WOMEN'S encounters with the criminal justice system have attracted early and energetic attention from scholars working in women's history in this country, as they have in Australia, the United Kingdom, and North America. For New Zealand there are now a number of historical studies of women and crime, most of which remain unpublished. They comprise one of the few bodies of work to emerge on a single theme within the vast and largely uncharted territory of women's history; for this reason alone the subject deserves consideration. It is an indication of the vitality and innovation that women's studies has brought to the humanities, and to history in particular, that these studies have emanated from the interest of students throughout the country; they have been undertaken within Departments of Sociology, Law, Psychology, and Political Science, as well as History, and they include some of the best postgraduate research completed in the past decade.

Significantly, the earliest work in the field was C.A. Mairs's 1973 research essay on the operation and eventual repeal of contagious diseases legislation in England and New Zealand.¹ The CD Acts and their immediate relation, prostitution, have proved a recurring focus for research. Mairs's approach is not so much comparative as additive. The greater part of her discussion is devoted to the situation in England; where attention moves to New Zealand, it is confined to the operation of the Act in Auckland. Her work was followed in 1977 by my research essay, 'Women and Crime in New Zealand Society, 1888-1910'.² Taking the period encompassing the first feminist movement and the Liberal government, the essay was in two parts. The first depicted the extent and major features of women's offending; the second examined feminist interest in the penal reform movement and female offenders. Both of these were relatively small excursions in research drawing, in the main, on easily accessible sources.

Robyn Anderson's authoritative and superbly-crafted 1981 MA thesis, "'The Hardened Frail Ones": Women and Crime in Auckland, 1845-1870', was the

first study to probe archival sources for a single district in any depth. She provides a thorough account of the judicial process, and a detailed analysis of the major categories of offending with which women were either charged or indicted. Particular attention is given to the local and immediate circumstances in which illicit and illegal behaviour took place, and the attitudes of women towards authority as manifested in the early colonial police force and the courts. Women are also discussed as prosecutors and victims. Anderson’s portrayal is vivid and sympathetic.

With the tools and questions of a sociologist, rather than an historian (but sharing a great deal of common ground with previous feminist scholars), Jan Robinson set out to explore the experiences of women who fell into the net of police, court, and prisons in nineteenth-century Canterbury. Again, working from an archival base — the criminal record books of the Canterbury Magistrate’s Courts 1888 to 1897, and the Supreme Court 1852-75 and 1888-97 — as well as from newspaper court reports, Robinson unearthed a wealth of material. Taking as a starting point the treatment of women in the literature of criminology, Robinson was primarily concerned to test theories of female criminality against empirical evidence. Did the reality of female offending match any one of the explanations offered by traditional, radical, or feminist criminologists? If so, in what ways? If not, how not?

Studies of women and crime are all, to some extent, concerned to explore the ways in which perceptions and responses to female criminality make explicit contradictions inherent in patriarchal definitions of femininity (conceptualized by some as the ‘ideology of womanhood’). The prostitute, murderess, and female forger have been regarded as aberrations of ‘womankind’. They have been accounted for either by denying that such people are ‘real’ women (Lombroso went to considerable lengths to document the ‘masculine’ appearance of female offenders), or by regarding them as displaying the inverse, or ‘darker’, side of ‘a female nature’. The latter notion comes from a dichotomous perception of femininity that sees all women as either virtuous or damned. Of all the New Zealand studies, Robinson pursues this most thoroughly. She identifies ‘the madonna/whore duality’ as a prevailing theme in the nineteenth-century discourse. At the same time, she offers an extremely useful critique of Anne Summers’s damned whores/god’s police model (derived from such ideologies) for understanding the position of women in colonial New Zealand.

I returned to women and crime, and in particular to the subject of prostitution, through a study of settler women in the earlier decades of the 1850s and 1860s. It was in the 1860s that the first sustained public awareness of the ‘problem’ posed by refractory women emerged. In New Zealand, as in England and various Australian colonies, contagious diseases legislation was seen as the best means

to control a growing ‘social evil’. But the circumstances in which the debate was conducted, and legislation subsequently enacted in New Zealand (Contagious Diseases Act, 1869), were markedly different from those elsewhere. In New Zealand, contagious diseases legislation was introduced to regulate prostitution throughout the whole society rather than as a measure to curb the spread of venereal disease within a particular population. Initially given as a paper at the 1983 Women’s Studies Conference, this study appeared in a revised version in Women in History (1986).5

The subject of prostitution was next taken up by Heather Lucas. Her 1985 research essay, ‘“Square Girls”: Prostitutes and Prostitution in Dunedin in the 1880s’, was more closely defined in time, place, and topic than any previous study, indicating already a degree of specialization within the field.6 As Anderson and Robinson had done before her, Lucas delineated precincts within the town that were the haunts of a small group of women living outside the boundaries of respectable society. This ‘outcast Dunedin’ inhabited ‘the Devil’s half-acre’ and was subject to regular visitations from police and ‘rescue’ workers. Lucas’s portrait corroborates earlier studies in undermining illusions of prostitution as a glamorous or, indeed, a distinct ‘profession’. Women charged with prostitution-related offences were, most often, locked into a cycle of poverty, destitution, and petty crime; many were left with children to support by transitory or erring partners.

