

# THE VANISHING FEMALE: THE DECLINE OF WOMEN IN THE CRIMINAL PROCESS, 1687-1912

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This article challenges the prevailing scholarly belief that women have always been at the periphery of crime and argues that a central issue for those studying the criminal process should be the decline over time of women as criminal offenders and defendants. Our argument rests on examination of criminal cases in the Old Bailey in London for 1687-1912, as well as of data drawn from English and some American courts for this period. For much of the eighteenth century women made up a substantial portion (over 45 percent at times) of all those indicted for felony offenses, in sharp contrast to contemporary levels of less than 15 percent. We conclude that the change is "real"—it cannot be explained away as an artifact of selective reporting, shifting jurisdiction, short-lived idiosyncratic enforcement policies, etc. We argue that these changes parallel and may be explained by significant shifts in the roles accorded women in the economy, the family, and society, and we conclude that the vanishing female in the criminal process may reflect a shift to more private forms of social control brought on by shifting social attitudes and the rise of industrialism.

[G]ender differences appear to be invariant over time and space.

—Gottfredson and Hirschi 1990:145

At the forefront of sociological interest at present are relatively short-term processes. . . . Long-term transformations of social structures . . . have by and large been lost to view.

—Elias 1968a:222

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We wish to acknowledge the assistance of Teri Winter, Charles Lester, and David Johnson for coding; Shelly Messinger for careful reading of several drafts of this paper; John Langbein, David Lieberman, and David Sugarman for help in locating sources, supplying background material, and help in devising the code; Dan Rubinfeld, Richard Berk, and John Berecochea for technical advice on sampling and coding; Thomas Green and Pieter Spierenburg for comments on a previous draft; four anonymous readers for the *Review*; and Shari Diamond for several careful readings of the manuscript and many helpful suggestions. Above all we wish to thank John Beattie and Norma Landau for their careful readings of earlier drafts, extended discussions with us, and for sharing data from their own ongoing research. An earlier version of this paper was presented at the annual meeting of the Law and Society Association, Amsterdam, June 1991.

Women's involvement in the criminal process has not always been marginal. Yet historians and criminologists have placed it at the periphery of study, highlighting distinctive female crimes or slight shifts in low rates of female criminal activity.<sup>1</sup> This article challenges the assumptions on which this neglect rests. We argue that one of the central puzzles for students of gender and crime should be the vanishing female participation in the criminal process.

Our contention that female criminal involvement changed over time rests upon an examination of criminal cases in London's Old Bailey between 1687 and 1912. We looked at "serious" crimes, felonies ranging from larceny to murder.<sup>2</sup> Although we will show that some of the decline in women's involvement in this court is more apparent than real, a strong pattern remains that reveals a high proportion of women defendants (by twentieth-century standards) in the early eighteenth century, followed by a decline over the next 150 years to near contemporary levels. To the extent that this pattern is general—and we consider additional evidence that suggests it is—a central mystery for both historians and criminologists is the marked decrease in women's criminal involvement that appears to have taken place over the course of the eighteenth and early nineteenth centuries.

Students of crime are well aware of the problems with "crime rates," particularly the lack of a reliable data base. Invariably research is based on some type of "reported" crime, but reporting systems have filters that encourage some and deter others from reporting. The situation is even worse in eighteenth-century England, for during that period there was no police force and no "official" record of persons picked up for questioning and charging by magistrates. Therefore, scholars of this period rely on court records as a measure of fluctuations in criminality (Beattie 1986), particularly in studies like ours of serious felonies (Sharpe

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<sup>1</sup> An early exception is Bonger's 1916 study, *Criminality and Economic Conditions*, which examines male and female conviction rates in selected European countries during the latter part of the nineteenth century. Other early discussions (e.g., Lombroso and Ferrero 1895) are psychological or physiological studies, focusing on personality types rather than rates of crime in society. Since Carol Smart's 1977a critique challenging the male bias in such studies and Simon's 1975 and Adler's 1975 arguments about recent increases in female crime, there has been a significant increase in sociological research on women's criminality and involvement in the criminal process. For a good review of some of this newer literature, see Gottfredson and Hirschi 1990:144-49.

<sup>2</sup> In the eighteenth and nineteenth centuries, the Old Bailey heard the full range of serious felonies. The few misdemeanors we found were dropped from our study. We coded all crimes charged (over forty different crimes) and found that the vast majority of defendants until the mid-nineteenth century were charged with larceny. There were only a handful of petty larcenies in our sample; thus, when we refer to larcenies, we are referring to cases charged as simple grand larceny. Robbery, burglary, shoplifting, picking pockets, and murder also appeared regularly throughout the entire period.

1984:53–57).<sup>3</sup> We use the term “involvement” in the criminal process to emphasize that we do not and cannot examine criminality *per se*. However, insofar as we examine large historical changes in the patterns of female involvement in the criminal process, we are arguing that these records convey important information about shifts in official responses to women and crime.

Despite the recent upsurge in research about female criminality, little of this literature addresses our problem. Historians have shown a renewed interest in such “women’s crimes” as witchcraft, infanticide, and prostitution and in women’s roles in food riots, but have neglected shifts in the proportion of women involved in ordinary crime. Similarly feminist criminologists have begun a reexamination of theories of crime in light of women’s generally low rate of involvement as offenders<sup>4</sup> but have neglected historical shifts in the proportion of women involved in the criminal process.<sup>5</sup>

This article suggests the need to reorient the attention of both historians and criminologists. We argue that a broader perspective is needed, one that places gender at the center of explorations of the criminal process as it considers broad shifts over time. Part I traces female criminal involvement over time, showing that it declines throughout the eighteenth and early part of the nineteenth centuries. Part II considers and largely rejects several hypotheses that treat this decline as more apparent than real. Part III outlines an argument that treats the declining involvement of women in the criminal justice system as part of a larger set of social processes that transformed social controls over women during this period.

## I. PATTERNS OF FEMALE CRIMINALITY, 1687–1912

We begin with the remarkable shift in the presence of women in the Old Bailey,<sup>6</sup> as arrayed in Figure 1. This graph is based on a 25 percent sample of indicted defendants—taken at roughly

<sup>3</sup> Some have argued for the value of indictment records as a measure of overall criminal patterns, suggesting that insofar as forces affecting prosecution did not change wildly from year to year, the indictments may be interpreted as reflective of changes in offense rates (see, e.g., Emsley 1987; Sharpe 1984; Beattie 1986; Hay 1982).

<sup>4</sup> See, e.g., Smart 1979, 1977a; Simon 1975; Adler 1975; Leonard 1982; Box 1983; Heidensohn 1985; Naffine 1987; Hagan, Simpson, and Gillis 1989, 1979; Chesney-Lind 1989; Gottfredson and Hirschi 1990; and Zedner 1988, 1991. Mainstream criminologists have been slower to incorporate gender into their analyses (Heidensohn 1989).

<sup>5</sup> An important exception is Boritch and Hagan 1990, which examines female arrests in Toronto between 1859 and 1955.

<sup>6</sup> The Old Bailey is the popular name for London’s criminal court, established by charter from Henry I early in the twelfth century. Beginning in the late Middle Ages, its jurisdiction was roughly equivalent to that of courts of assizes elsewhere in England. These courts handled indictable offenses—felonies punishable by death. The Old Bailey was in effect a special court for inner London, a densely populated area at the confluence of several counties. In 1834

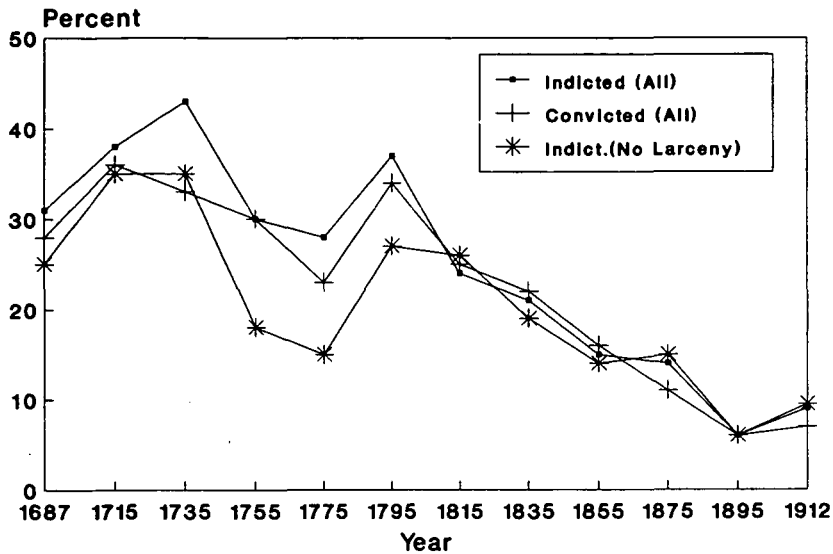


Figure 1. Female defendants, by year

SOURCE: *Old Bailey Sessions Papers* 25 percent sample; Appendix Table A1 presents these data.

twenty-year intervals and reported in the *Old Bailey Sessions Papers (OBSP)*.<sup>7</sup> It depicts three indicators of shifts in female involvement in the criminal process over time: women defendants as a proportion of (1) all indictments brought; (2) indictments with larcenies (the most numerous and least serious group of offenses) excluded; and (3) all convictions. At the outset, we note their substantial similarity.

To the contemporary student of the criminal process, two features of Figure 1 stand out: first, the high proportion of women in the early part of the eighteenth century, and second, their steady decline to a low of under 10 percent toward the end of the nineteenth century (a level that has remained throughout most of the twentieth century for courts in England). In short, during the first half of the eighteenth century women constituted roughly three to four times the proportion of felony defendants that they have in the twentieth century.

We double-checked the pattern found in the sample displayed

the City of London, all of Middlesex County, and parts of Essex, Kent, and Surrey were designated a single venue for the purpose of indictments and criminal trials, and the Old Bailey was given a new name, the Central Criminal Court. See Beattie 1988 regarding the development of the Old Bailey's jurisdiction.

