, however, that in so called "heinous crimes" such as rape, robbery and murder, most Children's Acts provide for removal to the criminal courts (*Juvenile Court v. State*, 139, Term 549 S.W. 770).

There is one more aspect of responsibility that has evolved through the ages namely: Insanity of intellect versus Insanity of will.

A notable early English case, known as Beverly's Case was significant because a person "totally deprived of understanding as a dumb brute or beast, not knowing father or mother" etc. was considered as a mitigation of responsibility. In Arnold's Case, the ability to "distinguish between right and wrong" test was promulgated. In 1760 in the Case of Lord Ferrer, the power to distinguish between right and wrong was also considered vital. In 1800, Harfield's Case brought forth the notion of "fixed delusions." In Bellingham's Case of 1812, the capacity to distinguish between right and wrong was again considered. In 1843, the famous M'Naughten's Case, following the murder of the secretary of Lord Peel, brought much discussion before the House of Lords and the "necessity of knowing the nature and quality of the act and the lack of knowledge that the act was wrong at the moment of the deed" has dominated opinion and practice since that time. There have been other concepts such as "The insane delusion" theory, and an American theory "The insanity of Will" and the "Irresistible impulse," presently in disrepute.

REPORT ON FORTY MARRIED FEMALES

These three aspects of the changing concepts on criminal responsibility have been reviewed as background for a report of my findings in the study of forty married females, twenty of whom were without known criminal behavior and twenty who had rather colorful delinquent careers.

The first group of twenty women had the following characteristics: (1), natives born of native born parents whom they said "were happily married," (2) high school educations, (3), were employed before marriage, (4), had one or more children, (5), had no complaints subjectively described as "nervous," (6), had no close relatives with instances of psychotic episodes, and (7), all had as husbands men with anxiety states of mild to moderate intensity. Four of the twenty women reported that they were frigid but all denied sexual disharmony in their marriages. Their ages were as follows: One (19), two (20), five (21), six (22), one (23), three (24), one (25), and one (26). Intelligence rated average to superior. Four admitted sexual indiscretions prior to marriage (one, three men other than husband, one promiscuous, two "were engaged to husband"). First dates with boys: Youngest was sixteen at time of first date. Three women stated they ran around with a "wild gang" group of boys and girls for periods varying from one month to one year. All stated that they were very "friendly" with their fathers whom they described as "good" fathers but were "independent" (not dominated by) with mothers. Sixteen said that mothers dominated fathers. Four said dominance was even. None alleged that their fathers had dominated their mothers. To the question "who are you (subjectively) most like?," eighteen answered "Mother," two answered "Father." To the question "who is responsible for the family," fifteen answered "Mother" and five answered "Father."

The second group consisted of twenty girls who had become known for irregular living, numerous offenses, excessive drinking, stealing, sexual promiscuity, irregular absences from home, incorrigibility, frequenting taverns, borrowing money, bad check writing, and refusal to perform household duties. No girl had served time nor had suffered convictions for felonies. Their ages were as follows: Three (19), five (20), eight (21), one (22), one (23), one (24), and one (25). Intelligence rated average to superior. All admitted sexual indiscretions (heterosexual). Ten were high school graduates. Fourteen stated that they were frigid, two (19), four (20), six (21), one (22), and one (23). Six stated they were not frigid. First dates with boys occurred at

early ages, three (12), four (13), five (14), eight (15). Sexual indiscretions began very early, one (12), four (13), four (14), six (15), three (16), and two (17). All were in "wild" groups with delinquent boys. All said they were antagonistic toward fathers, and six were antagonistic toward mothers. Ten said they were fearful of fathers. Fourteen felt they had responsibility toward mothers. Descriptions of fathers and mothers were as follows:

<u>Fathers</u>	<u>Mothers</u>
No good	Domineering
Indifferent	Ignorant
Spineless	Churchy
A tyrant	No good
Stupid	Jealous

To the question "who are you (subjectively) most like?" twelve answered "Mother," eight answered "Father." To the question "who is the responsible one in a family?" sixteen answered "Father" and four answered "Mother."

The second group were all native born with all native born parents. Parents were not happily married and the following reasons were given: No money, father loose morally, mother sloppy, not mated, marriage is impossible, both ignorant, mother dumb. Eight said parents were divorced. Additional separations occurred in three cases. Of the twenty, five were unmarried, fifteen were married and three of these divorced. All complained of sexual disharmony after brief periods. As to offspring: Eleven had none, three had one, four had two and two had three. Common explanations of promiscuity were: "Sex is part of playing around," "Like Money," "Part of life." Common remarks were: "Don't see how women stay at home," "Have to get out," "Get restless," "Like to talk with men," "Feel like one of the crowd," "Things move in a crowd," "Forget all about things," "Men have the best of it," "When we went out everything went," "Nobody was responsible," "Would decide not to but would get restless and go down to the tavern," "Like men better than women," "Men talk about more interesting things," "Don't like housework," "See no point to scrubbing and cooking," "Children are a nuisance," "Men are exciting."