Prostitution has continued to draw the attention of researchers. In 1987 Anne Knight completed a study of prostitution in New Zealand as an MA thesis within the Political Science Department at Canterbury, and Belinda Cheney prepared a research essay on the same subject for an LLB (Honours) degree at Victoria.7 Although Knight is principally concerned with the contemporary situation, she locates her discussion within an historical context. Unlike others working in this area, Knight is not so much concerned with prostitution as an illicit activity (and its regulation as the most blatant example of the double standard of morality), as with comparing the exercise of economic and sexual contracts in parallel institutions of marriage and prostitution.

Jan Robinson’s interest in crime has also carried over into the study of contemporary prostitution. In a contribution to Public and Private Worlds: Women in Contemporary New Zealand,8 she describes the surveillance of the


6 Heather Lucas, ‘“Square Girls”: Prostitutes and Prostitution in Dunedin in the 1880s’, BA (Hons) research essay, University of Otago, 1985.


1980s trade by the police vice squad principally under the provisions of the 1978 Massage Parlours Act. She is at pains, in her historical and contemporary research, to reveal the women's own perceptions of their work, including their attitudes to male patrons and interaction with regulating agencies. Here it becomes obvious that there is a diversity of circumstances and attitudes amongst 'working women'. Extending from this, Robinson argues that in both the historical and contemporary contexts, it is misleading to regard women who earn their living from prostitution as an undifferentiated group. The situation of nineteenth-century women described as working in 'quiet' or 'clandestine' brothels compared with those who solicited openly in hotels or, in the present, between street-walkers, 'ship girls', massage parlour workers, and those who work discreetly as 'hostesses', is very different. Women's place in this hierarchy determines, very directly, the degree and ways in which their activities are regulated.

Another important piece of work is Georgina Hall's MSc thesis (submitted for a degree in Psychology), which closely examines patterns of female offending in the period 1950-1980. Although Hall is dealing with the recent past, and her treatment is more systematically quantitative than any of the others, she is concerned with the same underlying issue of the relationship between women (and girls) in the wider society and the circumstances and frequency with which women end up before the courts. This has been a central question for feminist criminologists also, some of whom have argued that the low crime rate amongst women simply indicates the subtle, yet infinitely more effective, custodial and regulated circumstances in which the vast majority of women are confined for the whole of their lives. (There is a coincidence, too, in nineteenth-century discourse concerning women and prisoners: both were subject to periodic 'confinement' and 'labour'.) There is more to come from these and new authors. In addition, a number of other major works on crime, policing, and penal policy have appeared in recent years.

It is not difficult to see why this subject has been taken up by feminist scholars with such interest. Alongside the drastic paucity of evidence in so many areas of

10 Robyn Anderson is currently completing a University of Toronto PhD thesis on criminal violence. Jan Robinson is engaged on an extended study of contemporary prostitution. Bronwyn Dalley is working on a PhD thesis on women's prisons in New Zealand, 1880-1920, at the University of Otago. The work by Julie Glamuzina and Alison Laurie on the 1954 Parker-Hulme case, The Significance of the Parker-Hulme Case, is forthcoming.
women’s history, there is an abundance of police and court records, stretching back into the nineteenth century, available at regional as well as central repositories. These constitute a rich and readily accessible source for thesis research. Ironically, it is women who ‘drop through the bottom’ of society who are captured in historical documents, as well as those who ‘rise to the top’ (the difference being, of course, that women of the elite leave their own testament, while those at the other end of the scale are the subjects of others’ testimony).

As subjects of feminist enquiry, women criminals prove satisfying in exploding myths of a conforming, passive, decorous womanhood (especially Victorian womanhood). In nineteenth-century Pakeha New Zealand, ‘rowdy women’ (Robinson’s phrase) have helped undermine the prevailing images of sturdy, courageous, pioneer matriarchs. Anderson scarcely conceals her delight in telling us about ‘Mary Burke, convicted in one day of three offences — being “drunk and disorderly”, assaulting a constable, and “habitual drunkenness”’ — who ‘both accused the arresting constable of having stolen her boots and threatened, “I wasn’t born yesterday, Your Worship — I’ll have this taken to the Supreme Court”’. Robinson is explicit: ‘many of the Canterbury prostitutes exhibited a boisterous vitality and exuberance in their lives which makes them distinctly attractive in comparison with the idealised portrayal of Victorian women as frail and cosseted chattels.’

Criminal women, particularly those who were defiant, rebellious, and rau- cous, offer a unique opportunity to combine the attribution of agency to women in the past, without negating the overwhelming reality of their subject status. They are engaged — physically and verbally — in combat with the coercive agencies of patriarchal power. Special glee is evident when episodes are retailed of women scuffling with individual policemen, or speaking back to the bench. Judith Allen, in looking at a more bleak side of female criminality, notes with pointed irony how a Sydney policeman, desperate to terminate his partner’s pregnancy, sought out a back-street abortionist. ‘Even police needed abortion-ists’, she notes. Another strong impulse towards research in this area has been the deep indignation felt by women over the exercise of the double standard. Against a background of contemporary feminist struggles on a range of issues relating to sexuality and fertility, there has been heightened interest in historical precedents, such as contagious diseases legislation.