<sup>7</sup> The year 1687 was selected as the beginning date because that was the first year for which a nearly complete set of records was available (we were able to review records for seven of the eight sessions in that year, and substituted the first session of the following year in order to have a sample of eight sessions), and 1912 was the last year of publication of the *OBSP*. All sample years after 1687 had complete records.

in Figure 1 by examining 100 percent of all those indicted at five-year intervals from 1715 to 1912, using names (sex indicated by first names) listed in the indexes of the annual *OBSP* reports (see Appendix Table A2).<sup>8</sup> We found that the percentage of males and females brought before the Old Bailey during these years closely tracks the trend in the 25 percent sample. For this reason the remainder of the article is based on a discussion of the smaller sample for which more information is available.

To test the trend, we first dropped all larcenies, the single largest and least serious (although still felony) set of cases, to see if the pattern of high and then declining involvement by women held for the remaining, most serious cases. Figure 1 suggests that it does. (We will show below the importance of larcenies in the shifting jurisdiction of the court.)

In an effort to determine how "deep" this involvement was, we calculated women as a proportion of all those convicted of felonies at the Old Bailey. Figure 1 indicates that the same pattern of high involvement followed by decline occurs here too. In short, all indicators point to the same conclusion, that in the early eighteenth century women represented a high proportion of defendants involved in the criminal process, followed by a steady decline.

These findings pose a substantial challenge to conventional historical and sociological treatments of crime, which proceed as if criminal activity is and always has been a male phenomenon.<sup>9</sup> Indeed the scholarly belief that women are marginal in the criminal process and that gender is invariant with respect to crime is so pervasive that our first reaction was to see whether the patterns we

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<sup>8</sup> An obvious issue is the reliability of the *OBSP*. In particular, we considered the possibility that shifts in the proportion of women in this court could be a function of shifts in reporting practices. For more than 250 years, from the mid-seventeenth century to the early twentieth century, the Old Bailey cases were published by reporters who used shorthand to summarize the proceedings. Until the early 1710s cases seem to have been reported somewhat selectively, with an emphasis on sensational cases. However, with the appointment of a new reporting service, coverage was expanded and standardized. Langbein (1983) compared details of cases reported in the *OBSP* with the detailed shorthand notes of one of the judges who sat at the Old Bailey in the mid-eighteenth century, Sir Dudley Ryder, and found no significant differences between the two sets of records. He concluded that, at least for the period he was examining, the *OBSP* provided a generally accurate record of adjudicated cases. Landsman (1990), however, speculates that there was selective reporting until the 1740s. In either case there is no evidence to suggest that reporters selectively over- or underrepresented women or the types of cases women were involved in ways that would account for variation over time.

<sup>9</sup> The few exceptions have done little more than puzzle over the high rates of female criminality in eighteenth- and nineteenth-century England. For example, Philips (1977), who examined figures from records in the Black Country from 1835 to 1850, observed, "This general male-female ratio of 3:1 is of interest, differing markedly from the situation today, where this sex ratio in indictable offenses is about 7:1" (148). Similarly Sharpe (1984) and Langbein (1983) note the larger proportion of women defendants in the mid-eighteenth century but do not focus on the issue. Cf. Zedner 1988, 1991, discussed in the text below.

uncovered were an artifact of processes that "overrepresented" women in some ways. The next section considers several hypotheses.

## II. SEARCHING FOR AN EXPLANATION

Here we consider several explanations that might lead us to conclude that the patterns in Figure 1 are more apparent than real: First, it is possible that changes in court jurisdiction were responsible for the declining percentage of females in the criminal process. Second, demographic changes in London might account for the shift. Third, we considered the possibility that a handful of "women's offenses" for a period were vigorously enforced in ways that skewed the pattern of the remaining criminal offenses (just as during Prohibition tax evasion skewed the percentage of "normal" offenses and during the Vietnam War "draft evasion" skewed the overall pattern of criminal offenses). Fourth, the high proportion of female defendants during the early eighteenth century might be a function of women's involvement with a man who was primarily responsible for precipitating the charge. Finally, women might be "overrepresented" during times of war, when men were absent, engaged in the war effort, and subject to an alternative military sanctioning system.

Some of these possibilities suggest that change in the proportion of women is nothing more than a statistical artifact that dissolves on closer inspection. Others suggest more complicated social processes that affect institutions of control in ways that have a variable effect on women brought into court. The first possibility—that jurisdictional shifts affected the patterns—receives considerable support. But it still fails to account for most of the variation. The other factors complicate but certainly do not "explain away" the pattern of greater involvement by women in the eighteenth century.

### Shifting Jurisdiction

It may be that jurisdictional changes removed offenses that disproportionately involved women from the Old Bailey and into the lower courts, so that the changes depicted in Figure 1 reflect this shift rather than changes in gender and criminal involvement. As we will show, these jurisdictional changes account for much of the reduction in women at the Old Bailey throughout the second half of the nineteenth century. Indeed, they account for the very substantial absolute reduction in the size of the court's caseload between 1835 and 1900. However, jurisdictional shifts do not so easily account for the decline in the proportion of women throughout the eighteenth century, and it is this shift that is of particular interest to us.

During the period under consideration in this study, the an-

Table 1. Five Principal Crimes Charged in Old Bailey, by Year, 1687-1912 (Percent)

	1687	1715	1735	1755	1775	1795	1815	1835	1855	1875	1895	1912
Larceny	28	41	52	50	59	57	52	58	31	13	10	13
Burglary	22	19	6	7	9	8	7	6	10	7	16	9
Theft DH <sup>a</sup>	11	6	—	7	5	9	8	4	—	—	—	—
Shoplifting	7	6	10	5	—	3	6	—	—	—	—	—
Murder	6	7	6	—	—	—	—	—	—	—	—	—
Sheep theft	—	—	—	5	—	—	—	—	—	—	—	—
Receiving	—	—	—	5	4	—	—	4	—	—	—	—
Coining	—	—	—	—	—	3	—	—	19	12	—	8
Forgery	—	—	—	—	—	—	—	—	8	9	11	8
Pickpocketing	—	—	—	—	—	—	8	13	5	—	—	—
Sexual assault	—	—	—	—	—	—	—	—	—	—	9	—
Robbery	—	7	8	—	7	—	—	—	—	—	8	—
Fraud	—	—	—	—	—	—	—	—	—	9	12	10

SOURCE: *Old Bailey Sessions Papers* 25 percent sample.

<sup>a</sup> Theft DH: theft from a dwelling house, a crime usually committed by servants.

nual number of cases adjudicated at the Old Bailey grew steadily from 1687 to 1835 when it reached a high of more than 2,000 cases. Over the next seventy years, and particularly after 1850, its caseload plummeted by over 300 percent, reaching a low of 627 in 1900 (see figures in the 100 percent sample in Appendix Table A2). This reduction occurred in spite of a substantial increase in the population within the Old Bailey's jurisdiction. It was largely a result of nineteenth-century acts of Parliament, which culminated in the Summary Jurisdiction Act of 1879. These reforms downgraded offenses, both in severity and sentence, abolished capital punishment for selected offenses, and shifted lesser property offenses away from crown courts, expanding the summary jurisdiction of the magistrates.

These nineteenth-century shifts affected both the size and the composition of the caseload of the Old Bailey and are reflected in our data. Throughout the eighteenth century the major types of cases tried at the Old Bailey remained steady (see Table 1), and it was only in the nineteenth century, as many of the less serious cases were shunted off to the lower courts, that the *mix* of cases changed substantially. These jurisdictional changes reduced the overall percentage of cases accounted for by property offenses—as lesser offenses (like larceny, shoplifting, pickpocketing) were transferred to lower courts, the range and accompanying percentage of offenses charged at the Old Bailey shifted.

The percentage of larcenies charged dropped dramatically as a result of nineteenth-century jurisdictional changes. For instance, in 1835 larcenies accounted for 58 percent of all crimes charged and 62 percent of the crimes charged to females—figures that are more or less representative of the court's workload for the entire eighteenth century. But by 1855, only 31 percent of all defendants, and 38 percent of the women, in our sample were charged with larcenies. These figures were reduced still further; between 1875 and

1912, such cases accounted for only 10–13 percent of Old Bailey defendants in our sample. Since throughout the nineteenth century women were more likely to be charged with larcenies than men, wholesale shifts of such cases from one court to another clearly disproportionately affected women and contributed to their decline as a proportion of all defendants at the Old Bailey.

In addition, the number of violent offenses charged at the Old Bailey increased in the late nineteenth century (more than doubling in our sample between 1855 and 1875). At the same time the numbers of those charged with property crimes decreased, rising again after 1875, although not as dramatically (see Table 3 below).<sup>10</sup> This increase in defendants charged with violent crimes, coupled with the shift of lesser property offenses away from the Old Bailey and the smaller increase in the numbers charged with remaining property crimes, contributed to the dramatic decline in the proportion of female defendants at the end of the nineteenth century.

The eighteenth century appears to produce a different story; it was a period of expanding, not contracting, jurisdiction for the Old Bailey (and equivalent courts elsewhere) as a vast array of new capital crimes were created (see, e.g., Thompson 1975a; Hay 1975; Radzinowicz and Hood 1986; and Beattie 1975, 1986). Although these newly created offenses added substantially to the numbers of cases heard by the courts, their greatest impact was on those living in rural areas. They had only minimal impact on the Old Bailey's caseload.<sup>11</sup> Nevertheless, we wondered whether informal jurisdictional shifts in the eighteenth century might have transferred female defendants from the Old Bailey to lower courts.

Although it was beyond the scope of this research to conduct a full review of the combined caseloads of the courts of quarter sessions of Middlesex, London, and Westminster which had overlapping jurisdiction with the Old Bailey, we were able to test the effect of shifting jurisdiction in other ways. These efforts all support the patterns suggested in Figure 1, that there was a substantial decline in women's involvement in the late eighteenth and early nineteenth centuries.

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<sup>10</sup> There were only 15 defendants charged with violent crimes in 1855, equaling 7 percent of crimes charged in that year (see Table 3). In 1875, 37 defendants were so charged; this increased to 40 in 1895 and 49 in 1912. Women were seldom charged with violent offenses. The number of those charged with property offenses dropped dramatically between 1835 and 1875, after the legislative changes of the 1850s, from 515 in 1835 to 185 in 1855 to 117 in 1875. Thereafter, the numbers of those so charged at Old Bailey increased to 161 defendants by 1912.

