

WOMEN AND CRIME IN LATER MEDIAEVAL ENGLAND: AN EXAMINATION OF THE EVIDENCE OF THE COURTS OF GAOL DELIVERY, 1388 TO 1409

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For more than a century now criminologists have been giving some attention to the phenomenon of female involvement in criminal activity.¹ However, the female criminals of earlier eras, particularly those of the later mediaeval period, have not been the subjects of such scrutiny. Indeed, if we are to give credence to the romance literature of the fourteenth and fifteenth centuries, the woman was the meek, self-effacing and virtuous helpmeet of her husband. We cannot imagine, for example, that the daughters of the Knight of La Tour Landry would ever fall foul of the law or even be suspected of the most trivial offence.² Yet the legal evidence of the period makes it clear that women could and did appear before the courts as accused as well as accusers. They are found to such an extent that a Victorian interpreter of the court records has concluded that the women of the later mediaeval period were, "except in the very highest rank, almost as brutal as their husbands or paramours," that they were, indeed, "such as the circumstances in which they lived had made them -- strong in muscle but hard of heart - more fit to be the mothers of brigands than to rear gentle daughters or honest sons."³

In the brief discussion which follows, it will not be possible to present any composite picture of the later mediaeval female or even of the woman who was accused of criminal activity. The evidence to be presented is culled from the records of a single English court during the

period 1388 to 1409 and is further limited both in terms of the social class of the suspects and of the crimes of which they stood accused. The records of the Court of Gaol Delivery inform us only about indictments of felony; trespasses were only rarely brought before it, and for such less serious offences the rolls of the Justices of the Peace are more informative.⁴ As far as the background of the female suspects is concerned, it is immediately apparent that the Gaol Delivery Court was not normally concerned with members of the upper classes, for in an examination of almost 9,000 indictments⁵ involving both males and females only eleven suspects have been identified who may be considered as nobility or even as gentry, and of these few only one was a woman.⁶

A further limitation of the Gaol Delivery evidence which may be noted here is that many of the original rolls have not survived; indeed, the extant rolls may well represent less than 50% of the original total for the period. The probability of such a substantial loss will obviously limit the kinds of conclusions which may be drawn from these records.⁷

What may be expected of the Gaol Delivery evidence is some indication of the extent to which lower class females appeared before this court as compared to lower class males, information on the types of offences of which women tended to be accused, and some evidence of patterns, either chronological or regional, which may be traced from the cases of female indictment during the period. It may be also expected to provide some indication of whether females were more or less likely to be convicted or to receive different sentences from those which the court accorded to males.

Before commencing an analysis of the Gaol Delivery material as it relates to women it is necessary to sketch briefly the essential facts about the agency which produced it. The Court of Gaol Delivery functioned on a circuit system with its justices, usually trained Westminster lawyers,⁸ visiting most of England's prisons an average of twice each year.⁹ At each session those who had been held in custody on suspicion of some felony would be produced and would have their cases determined. The commission of lesser offences would not normally require the suspects to be held in custody, and thus those accused of such crimes

would not normally appear at Gaol Delivery. The charges against the suspects might include petty treason, homicide, theft of goods worth twelve pence or more, and violent assault, while men would also appear upon charges of rape.

The period selected for examination spans two reigns, that of Richard II and the man who deposed him, Henry IV. This study commences in the year of Richard's humiliation at the hands of the "Merciless Parliament" and follows the evidence through what Steel has dubbed the period of "appeasement"¹⁰ into the period of the so-called "despotism," climaxed by the deposition. For the Ricardian period all the extant Gaol Delivery cases for all six of the English circuits¹¹ have been examined, a total of some 5,603 cases. In addition some 3,276 cases from the first decade of the reign of Henry IV have been analysed, including material from all circuits. However, for the later period, only the records of the Eastern, Western, Midlands, and Southern regions have been examined *in toto*.