12 These can be found in Police, Courts, and Justice records at National Archives and at regional Record Centres in Auckland, Christchurch, and Dunedin. Police records contain papers from individual stations, including ‘charge books’, where details of offences and offenders were entered. The principal Court records used in research to date have been the ‘criminal record books’, also referred to as ‘criminal deposition books’. There are also ‘plaintiff books’, containing details of pleas made, and ‘civil books’, where results of cases were listed. National Archives acquires new holdings of nineteenth-century Police, Courts, and Justice records periodically — the resource is still growing. In addition, some issues of the Canterbury Police Gazette are available at the Canterbury Public Library, and the Otago Police Gazette at the Hocken Library.


These factors underlie the specific goals of each of the various studies. A primary aim, for all authors, was to ‘fill in’ the silence about women identified in existing histories of crime and the criminal justice system. It is asserted that although the number of women appearing before magistrates and judges has always been small in relation to men, and represents an even smaller proportion of the total female population, there has been, nonetheless, a steady flow of women through the system. These women warrant attention. It is also argued that the characteristics of the female criminal population and of female offending are different from those of men. This is a common starting-point for much research in women’s history, as it is in other women’s studies initiatives. The initial phase of the feminist challenge to ‘malestream’ disciplines established the failure of these disciplines to incorporate women and women’s experiences within their sphere of interest, and argued that this should be remedied.

The validity of this claim cannot be denied. But the reasons for women’s absence in existing histories of crime, as in other areas, can no longer be attributed simply to a single cause — neglect by male historians. Useful insights can be gained from a closer examination of such ‘gaps’ or silences. The reasons behind women’s absence in particular realms must be established; it does not mean the same thing in all places or times. In this instance, the lower profile of women in the history of crime reflects, to a great extent, the reality that relatively few women were apprehended and brought before the courts. Of these, many appeared on charges specific to women — charges that related either to prostitution or to such crimes as infanticide and abortion. Crime in the nineteenth century was a predominantly masculine activity; so too were associated policing, judicial, and penal institutions. The vast majority of offences were committed by men upon the person or property of other men or in breach of public order. Charges were laid and heard before a male magistrate, or a judge and male jury. We can characterize this aspect of the past as being overwhelmingly a manifestation of ‘masculinism’: the specific, historical reality into which men were socialized, and within which they lived their lives.

Identifying and describing the various and changing forms of masculinism is a central issue for feminist history. The other side of making women visible in history is distinguishing ‘men’ from the ‘people’ who have dominated and populated our understanding of the past. The feminist challenge to history extends beyond adding women to existing accounts of places, peoples, and events. It involves a fundamental reassessment of ideas, questions, and measures of significance.

The concept of masculinism is already established as part of Australian historical debate. In A Man’s Country, Jock Phillips has awakened New
Zealand history to the idea with a challenging exploration of the cultural and ideological meanings of ‘manhood’ and ‘masculinity’. There is much work yet to be done in understanding the nature and operation of masculinism in social, economic, and political spheres. The history of crime is only one area which can be characterized in this way; others come to mind.

The first major feature of women’s offending in the nineteenth century, then, is its relative scarcity. Overall, women made up less than 15% of all those who were apprehended and passed through the criminal justice system. Criminal activities pursued by women were different in character, as well as degree, from those of men. Generally, they were of a less violent and a less serious nature. The majority of women by far appeared in the Magistrates’ Court, where they were charged with minor offences. Only rarely were they among those dealt with by the Supreme Court. In Auckland before 1870 only one in every 26 cases heard in the higher court involved a woman defendant. By the 1890s the figure for Canterbury was slightly higher, but still amounted to a very small number of cases. Indeed, the small numbers involved make it difficult to draw conclusions with any confidence about fluctuations in serious crime across time or between regions. All the recent studies, however, have come to similar conclusions regarding the chief characteristics of female criminal deviance, and these confirm the patterns outlined in my 1977 preliminary study.

Typically, women appeared in the Magistrate’s Court (where by far the greater volume of court business was conducted), charged with one of the common offences against public order: drunkenness, disorderly conduct, obscene language, and the like. These were also the most common charges for which men appeared, but there was not the same degree of concentration on this one category of offence. Men showed a greater diversity in their criminal behaviour. They ran a greater chance of being apprehended for violence, or for appropriating or destroying property, than did women.

While the categories devised by different researchers for analyzing species of crime vary, this pattern of women’s high concentration in minor ‘street’ offences emerges clearly through all.