<sup>11</sup> The famous "Black Acts" were directed at poaching, stealing firewood, and other activities of rural commoners (Thompson 1975a). A handful of other new offenses, such as theft of lead (1731), theft from a ship (1753), theft from a post office (1765), and embezzlement (1795) affected people (and especially males) in urban areas (Hay 1982; Hall 1935; Radzinowicz and Hood 1986), but only a few such cases appeared in our sample.

Since larcenies constituted the single largest group of "hybrid" cases that could most easily be brought in either quarter sessions or the Old Bailey, we examined the mix of these charges in relation to other charges. In particular we wanted to see if larcenies declined as a percentage of the total caseload in the mid-eighteenth century, when women's presence began to decrease, as in the nineteenth, when formal jurisdictional changes substantially reduced the total number of cases heard at the Old Bailey as well as the proportion of larcenies.

Table 1 indicates that no major shift occurred until 1855. Throughout the first 150 years under consideration, larcenies accounted for the single largest group of crimes charged, and they remained a relatively constant proportion of the court's caseload. From the mid-1800s, however, other crimes shared the spotlight. This suggests that shifts in the types of cases handled by the Old Bailey cannot account for the decline in women defendants that took place in the eighteenth century.

We examined the possibility of informal jurisdictional shifts, particularly of larcenies and other types of property offenses, in other ways. As a second test, we dropped from our analysis *all* larceny cases (that is, those cases most likely to be candidates for shifting from one court to another) and examined only those cases remaining. Figure 1 shows that while the female percentage is dampened somewhat when larcenies are excluded, the trend is *not* eliminated. Indeed it follows closely the pattern for all indictments and for convictions.

Third, we tried to examine caseload shifts in the lower criminal courts to see how they may have affected business at the Old Bailey. Throughout the eighteenth century, jurisdictional lines between assizes (and in London the Old Bailey) and quarter sessions were not firmly fixed. The result was that judicial practices were based on practical considerations and varied by county and over time.<sup>12</sup> Although the judges sitting at the Old Bailey did not ride circuit and held eight sessions per year (as opposed to less frequent sittings of equivalent judges elsewhere), they too might have informally shifted some of their work to quarter sessions, either by allowing lower court judges to hear the lesser offenses or by encouraging victims to bring lesser charges at less trouble and expense to themselves in the sessions. One way to assess this would be to consider changes in the workloads of the two levels of courts in combination. Although we have been unable to do this directly, we were able to take "soundings" from several sources.

Certainly substantial informal changes in jurisdiction occurred in at least some assizes and sessions. For instance, Beattie

<sup>12</sup> Throughout England, assizes justices rode circuit and were scheduled for a limited period of time at each location. If they did not complete their docket before leaving, it was not uncommon for them to charge the quarter sessions with handling their remaining business.

(1986:284), who examined the workload of the sessions and assizes in Surrey and Sussex from 1660 to 1800, found major shifts in the ways larcenies were handled in the Surrey parishes. Between 1660 and 1749 Surrey quarter sessions heard only 18 percent of the cases involving simple larcenies (i.e., noncapital grand and petty larceny cases), and the remaining 82 percent were tried at assizes. But from 1750 to 1800, the pattern was reversed; 71 percent were tried at quarter sessions and only 29 percent at assizes. Beattie shows that a similar, although dampened, shift occurred for rural Sussex.<sup>13</sup> Although we were unable to relate this shift to the proportion of women defendants in these two courts, if women were disproportionately charged with larcenies, their decline in assizes could be a function of these jurisdictional changes.

However, in his earlier study of women in the criminal process, Beattie (1975) considered the *combined* caseloads of both the assizes and quarter sessions. His goal there was to compare differences in the proportion of women in cases heard in urban areas with those heard in rural parishes. We have recomputed his data so that they emphasize the proportion of cases involving women over time. Figure 2 indicates that the proportion of female defendants charged with indictable property offenses in the combined urban Surrey courts of assizes and quarter sessions increased in the late 1600s but began to decline some time after 1710<sup>14</sup> (see also Appendix Table A3). By the end of the eighteenth century, women constituted less than half the proportion of defendants that they had at the outset of the century. Thus, it appears that the shift in the proportion of women in the Surrey courts in the eighteenth century is not simply an artifact of jurisdictional changes. Although the downward trend in Figure 2 is not steady and the slope is not steep, the general pattern parallels the one we found for the Old Bailey. Even if we set aside the large increase at the outset of the eighteenth century, Beattie's data reveal a substantial decline in the proportion of women defendants.

Second, we were able to examine selected cases for the Middlesex quarter sessions during the eighteenth century. As part of her ongoing study of the Middlesex sessions records, Norma Landau recorded the sex of individuals in two samples of sets of cases from the early, middle, and late eighteenth century. The first sam-

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<sup>13</sup> We are indebted to Professor Beattie for calling our attention to the table in his book (1986) that shows this shift.

<sup>14</sup> We are limited by the lack of reliable records for the Old Bailey prior to the 1680s. Thus the beginning date of our study is somewhat artificial and does not represent some "natural" time shift. Although this limit is common to much historical research, it is especially frustrating to us, since both Beattie's and our own figures indicate an increase in the percentage of women in the late seventeenth and early eighteenth centuries. A review of cases extending back into the seventeenth century would allow us to determine whether these increases were part of a long term pattern or constituted an unusual spike.

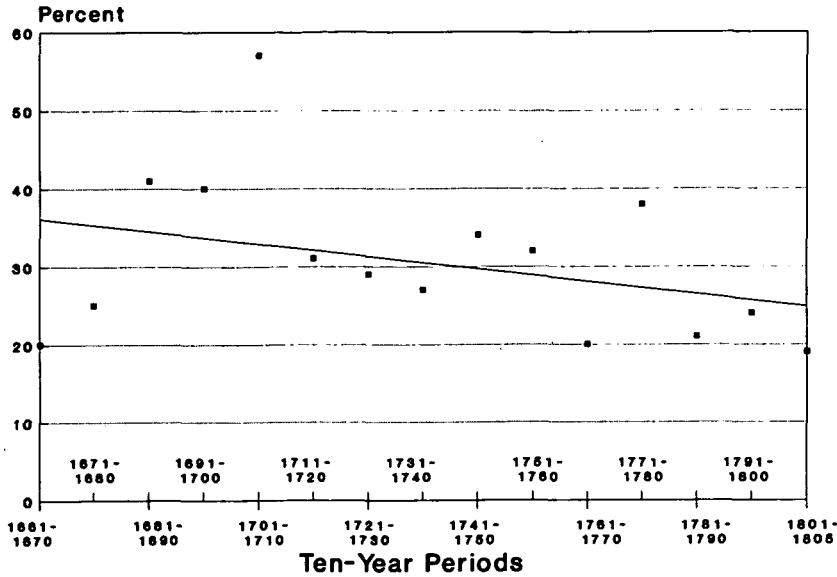


Figure 2. Women as a percentage of all property crimes charged, Surrey urban parishes, 1661-1805

SOURCE: Adapted from Beattie (1975), Graph I, pp. 225. We are deeply indebted to Professor Beattie for providing us with raw numbers to facilitate the reconstruction of his graph.

ple included all *individuals* against whom an indictment was brought; the second consisted of all those *cases* in which an indictment was brought. Her findings are described in Table 2.

Columns (1) and (2) in Table 2 describe the total number of persons against whom indictments were brought and the proportion of them who were female.<sup>15</sup> Two features of these columns stand out. First, there was no increase over time in the numbers of indictments brought. Indeed there was a decrease, at least when the 170½ sittings are compared with the later years. Second, although women as a percentage of people against whom an indictment was brought ranges from 23 to 37 percent, there is no identifiable shift over time. Columns (3) and (4) reinforce this interpretation.<sup>16</sup> Although there was an increase in the numbers of

<sup>15</sup> The number refers to the number of persons against whom a bill was brought before the grand jury and not the total number of persons whom the grand jury indicted.

<sup>16</sup> The number refers to the number of cases in which a bill was brought to the grand jury and not the total number of cases in which the grand jury declared that the bill was true. Since some portion of these cases involved multiple defendants, the figure understates the actual numbers of individuals involved. The accompanying percentages of females are somewhat misleading since they refer to the percentage of cases in which a female was involved and not the percentage of those indicted who were female. They no doubt over-represent women as a proportion of all persons involved in these cases. Data for individuals were not readily available to us. Nevertheless, in light of the lack of fluctuation in cols. (1) and (2), the lack of fluctuation (i.e., the averages of 41, 42, and 40 percent) in col. (4), can probably safely be interpreted to indi-

Table 2. Charges Preferred to the Grand Jury of the Middlesex Court of Quarter Sessions

	Indictments Brought		Fraudulent Taking/ Receiving Sought	
	No. of Individuals (1)	% Female (2)	No. of Cases (3)	% Female (4)
Oct. 1701	210	33	11	36
Dec. 1701	143	28	9	67
Jan. 1702	75	27	5	20
Feb. 1702	130	28	12	50
Ap. 1702	252	31	11	55
Average per session	(162)	(30)	(9.6)	(41)
Oct. 1733	141	23	1	100
Nov. 1733	118	29	17	29
Jan. 1734	67	37	6	67
Average per session	(109)	(38)	(8)	(42)
Oct. 1753	114	28	18	44
Dec. 1753	64	27	16	44
Jan. 1754	122	24	21	33
Average per session	(100)	(26)	(18)	(40)
Oct. 1795	108	28	18	33

SOURCE: These data were graciously supplied by, and reprinted with the permission of, Professor Norma Landau of the University of California at Davis. We deeply appreciate her help.

indictments brought for these types of larcenies, even at their most numerous there was a mere handful of such cases. Most important for our purposes, the proportion of cases involving women remained constant, between 40 and 42 percent. Thus, there is nothing here to suggest a shift of cases and/or of cases involving women away from the Old Bailey to the Middlesex sessions.

We would have expected to see a decline in the presence of women and this is somewhat puzzling. However, we don't see an increase, which the "shifting jurisdiction" hypothesis would have suggested. Admittedly Middlesex quarter sessions was not the only lower court connected with the Old Bailey (we were unable to obtain data from the other courts, London and Westminster quarter sessions), and admittedly these data constitute only a small number of the many sittings of this Middlesex court. Nevertheless, there is nothing in these data to suggest that the decline of women at the Old Bailey was the result of an informal shift in jurisdiction that redirected cases disproportionately involving women to the lower courts.