Prostitution was admitted by none but all took money and explained it by the following remarks: "All for small things," "Just from a pal," "Good friends," "for gambling, money is needed," "Most men are rats but you have to get around," "I've been crazy about a dozen men,"

"Anyone I am going with I am crazy about," and "He wants me to have a good time."

Start of "wildness" (subjectively) was estimated as follows:

<u>Ages</u>		
0-4	All of life.....	3
4-5	Told of temper tantrums, rebelliousness...	5
8-10	Tomboy	3
12-15	Grade School	4
15-19	High School	5
		—
		20

Attitude toward ability to alter or control behavior was as follows: "I am unable to change," "I do not want to change," "I would not know how to start," "It's my own business," "It's too late," "I like to do what I please," "I'll get along," "I know what I am doing."

In summary, the two groups of similar intellectual endowment and racial backgrounds were studied.

The first group present no problems to themselves, are smug, dominate the household and their husbands, and are reasonably well adjusted biologically and socially. This group had better than average homes, had married "Father substitutions" and strongly identified themselves with their mothers. The second group is subjectively and objectively maladjusted. They came from broken and discordant homes and felt antagonism or contempt for one or both parents. They have no female social adjustment and project themselves into a play relationship with men of delinquent habits. The delinquency of the women of this group, although serious and malignant in consequences, consists of loose and promiscuous life outside the ordinary female sphere. The women of this group feel unable to find or comprehend the ordinary female adjustment.

SUMMARY AND CONCLUSIONS

My conclusions are these: It is not the result of social accident or whim that police courts and juries deal with and judge women delinquents on a basis different from male criminals. It is significant that during war periods and loose money periods the maladjusted women find "friends" and frequent the taverns and dance halls and female crime frequency seems to increase. The female is different from the male. Because of her biologic nature, she must be trained and initiated into

the female habit in a home where identification with the mother is possible and a vivid father ideal forms and is desired by her.

It is considered that the female delinquent can properly be presumed to be not criminally responsible until she has had an opportunity to learn what "the marital state" consists of in any given social milieu. The type of maladjust described can be considered to be an "infant" until twenty-five years of age or older. It is considered that the female who does not know how to be a wife and mother is a special type of social delinquent. Experience with this group indicates that the delinquencies were concomitants of "play" participation with the only males accessible—psychopathic males. Although the question of psychopathy in the female is a challenging one, it is considered that in this group the evidence points toward reactive maladjustment rather than constitutional defects.

An effort has been made to point out the facts of evolution of three phases of criminal responsibility. There is nothing sacred or final about the present state of the social or legal attitude toward the female delinquent. It is odd that one of the most laugh-provoking old songs is the nostalgic "She is more to be pitied than censured."

Our society must take a realistic viewpoint of the inaccurate Uniform Crime Reports, police and jury "forgiveness," "desk sergeant paroles," and accept the responsibility for the salvation of these irresponsible, sick and maladjusted women. It is considered that the common belief that men generally excuse female offenders because women are weak or that they are reminded of their own wives, mothers, sisters or daughters, is erroneous. More closely, the attitude of the male toward the delinquent female is similar to his attitude toward a child, and is based upon a consciousness of the irresponsibilities and infantile character of the antics of the delinquent female. This type of social delinquency consists of a prolongation of the adolescent period with regression to the earlier "tomboy" or "asexual" phase of nine or eleven years. The gun moll, the female associates of gamblers and fast money men are immature and legally should be considered as "infants."

It is considered that the findings of normal to superior intelligence, without blunted affectivity, in a female who has rejected identification with her mother and does not have a desire to possess a male like her father, and who did poorly in school and sought out male "play" companions of psychopathic types with whom she was promiscuous but frigid, should be presumed to be without malicious intent, under the coercion of her male attachment, and an infant.

It is considered that Women's Courts, appropriately trained parole officers, and suitable custodial institutions should be provided for her in the same spirit they are provided for the juvenile delinquent.

Summary: It has been pointed out that the concept of criminal responsibility has been in evolution and that the concept is based not on absolute values but upon social sentiments and the reasoning that from time to time seems to support the social sentiment.

The woman, the child, and the insane have been special favorites of this evolution.

The female of today has many obstacles in the way of her realization of a simple biologic destiny.

Based on the results of the experiences described in this report, a pleading for the acceptance of presumptive lack of malicious intent for the female maladjust described above was made.

A recommendation for special courts, parole officers and institutional custody was offered.