Drink was what led both women and men most commonly into the arms of the law. Charges of drunkenness far outnumbered all others throughout the nine-

18 Macdonald, ‘Women and Crime’, pp.5, 8; Anderson, ch.2; Robinson, ‘Of Diverse Persons’, ch.3. Criminal statistics present a multitude of problems for historical interpretation, which are too complex to go into here. See discussion in Macdonald, 1977, pp.2-4. Authors of recent studies of women and crime in New Zealand take the police and court statistics as indicators of contemporary knowledge of crime in their society rather than measures of the ‘actual’ incidence of different types of offending.
20 Anderson’s categories are as follows: alcohol, prostitution and related, violence, property, and minor violations. Robinson divides cases heard in the Supreme Court into the following groups: offences against property, persons, morality and public welfare, administration of justice, and miscellaneous, while those heard in the Magistrates’ Court were divided into public order, liquor and licensing, welfare, and offences against the Lunatics Act.
Table 1

<table>
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<th>Offences</th>
<th>1890 M</th>
<th>1895 M</th>
<th>1900 M</th>
<th>1905 M</th>
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<td>18.1</td>
<td>23.6</td>
<td>15.7</td>
<td>18.5</td>
</tr>
<tr>
<td>Violent offences</td>
<td>6.0</td>
<td>6.8</td>
<td>5.7</td>
<td>4.9</td>
</tr>
<tr>
<td>Public order offences</td>
<td>75.2</td>
<td>67.2</td>
<td>75.5</td>
<td>73.3</td>
</tr>
</tbody>
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Source: AJHR, Reports of Police Force (from Macdonald, 1977, p.8).

teenth century. Courts in Auckland heard over 15,000 drunkenness cases between 1845 and 1870.21 In 1890 alone, the police successfully prosecuted almost 6000 such charges (over 800 of these were against women).22 Many of these were against the same people. Anderson cites the case of one Elizabeth Canning who was convicted of drunkenness on 15 separate occasions in one year, 1863.23 She was by no means an exception. Every town seems to have had a handful of women who spent their time shuttling between hotel bar, courtroom, and prison. As few had the money to pay the standard fines imposed for drunkenness convictions, most spent short periods in prison. Being declared an habitual drunkard, as many were from time to time, could earn a longer sentence of three months. From her survey of drunkenness cases Anderson concludes that only a small proportion, less than 20%, of women who were habitual drunkards were involved in other kinds of illegal activity.24 Whether this is true of other areas or other periods is not known. It may well be that different patterns emerged elsewhere as a consequence of variable policing practices.

A large number of other public order offences occurred within, or in close vicinity of, hotels and popular theatres. One winter evening in 1865, the Canterbury police found themselves dealing with a drunken and obstreperous Emma Craigie in a Colombo Street hotel. When the police arrived she swore at them and threatened to break the hotel windows; it was 'with great difficulty' that

21 Anderson, p.69.
23 Anderson, p.84.
24 Anderson, p.88.
she was finally conveyed to the lock-up in a cart. Emma appeared shortly afterwards, charged with drunkenness and using obscene language. Several months later four women, Susan Fuller, Fanny Fuller, Annie Simms, and Mary Ann Callaghan, were fined 40s. each on the same charges for using ‘the most revolting language’ while walking down Gloucester Street one Saturday night in a drunken state. Incidents of this kind are typical of those that brought women before the courts on charges of disorderly behaviour, obscene language, and the like. They are very similar to those in which men were apprehended.

A further category of public order offences for which women, and a few men, were picked up were those relating to prostitution. Prostitution itself was not a crime but soliciting, indecent exposure, living off the proceeds, keeping a disorderly house, and having insufficient lawful means of support all were. The number of prosecutions for specific offences such as soliciting and keeping a disorderly house was small compared with the much larger numbers for vagrancy. On this charge women constituted a considerably higher proportion of the total apprehended than in most other public order offences. Vagrancy charges were commonly used by the police against women working as prostitutes. It would be seriously misleading, however, to interpret all such cases as prostitution-related. Women who were destitute, or whom the police wished to see off the streets for longer periods than drunkenness charges allowed, were also commonly convicted of vagrancy.

Deducing an ‘actual’ prevalence of prostitution from police or court statistics is a highly problematic undertaking, as the authors of recent studies recognize. Equally difficult (and dubious) is any attempt to identify a discrete ‘prostitute’ population. Lucas notes that the ‘distinction between a woman who was regularly providing sexual favours for money as her sole source of income, and the woman known to be an acquaintance of persons of “low character” was often slight’. The only definition available in the law was that a prostitute was someone without legitimate occupation or source of income. Furthermore, the policing of prostitution in the nineteenth century was both highly responsive to external influences and deeply ambivalent.

It was not until the 1860s that prosecutions for prostitution-related offences reached significant levels in either Auckland or the southern provinces of Otago and Canterbury. In Auckland, the influx of a military population, together with the departure of a section of the town’s Maori population, led to an increased number of actions against women and men as ‘maintainers’ of houses of common bawdry. To the south, the flood of men to the goldfields and a steady stream of immigrants dramatically altered the character of initial settlement. By the end of the decade, ‘a heightening sense of propriety’ throughout the colony

25 Lyttelton Times, 29 July 1865, p.2.
26 Lyttelton Times, 3 October 1865, p.2.
28 Lucas, p.40.
29 Anderson, p.93.
30 Anderson, p.94.
resulted in more vigorous policing of prostitution and the introduction of stronger legislative measures (the CD and Vagrancy Amendment Acts, 1869). Surges of public anxiety, prompted by a variety of catalysts, resulted in similar 'crackdowns' on prostitution, most notably in 1884 and the early 1890s.