Other available figures that report on women as a proportion of the *combined* totals of assizes and quarter sessions support an interpretation that women constituted a larger proportion of the

cate that there was no significant variation in the proportion of women among all persons against whom an indictment was brought, at least for these types of larcenies.

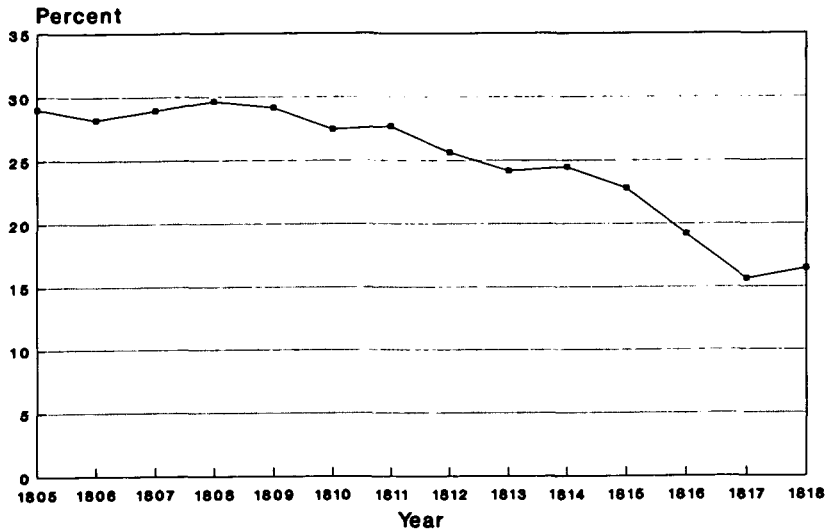


Figure 3. Women as a percentage of all indicated in assizes and quarter sessions, England and Wales, 1805-1818

SOURCE: "A Statement on the Number of Persons Charged with Criminal Offenses Who Were Committed to the Different Gaols in England and Wales for Trial at the Assizes and Sessions Held for the Several Countries for the Years 1805 to the Year 1818," 16 *British Parliamentary Papers*, 18 Feb. 1819.

business in the criminal courts in the eighteenth and early nineteenth centuries and that the figure began to decrease in the early nineteenth century. An 1810 Parliamentary report (14 *British Parliamentary Papers* 549-51) summarized figures by sex on all offenses brought in both assizes and quarter sessions in England and Wales during the four-year period, 1805-8. Overall, 18,114 charges were brought, of which 5,246, or 29 percent, were against women. Roughly half of all these charges were larcenies, and women accounted for 32 percent of them. However, when larcenies are excluded (but other male-dominated offenses such as rape, dealing livestock, and other violent offenses are included), women still constituted 18 percent of all remaining cases.

Still another set of nationwide indictment figures for combined quarter sessions and assizes from 1805 to 1818 (presented in Fig. 3) reveals a decline in the proportion of women, from 29 percent in 1805 to 17 percent in 1818 (16 *British Parliamentary Papers* 295-99).

Several features of these figures should be emphasized. First, they are indictable offenses brought in the *combined* courts of quarter sessions and assizes. Second, they are for the nation as a whole. If they were broken down by region, the proportion of women in urban areas might be higher than the national figures. Third, the higher levels (relative to contemporary figures) of women's involvement are not restricted to a narrow set of lesser offenses. They include a wide variety of types and, and as measured

by both indictments and convictions, levels of seriousness of offenses. Obviously more detailed figures from a longer run of cases would be useful as a basis for comparison. Still these limited figures do closely parallel the data for the Old Bailey during roughly the same years.

Only a few historians of crime in the eighteenth and nineteenth centuries have focused on gender and crime in any detail. However, some report findings similar to ours. For instance, Zedner (1988, 1991), who reviewed nineteenth-century court records for England and Wales, concluded: "Surveying the extent and nature of crime over the nineteenth century indicates the relatively high rates of participation by women compared with today" (Zedner 1991:317). She reports that in 1857 women accounted for 27 percent of those against whom indictments were brought. By 1892, this figure had dropped to 19 percent. As in the eighteenth century, patterns of crime by men and women were broadly similar to one another with the exception of a number of sex-specific offenses, most notably relating to prostitution.

Similarly, in her study of women charged with serious felonies in colonial Massachusetts, Hull (1987) found that women in colonial times had a much higher (three to five times) rate of participation in serious felonies than women do today and that colonial women constituted a substantially larger proportion of defendants. Furthermore, she found a steady and significant decline in females as a percentage of the total number of defendants for serious crime in Massachusetts between 1673 and 1774 (*ibid.*, p. 67). Spierenburg (1984:116) found a mixed but generally declining trend in the proportion of women who were sentenced for serious offenses in Amsterdam between 1651 and 1750, and Faber (1983:253-54) found a steady decline in the proportion of Dutch women sentenced for serious offenses in the eighteenth and early nineteenth centuries. And Boritch and Hagan (1990) reported a steady and significant decline in the arrests of women in Toronto between 1859 and 1955.

Our purpose in this section has been to determine if the decline in the proportion of women at the Old Bailey might have been an artifact of jurisdictional changes rather than actual changes in women's criminal involvement. We have controlled for the influence of larcenies, reviewed evidence that combines figures for both courts with overlapping jurisdictions, and reviewed evidence from a number of other studies. The evidence all points in the same direction, suggesting that in the past women were more heavily involved as defendants in the criminal process than they are today and that some time in the eighteenth and early nineteenth centuries there was a real decline in the proportion of women involved in the criminal courts.

## Demography

A second possible explanation for the higher proportion of women brought before the Old Bailey in the eighteenth century is the demography of London. Certainly there is an immense and long-standing literature on London that emphasizes its distinctiveness, if not uniqueness, in terms of size, population, worldwide importance and the like (see, e.g., Mayhew 1900). And Beattie (1975) argues that there is something distinctive about urban settings and women's criminality more generally. In comparing cases between 1660 and 1800 in urban and rural parishes near London, he found that women were more likely to commit crimes against the person and against property in the city than in the countryside,<sup>17</sup> and concludes that women in urban areas were more dependent on working for wages and less restricted and sheltered than women in rural areas. Thus his explanation for the higher proportion of women in the urban courts rests on a thesis that the courts compensated for weaker forms of social control over women in urban areas. This is an intriguing hypothesis, and one to which we will return. However, Beattie used it to account for different proportions of female involvement in urban and rural areas, and it cannot easily account for changes in proportions *within* the same area *across* time.

We considered whether the high proportion of women in the early eighteenth century was a consequence of a disproportionate number of women in the city during this period. In short, we asked whether there were shifts in the *rates* of women's and men's involvement, or whether the shift in the proportion of women was a result of changes in the numbers of men and women in the city. This is easier said than done for this period. As demographers well know, since no censuses were taken before the nineteenth century, it is difficult to obtain accurate population figures (Wrigley and Schofield 1981; Mitchell and Deane 1962). As a result, figures on the rates of male and female defendants (expressed in terms of numbers of defendants per 100,000 population) are at best only crude estimates. Our problem was compounded still further since the Old Bailey's jurisdiction was something of an artificial unit within the larger metropolitan area and its daytime population consisted of a large number of nonresidents. In short, it is not clear what its "base" population should be: the London area, the jurisdiction's residents, or its daytime population.

Available estimates of the population of England indicate that

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<sup>17</sup> The urban-rural differences existed in the late 1600s and after 1800. Shoemaker (1991) compared defendants in urban and rural Middlesex and Westminster quarter sessions for the period 1660–1725, finding a larger proportion of female defendants in urban areas. Rude (1985) examined nineteenth-century data for the Old Bailey, Gloucestershire, and Sussex. He concluded that women not only accounted for a higher percentage of defendants in the urban areas but that they committed a greater range of criminal acts.

in the eighteenth century there were more women than men in the overall population, and this was even more pronounced in London (Law 1967; Tranter 1985). Finlay (1981) reports a decline in the proportion of men in London over the course of the seventeenth century, so that by 1700 there were more women than men in London.<sup>18</sup> However, the ratio of women to men appears to have been relatively stable between 1695 and 1851 (Glass 1969). While the available statistics may explain the higher proportion of female urban crime (relative to rural crime), there is no evidence of significant shifts in the ratio of men to women in greater London during the period we examined. Thus, the shifts in the proportions of men and women defendants would not disappear if they were expressed in terms of rates. Indeed, using available population estimates for London, we have attempted to determine rates. Appendix Figure A1 depicts shifts in rates (per 100,000 population) of men and women defendants at the Old Bailey. It reveals the same pattern suggested by the percentages, and certainly cannot account for the downward trend in the proportions of women defendants.<sup>19</sup>

### Female Offenses

We considered as a third hypothesis the possibility that the higher percentage of women in the early eighteenth century was a function of distinctively female offenses such as witchcraft and infanticide which for periods were vigorously enforced and then declined. This possibility was suggested by research that has focused on distinctive features of female criminal activity, for example, food riots (Thompson 1971), witchcraft (Larner 1980), prostitution (Walkowitz 1980), and infanticide (Hull 1987).<sup>20</sup>

Following such leads, we sought to control for these and other distinctively "female offenses." However, prostitution was never a felony offense during the period under consideration, witchcraft had all but died out as an offense by the end of the seventeenth century, and there were far too few cases involving riots and infanticide to have any measurable impact on the pattern we found.

Table 3 indicates that property offenses constituted the vast bulk of all cases across the entire period, a continuation of an earlier trend in all parts of England (Sharpe 1984:55), and one that

<sup>18</sup> These demographic changes may explain some of the increase in the proportion of female defendants in the late seventeenth century but do not easily account for shifts in the 1800s.

<sup>19</sup> Since demographic estimates are that the ratio of males to females was relatively stable during the period we examined (and given the problems of trying to calculate the population base for the Old Bailey jurisdiction), the discussion that follows is based on proportions rather than rates.

<sup>20</sup> See also the discussion of food riots in Hay 1975 and Thompson 1975b. Other studies of witchcraft include Trevor-Roper 1969; Keickhefer 1976; Macfarlane 1970; and Boyer and Nissenbaum 1974. And see Sharpe's (1984:60-62) discussion of the "infanticide wave" which took place in England in the seventeenth century.

Table 3. Type of Crimes Charged by Year, All Defendants

	% Violent	% Robbery	% Burglary	% Property	% Other	Total
1687	12	2	22	62	2	100
1715	8	7	19	65	1	100
1735	8	8	6	76	1	100
1755	5	4	7	80	4	100
1775	1	7	9	81	1	100
1795	2	3	8	84	2	100
1815	3	5	7	83	2	100
1835	3	2	6	87	1	100
1855	7	3	10	76	4	100
1875	22	4	7	60	7	100
1895	20	8	16	51	5	100
1912	21	6	9	55	9	100
N	(217)	(117)	(240)	(1,884)	(87)	(2,545)

SOURCE: *Old Bailey Sessions Papers* 25 percent sample.

has remained since.<sup>21</sup> We found some differences between men and women: most notably men were more frequently charged with violent offenses, and women were usually involved in nonviolent property offenses.<sup>22</sup> However, the high proportion of female defendants in the early eighteenth century is not a result of greater female involvement in distinctively female crime.

Although we developed a detailed code for all offenses charged at the Old Bailey, here we grouped them into more general categories to facilitate comparison across time. "Violent" crimes include acts like homicide, rape, infanticide, assault, arson and riot. The "robbery" category includes robbery, attempted robbery, and robbery with violence (a crime added in the nineteenth century). "Burglary" includes both entering a dwelling at night (burglary) and entering a dwelling during the day (housebreaking). "Property" includes nonclergyable offenses ranging from shoplifting and theft from a dwelling house to larceny, coining,

<sup>21</sup> In his study of female crime in England between 1660 and 1800, Beattie (1975) found that property crimes predominated. Rude (1985) examined nineteenth-century cases at the Old Bailey and in Gloucester and Sussex courts and concluded that larceny dominated the criminal charges for both men and women. He found no evidence of large numbers of infanticide cases. Sharpe (1984) looked at felony indictments for the sixteenth and seventeenth centuries and found that property offenses constituted between 74 and 93 percent of all indictments in nine counties. Typically, and frustrating to us, he grouped the cases in 100–150-year periods and failed to look at gender or changes over time.

<sup>22</sup> Beattie (1986:238) reports that while women were accused of only 13 percent of the robberies and 16 percent of the burglaries over the period 1660–1800, they were charged with 40 percent of the housebreaking offenses, 36 percent of the nonclergyable (crimes in which the defendant was not permitted to avoid the death penalty by reading from the Bible "under benefit of clergy") larcenies and 29 percent of the simple grand larcenies. Using Beattie's criteria, we found women charged with 29 percent of the robberies, 15 percent of burglaries, 19 percent of housebreaking offenses, 35 percent of nonclergyable larcenies, and 43 percent of all simple grand larcenies between 1687 and 1800.

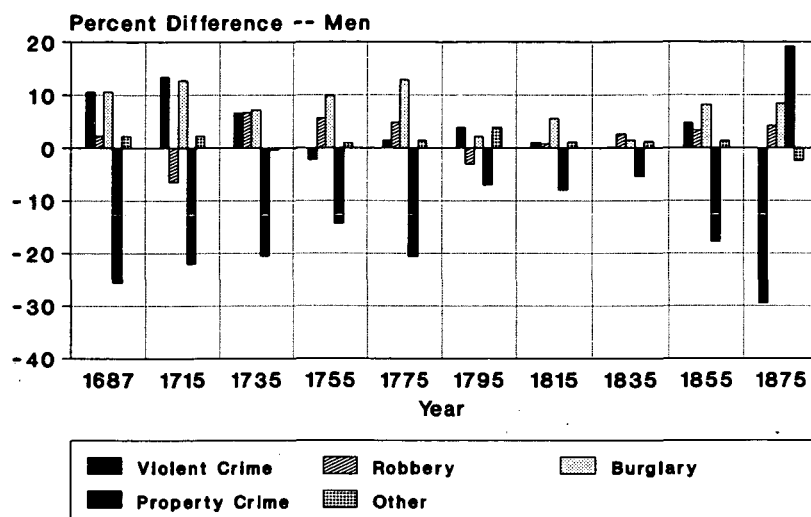


Figure 4. Male/female percentage differences by types of crime charged. Bars above zero axis indicate greater involvement of men; bars below the axis indicate greater involvement of women.

SOURCE: *Old Bailey Sessions Papers* 25 percent sample.

and receiving. "Other" is a category in which few defendants were charged; it covers things like bigamy and perjury.

The importance of property offenses in accounting for women's criminal involvement is seen in Figure 4, which compares differences in the percentages of male and female indictments by type of offense. In all years but 1875 (after formal jurisdictional changes altered the court's caseload) men were overrepresented in violent crimes and women were overrepresented in property crimes. What stands out most clearly is that the high proportion of female defendants in the early eighteenth century was due in large part to their "overrepresentation" in property offenses (i.e., larceny, shoplifting, pickpocketing, theft from a dwelling house, receiving stolen goods, and uttering counterfeit coins). Although these offenses are not sex-specific, traditionally women have been charged much more often with these types of offenses and less often with violent offenses.

We considered whether additions to the category of property crimes might have led to increased male involvement in the Old Bailey, thus decreasing the proportion of women. In particular we considered whether the expansion in the numbers of capital offenses during the eighteenth century might have contributed to an increase in male defendants at the Old Bailey. But as noted earlier, the overwhelming majority of these new offenses were directed at rural folk, and their impact on the Old Bailey's caseload was miniscule. Indeed some of the new offenses dealing with passing forged currency were, if anything, likely to disproportionately im-

Table 4. Proportion of Females Charged Alone or with Co-defendant

	Alone	With Codefendant	Total	N
1687	68	32	100	(40)
1715	78	22	100	(55)
1735	71	29	100	(66)
1755	68	32	100	(31)
1775	56	44	100	(54)
1795	63	37	100	(60)
1815	64	36	100	(75)
1835	69	31	100	(112)
1855	69	31	100	(32)
1875	74	26	100	(23)
1895	38	62	100	(13)
1912	85	15	100	(20)
Total	67 (392)	33 (189)	100	(581)

SOURCE: *Old Bailey Sessions Papers* 25 percent sample.

pact on women. Thus, expanded criminalization of distinctively "male" offenses cannot account for the declining percentage of female defendants.

#### Women Following Men

A fourth possibility was that the high percentage of women defendants in the eighteenth century was due to women following men into crime.<sup>23</sup> Such an explanation is not a statistical artifact like shifting jurisdiction. Indeed it could reveal important shifts in social processes. It suggests that apparent shifts in women's criminal involvement might be explained in terms of shifts in prosecutorial policies regarding accomplices and the like, and so we consider it here. To explore this issue we divided the sample into cases involving persons singly accused and cases involving co-defendants, and considered each separately. Throughout the entire period approximately two thirds of the women defendants were charged singly (see Table 4); an equivalent table for men would show roughly the same picture. We then considered women as a proportion of *all* cases, and contrasted this with the proportion of women in cases that did not involve a male co-defendant (i.e., we dropped all women in our sample who had a man as a co-defendant). If the higher proportion of women during the early part of the eighteenth century was a result of their following men into crime as accomplices, we would expect to find a gap between these two sets of figures during periods when women constituted the greatest proportion of defendants. Nothing of the kind is suggested in Figure 5; the two lines—representing all women and women in

<sup>23</sup> Contemporary criminologists have found that delinquency is in large a group phenomena and that a substantial portion of girls involved in crime are associated with boys who are likely to have been the initiators in criminal activity. See, e.g., Gottfredson and Hirschi 1990:154–68.

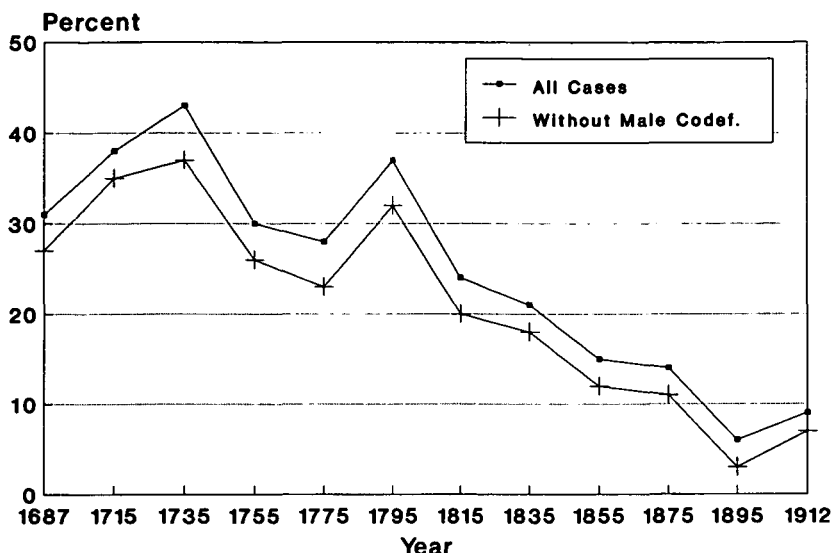


Figure 5. Percentage of women in Old Bailey, 1687–1912

SOURCE: *Old Bailey Sessions Papers* 25 percent sample.

cases without male codefendants—track each other nearly perfectly.<sup>24</sup>

### War and Peace

Finally, we examined the influence of war and peace as it might have affected men's and women's criminal involvement. From John Howard onward, historians and government officials have noted that during periods of war the crime rate declines and that immediately following cessation of war, the crime rate increases (Sharpe 1984; Beattie 1986). These observers have not generally explored how crime rates during periods of war and peace might differentially affect men and women.

However, the hypothesis is clear: The proportion of cases involving women increases during periods of war and decreases during peace time. Under this hypothesis the variation in women's participation would be a function of shifts in male involvement. During periods of war, men would be subject to alternative forms

<sup>24</sup> When we divided men into "spouses" and others, we found that between 1687 and 1775 spouses constituted between 30 and 40 percent of all "mixed" co-defendants, while the average after 1775 was around 20 percent. Thus, while men and women appeared as co-defendants in roughly the same proportions through the entire period, the men with whom women were involved changed somewhat. During the earlier period, they were more likely to be involved with their husbands. (Although the *OBSP* are not consistent in identifying the marital status of defendants, they do seem to be consistent in reporting the marital status of husband and wife co-defendants. This may have been because wives could (and sometimes did) claim *coverture* (*feme covert*) as a defense when they were charged with their husbands. The few *coverture* cases were not concentrated in the early eighteenth century.)