Despite public outcries against 'the social evil' at intervals throughout the nineteenth century, the attitude of those immediately involved in policing prostitution was highly ambivalent. This is evident, not only in those instances where individual policemen were discovered to be responsible for running brothels\(^3\) or visiting a 'known' house in a 'non-professional' capacity,\(^3\) but also in general policing practice, which was designed to regulate the trade rather than eliminate it. In this respect, the CD Act represented the ultimate legislative embodiment of an official stance, which condoned the existence of prostitution and provided an extension of police powers of regulation. Actions against particular individuals and houses were taken to control those which became disruptive, noisy, or excessively disreputable, especially those known as places which harboured 'dubious' characters — men and women. Women who worked in a quiet, orderly, or clandestine manner may have been known to the police, but they were less likely to appear in court.\(^3\) This ambivalence towards prostitution reflects contradictory attitudes towards sexuality in the wider society. Prostitution was regarded as inevitable, given the nature of male sexuality; in a community that comprised a large proportion of young, adult men there were clearly interests which saw the ongoing availability of sexual services as advantageous.

These were precisely the issues that began to be raised in the 1890s and early 1900s, largely at the prompting of feminists. Such debates belong to a separate study. New research initiatives in this area could usefully turn to look at prostitution in relation to men and masculinity, specifically examining the various groups of men who were associated with, and often beneficiaries of, the prostitution trade. In the 1880s, for instance, the proprietor of Dunedin's Provincial Hotel appears to have profited from 'working women' frequenting his bar.\(^3\) Landlords, husbands, and cohabiting partners also fall into this category. The role of prostitution in relation to male sexuality could also be the subject of historical investigation.

In addition to the heavy concentration on public order offences, the other outstanding characteristic of female criminality in the nineteenth century was its extremely high rate of recidivism. While women were much less likely to break the law than men, those who did were likely to do so repeatedly. Over 80% of women imprisoned between 1888 and 1910 had at least three previous convic-

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\(^3\) See, for example, the case of Martin Cash in Robinson, 'Of Diverse Persons', p.85.
\(^3\) See, for example, the cases of Constables Powley and Winipress in Anderson, pp.91-92.
\(^3\) See comments made by the police on particular individuals and houses in reports such as the 'Extract from Surveillance Report', OP 79-1783, 1863, Otago Provincial Archives, National Archives; police evidence to the select Committee on Social Evil, Le 1/1869/12, National Archives; 1893 Register of Brothels.
\(^34\) Lucas, pp.35, 70, 83.
tions. The equivalent figure for men was 60%. A much higher proportion of men were casual offenders, convicted only once. In presenting and interpreting criminal statistics, considerable care must be taken to distinguish the number of individuals apprehended from the number of charges laid. For female criminality, the number of people appearing before the courts was very much smaller than the number of charges would initially suggest.

Given the high rate of recidivism, it is not difficult to see why contemporaries perceived the woman criminal as abandoned, incorrigible, and hopeless. Abandoned, because she was constantly being picked up for being drunk, disorderly, and vagrant; hopeless, because she had accumulated a long string of convictions and had served numerous sentences of imprisonment that had no obvious effect on her behaviour. Women offenders were regarded more as a public nuisance than a threat to personal safety or property. They were part of a small criminal subculture that existed on the margins of respectable society. Most habitual women offenders lacked legitimate employment, a permanent abode, or a stable relationship. Often they were solely responsible for children; this made them less mobile than their male associates. Their lives were generally harsh, rough, and marked by poverty, as evidenced by the physical disabilities many of them suffered — lameness, pock-marks, partial blindness, and scarring.

Both Robinson and Anderson have pursued the question of the relative progress and treatment of men and women through the criminal justice system, paying particular attention to differentials in sentencing. Conclusions vary according to the nature of the charge. The results are interesting, though it is not always easy to draw a single or simple conclusion. Overall, it seems that courts generally tended to see women as less culpable than men in serious crimes against property or those involving violence.

Within the second largest category of crime, comprising offences against property and acts of dishonesty, the most common charge for both men and women was petty larceny or theft. In general, women stole small and relatively inexpensive items that they could put to immediate use or dispose of within a short time. Clothing was the most popular, followed by household articles such as cutlery and crockery, and jewellery and money. Men made off with a greater range of ‘hot’ property. Women were more likely to steal items from private homes and lodging houses with which they were familiar than from public places. Some did, however, remove goods from shops and hotels, often taking advantage of their commodious clothing to do so. While making various purchases in Thomas Forsaith’s Auckland store in 1850, Ellen Culpan wrapped a pair of boots in her shawl, then concealed the bundle underneath the child she carried in her arms. Unfortunately for her, Forsaith observed what Ellen had

36 See, for example, Mary Ann Robinson (lameness), Canterbury Police Gazette, Vol.XI, no.9, 1 May 1873; Mary Rodens, alias Smith and Ann Sherry (pock-pitted); Barbara Weldon and Alice Hawley (blind in one eye), Otago Police Gazette, 1869. See also Lucas, pp.77-81.
done. She was convicted and sentenced to four months’ imprisonment with hard labour. Women were rarely in situations where they had opportunities for fraudulent practices such as embezzling or forgery, but they did appear on charges of using false pretences. On a number of occasions young women presented themselves to shopkeepers as servants or daughters on fictitious errands for a mother or mistress. Seventeen-year-old Lucy Poore, for example, told a Christchurch draper she was Mrs Cracroft-Wilson’s servant, and left the shop with expensive trimmings of a feather and an artificial flower.