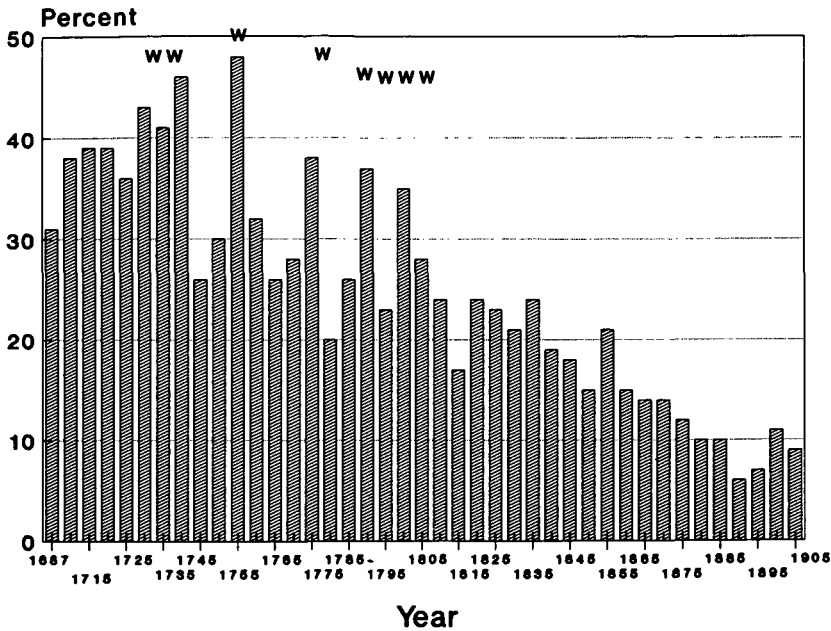


Figure 6. Percentage of women charged in Old Bailey, 1687-1912

SOURCE: Old Bailey Index.

of control and absorbed in military affairs. Immediately following wars, large numbers of men would be released from military service and be dislocated. Some would turn to crime and thus increase the crime rate (and decrease the proportion of women offenders).

Douglas Hay (1982) reports such a finding in his study of Staffordshire crime in the eighteenth century.<sup>25</sup> We found no such pattern; while indictments increased in the aftermath of war, it is not clear that war and peace are linked to the pattern of women's involvement in the Old Bailey. The early years in the eighteenth century, when women constituted the highest proportion of criminal defendants, were primarily years of peace.

Still we do not want to wholly discount war as a factor, and we suspect that wars may have had something to do with the erratic upsurges in the proportion of women during certain years after 1735. We have indicated eighteenth-century war years with a "W" on Figure 6. During war years, there would have been fewer men in London; thus, these upward jumps, which deviate from the

<sup>25</sup> Hay 1982 looked briefly at female crime rates during war years and found that women's rates of property crime, especially noncapital thefts, were higher during the war years in which prices were high. He concludes that women resorted to petty theft as the "appalling pressure of dearth reached more and more families"; in the alternative, he postulates that prosecutors might have been more willing to prosecute women when general theft levels were high or that in war years an increased number of abandoned wives and mothers were left to fend for themselves. Cf. Beattie 1975, who reports less fluctuation in female than male property crime rates in London as prices rose. However, he did not systematically compare war and peace years.

overall downward trend, may in part be the result of periods of war. Beattie's data show similar upward leaps at roughly the same periods of time. In short, although wars may affect involvement, they do not account for the long decline in women's involvement in the criminal process.

### Discussion

Earlier we presented figures that revealed women's involvement in the criminal process to have been substantially higher in the eighteenth century than in the twentieth century or even the late nineteenth century. They also revealed a precipitous decline in the rate of this involvement throughout the eighteenth and early nineteenth centuries. The discussion in the several sections of Part II suggests that this higher level of involvement and subsequent decline was real. Although shifting jurisdiction appeared to have amplified the pattern of decline, this alone cannot completely account for the downward trend in the proportion of females at the Old Bailey. The other factors we examined—women following men, demographic shifts, the possibility of distinctive female offenses, and war and peace—bore no meaningful relation to the trend.

Thus our question remains: Why, in the first half of the eighteenth century, did women constitute such a large proportion of those charged with felonies, and what accounts for the decline over the next hundred or so years? It is worth remembering that throughout the entire period under consideration, the crimes tried at the Old Bailey were viewed as extremely serious, unlike shoplifting today. Like other more serious and violent offenses, property crimes—including larcenies—were punishable by severe sanctions, up to and including death (although transportation was in fact the usual punishment).<sup>26</sup>

Below we offer an exploratory analysis of some other explanations grounded in criminological theories of social control and in historical studies of shifting roles of women in the eighteenth century.

### III. THE VANISHING FEMALE: AN EXPLORATORY ANALYSIS

At the outset we suggested that criminologists have generally focused on short-term processes and tended to ignore broad-scale transformations. One result is the belief that gender is stable and invariant with respect to crime. The discussion above challenges this belief in a central way. In this section we suggest that the pat-

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<sup>26</sup> We note that both men and women were sentenced to death for larceny during the eighteenth century. The records do not always indicate whether sentences were in fact carried out, but here we merely want to emphasize that all the offenses—even the larcenies—at the Old Bailey were regarded as serious crimes.

tern during at least the first half of the period we have explored was the consequence of social and structural changes that affected the place of women in society generally. This was a period in which women's lives, and more particularly forms of social control of women, were substantially altered. This transformation took many forms: women became less inclined and able than men to engage in activity defined as criminal, and women were less subject to the criminal sanction as other forms of more private control emerged.

We are guided by criminologists who have explored different "roles" or opportunity structures for the two genders, or looked at social control mechanisms that may differ qualitatively for men and women in the twentieth century. Some suggest that the relative lack of criminal behavior by women is due to female "socialization" that stresses conformity (Adler 1975). Others point to such structural factors as women's labor force participation, suggesting that women have had fewer opportunities to engage in illegal activity (Simon 1975; Box 1983). Several criminologists argue that women's lesser criminality can be explained by different types of social control for men and women, including familial restraints on girls (Hagan et al. 1989), occupational segregation, and women's limited participation in the "public" spheres of the state and the military (Heidensohn 1989). We explore changes in social controls of women over the course of the eighteenth and early nineteenth centuries in the discussion that follows.

Our discussion is also informed by Norbert Elias's (1968a, 1968b) monumental work of historical sociology, first published in 1939, which traces a "civilizing process," or changes in a variety of norms and behaviors since the late medieval period. By "civilization" Elias means a *process* by which behavioral norms are internalized and sensibilities changed. Once accepted, he argues, they lead to behavioral changes (Elias 1968a:308 ff.). Two recent studies have used his work to illuminate the rise of modern penal policies. In *The Spectacle of Suffering*, whose title brilliantly announces its thesis, Pieter Spierenburg (1984) traces the disappearance of public executions and the evolution away from executions to imprisonment. David Garland (1990) uses Elias's theory to explore shifts in sentiments—and policies—about punishment. He marshals considerable evidence to show that in the eighteenth and nineteenth centuries attitudes toward violence shifted significantly. With this shift came both a decline in violent criminal conduct and the substitution of less violent (and more private) forms of punishment as capital punishment was largely abolished, corporal punishment was curtailed, and imprisonment expanded.

In the text below we suggest that sensibilities about the role of women in society as well as the forms of their control and punishment changed. Just as there was a transformation in and a lowering of tolerance for violence, by both citizens and officials, so too

we suggest there was a transformation in the acceptability of women in the criminal process that resulted in a decline in the use of the public criminal justice system as a form of social control of women.

The eighteenth century is generally known as the time of the "Bloody Codes," a period when more than two hundred crimes were legally punishable by death. Rising commercial classes called for deterrents against property crimes (Hay 1975; Thompson 1975a). Criminal control mechanisms were primarily informal—there was no organized system of police and prosecution depended on private initiative. This initiative was promoted through a system of rewards for successful prosecutions and pardons for defendants turned informant (Phillips 1983; Rock 1983). Some have argued that the severity of punishment coupled with private and/or official leniency after indictment or conviction reinforced the dependence and deference of the lower classes who were the primary objects of criminal prosecution (Hay 1975).<sup>27</sup>

The pressures to criminality were similar to those of the twentieth century—unemployment, underemployment, destitution. Much of the workforce in London was dependent on casual, often seasonal labor (Beattie 1986; George 1965). We were not able to systematically gather occupational data for the Old Bailey defendants. However, our reading of the cases reveals that almost all of them were poor. Some worked as laborers, apprentices, servants; others were unemployed. For most lower-class workers such events as war, increases in food prices, interruptions in export trades, seasonal layoffs, and the movement of upper-class families out of the city meant the difference between employment and unemployment. In fact, many defendants, especially in the eighteenth century, claimed hunger or poverty as a defense. This was the general context in which crime occurred in London.

Our concern within this context is what might account for the decline of female defendants in the eighteenth century. Below we review two schools of social history, both of which support a view that the decline was due to a shift in public sensibilities and social controls over women during this period. One school emphasizes shifts in the modes of production and their effects on women's roles and economic opportunities. The other emphasizes shifts in social relations and sensibilities independent of economic conditions. Although these schools of thought are quite different and their advocates often antagonistic, the types of factors they emphasize are in fact those identified as important in contemporary criminological control theories that examine women's criminality. The discussion that follows is put forward as a hypothesis in need of further exploration and refinement rather than a test of either a

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<sup>27</sup> See also Haagen's (1983) discussion of the ways in which the debtor laws produced similar effects.

theory of female criminality or a developed historical analysis of the role of women in crime.