A number of domestic servants were accused of stealing items from their employers. Although the goods stolen were usually not of great value, such crimes were classed as serious misdemeanours because they involved a breach of trust. In 1863 Mary Ann Murphy and Joanna Cotter were charged with stealing cutlery, crockery, egg cups, a corkscrew, and a brush from Grosvenor Miles’s house, where Mary Ann worked as a servant. Both were committed to the Supreme Court for trial. Women accused of such offences were frequently at a marked disadvantage. Evidence often amounted to little more than their word against that of their master or mistress. As younger, poorer, and generally less articulate individuals, they were in a weak position; any taint of dishonesty was liable to damage their reputation and, thereby, future employment prospects. Sometimes, as Mary Coghlin discovered, servants were subjected to ‘testing’ by their employers. She was employed as a servant at E.M. Templer’s Coringa Station in Canterbury in 1863. Suspecting Coghlin’s honesty, Templer left several marked coins in his waistcoat pocket. The next morning he missed a sovereign and subsequently took action to have Coghlin charged.

Picking pockets and other varieties of theft from the person was, overall, the most profitable form of theft. This type of offence was usually committed in hotels and other public places where people crowded together. As Anderson notes, alcohol was often involved in these crimes; ‘the inebriated made easy targets’. Victims were commonly men who were known to be in town with money to spend. Some bragged indiscreetly, letting others know how much cash they carried. Men who spent the night with a woman after an evening in the bar often found their wallets not just depleted when they woke the next morning, but empty. Women who worked as prostitutes often capitalized on their opportunity by fleecing a sleeping client. Lucas retails the case of a rabbiter from Moa Flat Station, who arrived in Dunedin with his wages, prepared to have a good time.

38 Anderson, p.141.
40 Lyttelton Times, 6 May 1863, p.5. See also case of Helen Marks, Lyttelton Times, 12 September 1863, p.5; case of Elizabeth Adams, Lyttelton Times, 25 March 1865, p.5.
41 Lyttelton Times, 18 February 1863, p.4. See also the case of Margaret Lynch in Auckland, 1867. Evidence given in court strongly suggests she was framed by her employer. Lynch was convicted and sentenced to one month’s imprisonment, but pardoned and released within a few days in response to public outcry. Anderson, p.148.
42 See Anderson, Table 30, p.143. The average value of property stolen by prostitutes and pickpockets was £16.6s.7d. and £7.2s.4d. respectively, compared with £1.9s.2d. and £4.11s.5d. for thefts from homes and lodging houses.
43 Anderson, p.150.
on the town. He had dinner with some acquaintances at the Spanish Restaurant. Afterwards he went to the Provincial Hotel with two young women; they also patronized another hotel in Maclaggan Street before going to the house where one of the young women lived. He stayed the night, during which time he was robbed.\textsuperscript{44} Most crime of this nature appears to have been opportunistic and casual.

The few women who were charged with crimes of violence almost all appeared for minor offences such as common assault and abusive or threatening language. Most disputes arose around domestic issues, either with a member of the same household or, more commonly, in defence of a spouse, children, or property against someone from a neighbouring household.\textsuperscript{45} Intra-household violence was less likely to come before the public purview of the courts than struggles of an extra-household nature. Women were more often the victims of violence than the perpetrators of it. A high proportion of prosecutions brought by women were for crimes of violence.\textsuperscript{46} As far as serious crime was concerned, figures suggest that women made up a disproportionate number of murder victims. Eleven men were prosecuted for murdering women in early Auckland.\textsuperscript{47} Of the five men convicted of murder in Canterbury between 1852 and 1875, four had murdered women (two of the victims were the men’s wives).\textsuperscript{48} Prosecutions for rape in Auckland before 1870 were unlikely to be successful, and were certain to be unpleasant for the woman plaintiff, with whom the onus of proof rested. Anderson’s research reveals that only three of the 22 defendants prosecuted on a charge of rape were convicted.\textsuperscript{49}