Both economic and social historians point to major changes in social relations between men and women during the eighteenth and nineteenth centuries. In the broadest terms, there was a redefinition of the female, and a shift and perhaps intensification of private patriarchal control of women within the household. In the earlier period women were more or less equal participants in household production. As a subsistence economy gave way to a market economy, women were excluded from much of developing industry or segregated in fewer and fewer low-wage occupations. With the development of the male breadwinner ideal came a stricter sexual division of labor (Belchem 1990). Women's time was increasingly devoted to child care, as children also were removed from productive work. A number of these changes are regarded by some historians as having been harmful to women's status (see, e.g., Belchem 1990; Charles and Duffin 1985; Clark 1919; Hill 1989; Pinchbeck 1930). The loss of their economic functions led to a decline in women's power and autonomy within the family; male head-of-household authority was solidified. By the end of the nineteenth century, there was a separation of home and work, a firmer sexual division of labor, the exclusion of women from the public sphere and from much of productive work, and an intensification of cultural ideals of woman as wife and mother. Our data indicate that there was also a decline in female criminal court involvement during this period.<sup>28</sup>

Although economic and social changes did not occur in a uniform or linear manner, it is striking that the decline in women in the criminal process occurred during a period of shifting gender roles and controls. Shifts in cultural ideals undoubtedly had more to do with bourgeois women than with those at the bottom rung of the economic ladder, whose lives may not have been touched directly by the shifting sensibilities of the middle classes. However, our argument hinges less on the actual behavior of women and more on the sensibilities of those who were able to bring charges or administer justice. New conceptions of the roles of women may have led those in a position to bring criminal charges to eschew public prosecutions for other more private responses. Our goal here is to link two trends, identified by economic and social his-

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<sup>28</sup> Boritch and Hagan (1990:587) point to similar developments in their study of declining female arrests for public order offenses in Toronto between 1859 and 1955:

The sexual stratification of social control is linked to the separation of public and private spheres, which was intensified during the early stages of industrialization. Men's participation in the labor force and public sphere made them increasingly subject to official legal regulation, while the exclusion of most women from wage labor left them more liable to informal controls operating in the private domestic sphere.

torians, with the decline of women's involvement in the criminal process we have identified here. The connection between these two trends is reinforced by the themes of contemporary control theorists who see the low rate of female criminal involvement in crime as a consequence of highly developed forms of social control of women.

### Economic Changes

A number of economic historians following Clark (1919) argue that the period of the family economy in the seventeenth and early eighteenth centuries was a period of significant economic participation by women. At the same time, some argue that men were more occupied in domestic activities (Clark 1919; Medick 1976). 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 associations" (Clark 1919:301).

Marriage in much of the eighteenth century was an economic partnership (Tilly and Scott 1978). Everyone worked, including women and children. In rural areas women farmed, engaged in dairy work, and sold home-manufactured products in the market. In urban areas, where much of the production of food and clothing had moved outside of the home, women spent more time in consumption activities 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 the wives. Some women practiced independent trades—as bakers, grocers, innkeepers, milliners, butchers, etc. 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 engaged in the full range of productive activities (George 1965). Widows who didn't inherit a guild membership had a difficult time, and many had to send children to charities, being unable to support them with low-wage work. However, that many widowers had similar problems provides evidence that two adults were necessary for the economic well-being of a family (Tilly and Scott 1978). As work moved out of the household, this changed, for both men and women.

In industry after industry—textiles, the domestic industries, the mines, crafts, and business—the range of employment for women shrank dramatically throughout the eighteenth and nineteenth centuries (Pinchbeck 1930). For example, up until the mid-eighteenth century, women and children pursued work alongside their husbands and fathers in textile production, combining spinning and the like with housework. With the rise of wage labor

these jobs were transferred out of the house into the factory. By 1830 the textile industry had been entirely removed from the cottage into the factory, where it was performed by skilled workmen on complicated machinery. In the case of London, the movement from a putting-out system to the factory meant that silk winding and silk throwing, occupations that employed large numbers of women, disappeared as production moved to textile factories outside of London (George 1965). More generally, new forms of production required specialized knowledge and training, which men had already begun to monopolize (Clark 1919; Pinchbeck 1930; Hill 1989; Middleton 1985). Thus, women were squeezed out of many aspects of economic participation. With this came the development of what Clark called the "doctrine of the subjugation of women to their husbands" (Clark 1919). Men were "freed" from economic dependence on their wives and a Victorian ideal of the subjection of women to their husbands gradually developed. The result, in Clark's and others' 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.

Historians do not suggest that women were "equal" to men in the eighteenth century. Women were low-waged labor, paid much less than men even before industrialization (Rose 1988). They were denied membership in many guilds so long as their husbands lived (Tilly and Scott 1978). Additionally, husbands were the legal heads of the household, with rights to physically chastise wives and children. However, the fact that women had greater participation in the household economy and control over certain aspects of production indicates that social controls in the family and economy may have been less than they were in the nineteenth century. One historian even argues that not only did men and women share productive work during this period, but that there was almost "sex-role reversal" in the sharing of household tasks (Medick 1976). Control theorists posit that controls over female labor and the restriction of women to domestic work leads to lesser female deviance; the greater participation of women in economic production in the eighteenth century may mean that they were less controlled, more able to engage in criminal activity, and more subject of formal legal controls.

Along with changes in the mode of production came a growing view about gender and work. Exclusionary provisions were justified on the grounds that certain work was unsuitable and unfeminine or would lead women into immoral habits because it required being in close proximity to men (Hill 1989). When women worked, only occupations that coincided with their "natural sphere" were encouraged (Alexander 1983). Hill (1989:263) observes, "Far from industrialization meaning the emancipation of women, for many the first phase must have meant a greater servi-

tude and conditions where they had no defence against the arbitrary wielding of patriarchal power."

Even without exclusionary provisions 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, child-bearing and child-rearing duties (Tilly and Scott 1978). All this was reinforced by accompanying theories of femininity, which further restricted the range of socially acceptable behavior permitted to women.

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.<sup>29</sup> The development of the "family wage" and protective legislation further restricted female employment. Accompanying these restrictions was the rise of the "Cult of Domesticity" in the middle classes, an ideology that portrayed women's proper role as a subservient, virtuous, and pious wife and mother. This Victorian ideology changed broader cultural norms about the relations and roles of both men and women, affecting individuals in all classes ultimately.

In London, the economic changes were both less dramatic and more gradual. In an urban area in which trades, crafts, and casual employment predominated, women did not experience the rapid transitions from putting out to factory work detailed for agricultural workers by Pinchbeck (1930). Some women continued to work in their husbands' trades well into the nineteenth century; however, probably less than 10 percent of London women were married to tradesmen (Alexander 1983). Moreover, as work moved from the home to workshops and male tradesmen acquired capital, they began to hire larger numbers of male journeymen and apprentices, excluding their wives from participation in the trade (George 1965).

In London, as in the rest of the country, 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 them. Alexander (1983) details a host of occupations in which by the 1820s London women did not work.<sup>30</sup> When women did work, they participated in "women's" jobs like domestic and household

<sup>29</sup> See Hartmann 1979; Rose 1988. There is substantial debate over the reasons male unionists tried to exclude women and the participation/agreement of working-class women in these struggles. However, the fact of their increasing exclusion from production remains.

<sup>30</sup> These included shipping industries, public utilities, transport, semi-processing and extractive industries (i.e., London's factory trades), professions, civil service, clerical work, scientific trades, and the old craft guilds (Alexander 1983).

labor, child care and training, the distribution and retail of food and other articles of regular consumption, and manufacturing skills based on the sexual division of labor in the household (*ibid.*). 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; in addition, slopwork contributed to the demise of women's occupations since 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 London.

Thus, it appears that from a situation of marital partnership in a household economy, women gradually moved to a weaker economic partnership working out of the household and finally to no economic partnership and economic dependence on men. It is always difficult to directly link macro-structural changes to micro data like ours. However, some control theorists suggest that lower rates of female criminality can be explained by restrictions and controls on women's economic participation.<sup>31</sup> Beattie (1975) suggests that women committed more crime in urban areas because they were both less restricted in work and less protected than women in rural areas. Economic historians point us to the possibility that economic opportunities and social controls *changed* over the course of the eighteenth and early nineteenth centuries. Women were increasingly restricted in their work and in their ability to contribute to the household income. This transition coincided with a decline in female criminal court involvement and suggests that women had fewer opportunities to commit crimes and were subject to increased private informal controls rather than public legal controls.

### Social and Cultural Changes

Social historians point to changes in the family and in ideologies that affected both the relations between men and women and the nature of social controls over women. For instance, Stone (1977) notes that the eighteenth century witnessed the acceptance of the idea of the "companionate marriage," in which marriage

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<sup>31</sup> We do not argue here, like Adler 1975 and Simon 1975, that female economic participation *per se* leads to greater female criminality. These claims have been challenged by many (see, e.g., Steffensmeier 1989, 1980, 1978; Box and Hale 1983; Giordano and Cernkovich 1979; Smart 1979). Rather, our discussion looks at changes in female economic participation and changing social controls over women within a specific historical context, the transition from precapitalist household production to capitalist forms of production.

came to be regarded as a decision to be made by the couple in accord with their own feelings. More generally, he identifies other changes in sexual relations. Pointing to the collapse of the Puritan movement and the weakening of kin protections as causes, he reports a rise in the illegitimacy and premarital pregnancy rates after 1700. "This was caused by the weakening of the social controls over the seducer previously exercised by the neighbors, the parish clergy and the local community, caused in part by the isolation of migrant and propertyless young people in the big cities" (Stone 1977:646).

Hill (1989) discusses courtship relations among the laboring classes in the eighteenth century, concluding 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 rates, as reported by Stone.

Over the course of the nineteenth century, however, with the rise of Victorian ideology, sexual controls over women tightened.<sup>32</sup> Ideological links were made between female crime and sexual morality. Indeed, Zedner (1991) has detailed the effect of this ideology on views of female criminals and the resulting policy decisions about treatment of female prison inmates. Women, who were supposed to be the moralizing force in society, especially among the lower classes, caused tremendous anxiety when they engaged in criminal deviance. Female criminals were the opposite of virtuous Victorian womanhood; they were "shameless," "more dangerous to society than the other sex," and comparable to beasts (Zedner 1991:321, quoting from various journalists). The result was a penal system geared to moral regeneration and the highest levels of control over all aspects of women's prison life and conduct.

Other historians have examined long-term declines in interpersonal violence in England (and other countries), arguing that the last two to three hundred years have seen a "civilizing process" (Elias 1978), in which interpersonal violence has been increasingly prohibited and subject to sanction (Gurr 1980; Gurr, Grabosky, and Hula 1977; Gatrell 1980; Garland 1990). They suggest that people have been socialized to control anger and find nonviolent means of resolving conflict. These cultural changes and the decline in interpersonal violence roughly parallel our own downward trend in female criminal involvement. It seems possible that these "civilizing processes" affected women first, insofar as they were viewed as the

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<sup>32</sup> Sexual controls in general increased during the Victorian era. In our data we saw a rise in prosecutions for sexual offenses, especially sexual assaults of minor girls and homosexuality in the late nineteenth century.

moralizing influence in society.<sup>33</sup> They may also help to explain our findings.

A brief look at the situation in London and more specific social control efforts indicates that eighteenth-century London reformers and members of the governing classes tried to cope with the problems of the poor and working classes in ways that especially affected women in these classes. Concerns about infant mortality and the quality of mothering led to the opening of increased numbers of lying-in hospitals, regular hospitals, and dispensary health centers throughout the mid- to late eighteenth century. These facilities provided midwifery services and advice about hygiene. In addition, they focused on educating poor women about proper child rearing. During the early part of the century legislators enacted a number of bills that limited the consumption of alcohol by the laboring classes; of major concern was the effect of gin on women's performance of their maternal responsibilities, as well as fears that it led women into prostitution (George 1965). (These concerns resurfaced in the late nineteenth century when social reformers blamed drunken mothers for irresponsibility and failure to fulfill maternal duties; Zedner 1991.) In essence, there were increased efforts to both protect and control women in their maternal duties.

Legislative efforts to reduce the number of individuals, primarily wage earners, imprisoned for debt may have reduced the numbers of women and children left destitute (and perhaps driven to crime) by the imprisonment or desertion of a spouse confronting debts. Other efforts throughout the eighteenth century to deal with the problems of orphaned infants, apprentices, and those needing poor law assistance may also have had the effect of both restricting and protecting women (George 1965).

Our purpose here is not to provide a detailed historical analysis. Rather, we only suggest directions for future study. Macro social changes in the economy, in sexual relations within the family, in the roles of both men and women, and in cultural values during the eighteenth and nineteenth centuries all lead in the same direction—that is, toward a greater range of social controls that restricted women to domestic life, controls that may at the same time have provided some protections for women against the economic uncertainties of life in London. Further research into the specifics of the lives of women in London is necessary to point to the ways in which macro and local-level social changes and reforms led to changes in the informal and formal controls over women, contributing to the decline in their criminal involvement.

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<sup>33</sup> Cf. Foucault (1979, 1980) who has a very different interpretation of the rise of imprisonment and of sexual controls. While he does not focus on gender, his study of sexuality certainly elaborates on nineteenth-century controls directed at female sexual behavior.

## CONCLUSION

The research reported in this article reveals the high rate of female involvement in the criminal process in the early eighteenth century and its decline over the next century. We have suggested that social and economic changes that took place during the same period may help explain the decline. While we recognize that we have not solved the mystery, we have identified a significant problem and suggested several explanations for it.

This exploration suggests still other avenues for study. The decline in women's involvement in the criminal process throughout the eighteenth century took place on the eve of the establishment of the modern criminal justice system and during a period of decreasing criminal violence. This decline coincides with the widespread embrace of new and more "civilized" forms of punishment, the creation of stipendiary magistrates in London, the creation of the first professional police force, and a significant expansion of prosecution societies. All these and related reforms undoubtedly had a significant effect on the operations of the criminal justice system.

Although there is debate as to whether these innovations had any appreciable affect on the rates of crime per se, they clearly had an impact on *who* was subject to criminal control. Debates about the subjects of the administration of an increasingly rational system of criminal justice took place at a time when women's roles and places in society were being redefined. Most certainly these issues were joined, and joined in ways that diverted women from the criminal process. The nature of the control was shifted to the male as husband and to other institutions increasingly defined as suited to "distinctively female problems."<sup>34</sup> As Zedner (1991:312) correctly comments: "Criminal men were, indeed, the primary target of the development of formal policing and the proliferation of prisons—and the histories have reflected this."

In concluding, we acknowledge that we end with more questions than answers and an even longer research agenda than we started with. A fuller examination of the shifts we have uncovered requires attention to these additional factors. More generally, the rise of public criminal justice institutions must be related to the sorts of social and economic developments we have considered. We have noted what we believe is an important and little-addressed problem, the decline of women in the criminal process, and con-

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<sup>34</sup> There is of course a huge literature on the construction of femininity in the Victorian era (see, e.g., Showalter 1987), some of which relates it to public social control. A number of students of Victorian crime have noted that throughout the nineteenth century women constituted a declining portion of the prison population and correspondingly a growing portion of the population in insane asylums. More generally there was a shift of views of female deviants who came to be seen as "mad not bad" (Zedner 1991). Our data suggest that such a shift occurred but was set in motion in the eighteenth century, predating the Victorian era by several decades.

nected it to large-scale shifts in the controls over women. The connection is certainly strong enough to warrant additional sustained attention by both social scientists and historians.

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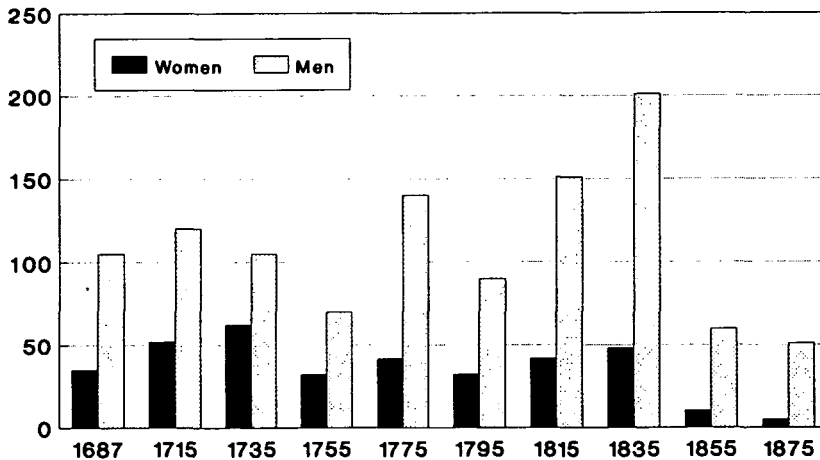
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## APPENDIX

Appendix Table A1. Sex of Indicted Defendants, Indicted Defendants (Larcenies Excluded), and Convicted Felons by Year, All Crimes Charged

	Indicted Defendants, All Crimes Charged			Indicted Defendants (Larcenies Excluded)			Convicted Felons		
	Males	Females	N	Males	Females	N	Males	Females	N
1687	69%	31%	130	75%	25%	93	72%	28%	79
1715	62	38	144	64	35	85	64	36	92
1735	57	43	155	65	35	75	67	33	76
1755	70	30	102	82	18	51	70	30	63
1775	72	28	194	85	15	79	77	23	109
1795	63	37	162	73	27	70	66	34	99
1815	76	24	317	74	26	152	75	25	229
1835	79	21	535	81	19	224	78	22	417
1855	85	15	209	86	14	145	84	16	170
1875	86	14	165	85	15	144	89	11	116
1895	94	6	201	94	6	180	94	6	165
1912	91	9	231	90.5	9.5	200	93	7	183
Total	77%	23%		82	18		79	21	
N	(1,964)	(581)	(2,545)	(1,225)	(273)	(1,498)	(1,426)	(372)	(1,798)

SOURCE: *Old Bailey Sessions Papers* 25 percent sample.

Appendix Figure A1. Charge rates for Old Bailey, 1687-1875

SOURCE: Based on estimated population counts for London population and index counts for Old Bailey.

Appendix Table A2. Sex of Indicted Defendants, by Year (All Crimes Charged)

	Males	Females	Total	N
1687	69	31	100	130
1715	62	38	100	144
1720	61	39	100	444
1725	61	39	100	690
1730	64	36	100	614
1735	57	43	100	155
1740	59	41	100	494
1745	54	46	100	382
1750	74	26	100	599
1755	70	30	100	102
1760	52	48	100	293
1765	68	32	99	473
1770	74	26	100	669
1775	72	28	100	194
1780	62	38	99	557
1785	80	20	99	1,105
1790	74	26	99	872
1795	63	37	100	162
1800	77	23	100	901
1805	65	35	100	832
1810	72	28	100	975
1815	76	24	100	317
1820	83	17	94	1,820
1825	76	24	96	1,991
1830	77	23	96	2,119
1835	79	21	100	535
1840	76	24	100	1,875
1845	81	19	100	1,597
1850	82	18	100	1,599
1855	85	15	100	209
1860	79	21	100	715
1865	85	15	100	836
1870	86	14	100	883
1875	86	14	100	165
1880	88	12	100	730
1885	90	10	100	873
1890	90	10	100	727
1895	94	6	100	201
1900	93	7	100	627
1905	89	11	100	694
1912	91	9	100	231

SOURCE: *Old Bailey Sessions Papers* 100 percent sample and 25 percent sample. All years taken from indexes except those in boldface type, which were taken from sample data. A few defendants in some indexes had only an initial given for their first names, and thus we were unable to determine their sex. Missing information never accounted for more than 6 percent of all defendants in a given year. Also, some indexes in the eighteenth century did not always indicate when the same individual had been brought up twice, in separate cases. This did not occur often enough to cause us to lose confidence in the indexes as rough indicators of trends. Moreover, men were generally involved in multiple cases, and thus our counts would, if anything, underrepresent the proportion of women.

Appendix Table A3. Men and Women Accused of Property Crimes in Surrey Urban Parishes, 1661-1805

Period	No. of Men	No. of Women	Total	% Women	No. of Years
1661-70	129	33	162	20	(3)
1671-80	235	80	315	25	(4)
1681-90	17	12	29	41	(1)
1691-1700	170	115	285	40	(4)
1701-10	40	53	93	57	(2)
1711-20	215	96	311	31	(3)
1721-30	212	87	299	29	(3)
1731-40	279	102	381	27	(5)
1741-50	283	146	429	34	(7)
1751-60	415	192	607	32	(8)
1761-70	550	140	690	20	(9)
1771-80	23	14	37	38	(1)
1781-90	257	70	327	21	(4)
1791-1800	587	182	769	24	(6)
1801-5	352	83	435	19	(2)

SOURCE: Beattie (1975), Graph I, p. 225. We are deeply indebted to Professor Beattie for providing us with these figures which were reported only in graph form in his 1975 article.

NOTE: Beattie's data have been grouped in ten-year periods to assess the trend in the percentage of women involved in property crime. Surrey was part (about one-sixth according to Beattie) of the greater London metropolis.