A number of men came before the courts charged with wife-beating. Cases that have been examined suggest strongly that charges were likely to be brought only against husbands whose violence towards their wives was persistent or particularly severe. Even then, a high proportion (30\% in Anderson’s study) were withdrawn before coming to trial.\textsuperscript{50} Taking a case to court was not always an effective means for a beaten wife to secure protection. While courts could act resolutely in response to evidence of husband brutality, they were likely to do so only if the woman was unambiguously an innocent and ‘legitimate’ victim. Women who fought back, women who were living apart from their husbands, and women who lived in common law marriages were less likely to obtain the court’s sympathy or successful prosecutions. A poignant example is cited by Anderson: ‘Although threatened with an axe by her husband who was described as a “drunken brute”, Sarah Jane Cleveland was still recommended to have

\begin{thebibliography}{99}
\bibitem{44} Lucas, p.70.
\bibitem{45} Anderson, ch.6.
\bibitem{46} 72.33\% of prosecutions by women in the Police Court and 49.32\% of prosecutions by women in the Supreme Court were for crimes of violence. Anderson, p.190.
\bibitem{47} Anderson, ch.10. Robinson’s figures for prosecutions taken in the Magistrates Court show that 311 of the actions were taken against men (178 by women), compared with 39 against women (7 by women), ‘Of Diverse Persons’, table 7, p.120.
\bibitem{48} Robinson, ‘Of Diverse Persons’, pp.100-1.
\bibitem{49} Anderson, pp.203-4.
\bibitem{50} Anderson, p.192.
\end{thebibliography}
displayed a “little gentleness and forbearance”, rather than to have torn out his
whiskers.”\[51\]

Marital combat was not all one-sided. Some cases of assaults on husbands by
their wives did reach the courts, though the number falls well below that of wife-
beating. These actions were usually of a retaliatory character. James Scott,
charged by his wife in May 1863 with assault and ‘general ill-usage’, chose to
go to prison for three months rather than find two sureties to keep the peace.
Explaining his decision, Scott said ‘he would go to prison, for his wife frequently
ill-used him with the frying pan and other unlawful weapons’\[52\].

Several offences fall into a separate category altogether. These are the
‘reproduction-related’ offences of infanticide, baby-farming, abortion, and
concealment of birth. They comprise only a small proportion of the total charges
against women, but they include the most infamous, as well as most pitiable,
cases in which women appeared before the courts. They represent some of the
more desperate circumstances in which women dealt with pregnancies they were
unable to admit to or cope with.

There is ample evidence suggesting that cases heard in the courts represented
only a fraction of the total incidence of such ‘offences’. A number of babies were
discovered abandoned in mysterious circumstances, some dead and some still
living. By no means all of these resulted in charges being laid. A young servant
by the name of Bowie appeared before a Christchurch magistrate in June 1865,
explaining that the previous Friday she had been standing in the street when a
woman she did not know had come up to her and asked her to hold her baby for
ten minutes. The woman offered her 2s.6d. for her trouble, then went away and
never returned. Bowie told the magistrate she had never met the woman before
and could remember very little about her. The magistrate placed the child in the
care of the Charitable Aid officer.\[53\] Deliberately giving a baby to someone else
to look after in exchange for a sum of money — baby-farming — was another
way of disposing of unwanted children. The Minnie Dean case revealed the
extremes to which such a practice could go. It is not known how extensively
baby-farming of a less pernicious kind was practised in nineteenth-century New
Zealand.

Infant life was precarious in the nineteenth century. ‘Illegitimate’ infant life
was especially precarious: the death rate of children born to unmarried mothers
was more than twice that of other children. Many babies died within a few hours
or days of being born. It was usually extremely difficult to determine whether a
baby had died of deliberate neglect, suffocation, or from ‘natural causes’. In
addition there was, until 1913, no requirement that stillborn infants should be
registered. All of this meant that concealing the disposal of a newborn baby was
not difficult.\[54\]

\[51\] Anderson, p.199; ch.10 passim.
\[52\] Lyttelton Times, 16 May 1863. p.5.
\[53\] Lyttelton Times, 15 June 1865, p.5. In Auckland, during the late 1860s, six infants were found
dead; in three cases young women were charged with concealment of birth, while the three other
cases were unsolved, Anderson, p.130.
\[54\] Andrée Lévesque, ‘Prescribers and Rebels: Attitudes to European Women’s Sexuality in
Most women who were tried for infanticide or concealment of birth were young, single women whose partners had deserted them. Their families, friends, and employers were usually completely ignorant of their pregnancies, and the women typically gave birth unaided and alone in an out-of-sight place such as a servant’s bedroom, shed, or outdoors. Courts tended to take a lenient view of such cases, pitying the circumstances which had driven the woman to such a course. In situations where violence was used, or preparations had been made in advance for the disposal of the baby, juries were more likely to be harsh — as they were in finding Anna and Sarah Jane Flanagan guilty of murder in 1891. The death sentence was passed, but not carried out. These two women were charged with murder after the decapitated body of a newborn infant was found in a vacant section in Christchurch. The child was Sarah Jane’s, born some weeks earlier.

Sensational cases such as those of the Flanagans and Minnie Dean should not mask the fact that these, and less serious offences, took place within specific historical circumstances. The interplay of interests between the various parties in any such case was complex, and shifted with changing social, economic, and demographic conditions. While Andrée Lévêque, Margaret Tennant (for the nineteenth and early twentieth centuries), and Barbara Brookes (for the inter-war period) have examined some questions relating to fertility, illicit sexual activity, and sexual ideology raised by these cases, there is a great deal more that could be investigated. In the middle decades of the nineteenth century, for instance, when the fertility rate within the European population was extremely high, infanticide and concealment of birth are likely to have occurred in different circumstances, and to have received a different public interpretation, than they did around the turn of the century.

With the emergence of sustained public concern over the birth-rate and the ‘pronatalist’ movement in the early twentieth century, the context in which such criminal cases were tried changed dramatically. Judith Allen has argued that in New South Wales, between 1880 and 1939, ‘reproduction-related’ offences contributed significantly to the two major demographic upheavals: the dramatic decline in fertility and the increase in infant mortality. She is concerned to establish, as part of an overall examination of the class dynamics behind the demographic revolution, that these practices could be seen as evidence that working-class women successfully controlled their own fertility. Investigating the policing of abortion, baby-farming, and infanticide, Allen challenges the view that the state in the early twentieth century can be characterized simply as ‘pronatalist’. Instead, she argues that the state had a deeply conflicting view

55 See, for example, the cases of Mary Pollock, Edith Hewlett, and Mary Jane Palmers in Anderson, p.132; Annie Wilson, Margaret Blyth, and Annie Read in Robinson, ‘Of Diverse Persons’, pp.171-2.
towards children. She regards its failure to tackle such illicit practices as abortion and infanticide as tacit endorsement of these practices — an endorsement that expressed the state’s reluctance to take responsibility of any sort for illegitimate and unwanted children.\(^{58}\) Whether the same can be said of New Zealand remains to be tested.

The task of charting changes in the nature and extent of women’s offending through the nineteenth and early twentieth centuries constitutes a larger exercise than that being undertaken here. It is possible to depict only the broad patterns displayed in the more than 70 years between 1840 and 1913, a period that began with the imposition of an English-style justice system and concluded with the opening of the first specially-designated women’s prison. It would be useful to consider whether fluctuations in women’s offending followed the pattern outlined by Fairburn and Haslett, of an extremely high rate of violence and litigation up to the 1880s, giving way to a markedly law-abiding phase through to the 1940s. Such a study would be of special interest, as a central part of their argument in accounting for the high crime level concerns the gender structure (or, rather, lack of structure) of colonial society.\(^{59}\) Of all the studies that have been completed, Robinson’s is the only one to compare the incidence of certain crimes over several decades. She has data for Canterbury from the Supreme Court for two periods, 1852-75 and 1887-97. As the number of cases coming before the higher court is small, the conclusions that can be drawn are limited. This absence of emphasis on chronological development is characteristic of most recent research in women’s history. It is not that change over time or a narrative approach is eschewed, but rather, that initial attention has had to be devoted to establishing the basic outlines around particular events, activities, or groups of people. Until this is done, comparative chronological discussion must wait.

Court and police records still have much to reveal about women, not only in relation to criminal behaviour. There is a wealth of information to be mined on subjects such as property-ownership, family relations (e.g., women using the courts to gain maintenance from men), and incidental detail of women’s lives given in evidence during cases. As far as criminal activity is concerned, researchers in future may find it worth concentrating on particular types of offences rather than trying to consider the wide range of actions dealt with in the nineteenth-century courts (suicides, committals to ‘mental asylums’, and breaches of by-laws have not been mentioned here). It would also prove fruitful to place any investigation of women’s criminal behaviour within a more general context of illicit activities, as it is in the overlap between moral and legal proscription that the majority of misdemeanours with which women were accused are located. Constraints upon female behaviour of a religious, moral, and educational nature have been more effective than formal legal regulation or coercive enforcement by policing.

The limitation of a women’s history approach that seeks simply to include women within existing frameworks are exemplified in looking at the history of

\(^{58}\) Allen, ‘Octavius Beale Re-considered’.

\(^{59}\) Fairburn and Haslett, ‘Violent Crime in Old and New Societies’.
crime. As far as criminal activity is concerned, men's and women's experience have been markedly different in degree and character. Female criminality cannot be regarded as a smaller and less serious shadow of male criminality: it shows a pattern of law-breaking that is altogether separate. But the overwhelming absence of women amongst those who fell into the hands of police and the courts does mean that the concept of crime can be defined in more masculine-specific terms. Useful things can be learned about the past through identifying those areas and activities in which women were absent or not involved.

Early interest in women's criminal deviance as a way of defining historical meanings of 'femininity' has become a less important focus as ideas in women's studies have developed. Women's crime (and women offenders) are no longer regarded as a single category of erring transgressors. There is little common ground in the circumstances of the domestic servant pilfering linen from her mistress and a woman arsonist. What is understood by 'femininity' has also been refined. No longer is it seen as a single, coherent whole, an ideology which can be neatly described, but rather as a system that contains a multitude of elements, many of which are conflicting and contradictory. An examination of nineteenth-century female criminality has much to add to our understanding of women in colonial New Zealand. The relationship between 'deviant' and 'non-deviant' groups contains more continuity than contrast. The boundaries that divide legal, sanctioned behaviour from illegal, criminal behaviour are constantly shifting.

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