Of the total 8,879 indictments examined in the Gaol Delivery rolls of this twenty-one year period, the proportion of females to males is in the area of one woman suspect for every 25 men.¹² Such a figure is even more disproportionate than the sex ratio apparent in arrests for indictable offences in the courts of today.¹³ We are at some disadvantage in not knowing the ratio of females to males in the general population of later mediaeval England. The frequency of wars and the generally unsettled tenor of the times might suggest that females actually outnumbered males, but there is no available evidence to support this suggestion. However, assuming the ratio of the sexes to be approximately equal or even predominantly male, the imbalance in males and females brought before the Gaol Delivery courts of the period is still quite remarkable.

It has been suggested by an observer of the female offenders of another era that as women became more emancipated and approached equality, particularly economic equality, with men, so the rate at which they participated in activities of a criminal nature tended to increase.¹⁴ If this generalization holds any substance, women of the later fourteenth and early fifteenth centuries, with very limited opportunities of attaining economic equality with males, might indeed have been less likely to

turn to crime and thus to come before the courts. However, a modern criminologist has asserted that the apparent imbalance between male and female participation rates in twentieth-century criminal activity is based upon a "statistical deception."¹⁵ Pollak submits that modern women are quite as likely as men to commit crime but that females tend towards offences which are more minor in character and can be more easily concealed. Thus, according to this hypothesis, more women escape apprehension and do not swell the court statistics as do men. Pollak cites the example of the large proportion of women employed in domestic capacities where there is ample opportunity for petty theft unlikely to be detected.¹⁶

In attempting to test two hypotheses against the later mediaeval Gaol Delivery evidence, first, that the female had greater opportunity for covert crime and, secondly, that she tended towards offences of a less serious nature, there would appear to be no confirmation for the former since, in that age of resident retainers, men were quite as likely as women to "live in" with their employers and hence to enjoy the same opportunity for theft. With regard to the second suggestion, since the sampling here is from the records of a court concerned only with felony suspects, it is impossible to establish from this source whether women of the period were more active in less serious crimes. The agency to which such minor indictments would be brought during this period was the Court of the Justices of the Peace. This was the chief instrument of royal justice in the English counties for those suspects, primarily non-felons, who did not find themselves taken into custody. However, a cursory examination of some of the published peace material for the later fourteenth century has yielded similar findings to those presented by the Gaol Delivery evidence, that is, a remarkably small proportion of female suspects.¹⁷

Turning now to examine the various crimes of which women stood accused before the Justices of Gaol Delivery, of the 211 females indicted according to the surviving rolls of 1388 to 1399, 140 were charged with what may be described as thefts of various kinds, 33 with homicides, 25 were indicted as accessories to a felony, most often a theft, five women were charged with aiding the escape of a prisoner,

four with arson, three with wounding, and one with treason.¹⁸

The proportion of alleged property offences charged against women closely reflects the proportion of such offences for males and females combined.¹⁹ Regardless of the sex of the offender the phrase most often used where another's good had been taken unlawfully was "felonice furatus fuit" with the occasional instance of "felonice asportavit" or "felonice abduxit." Offences charged to women were almost invariably larcenies rather than robberies; rarely do the indictments record any physical violence accompanying the alleged commission of the deed. The element of violence may be seen far more frequently in the indictments of male suspects.

Like their male counterparts, female suspects were sometimes charged with having carried off a wide variety of items, but while such valuables as livestock and agricultural implements dominate the indictments of male suspects, females appear to have favoured the smaller, more portable objects. As might be expected, money was frequently alleged to have been stolen by the female suspects before this court, but theft of money was rivalled in frequency by the taking of wool, both raw and woven into cloth.²⁰ Also commonly stolen were various articles of clothing²¹ and fairly small amounts of grain of all varieties.²² In the occasional examples of female appropriation of livestock, the woman suspect is almost invariably accused of having acted with one or more male accomplices.²³

It has been suggested that women tend to turn to crime when times are hard and then tend to steal the more basic, subsistence type of goods.²⁴ Leaving aside, for the moment, the question of whether the late fourteenth century was an economically difficult time for the English lower classes, there is, apart from the grain and wool thefts, little to suggest subsistence level desperation in these crimes. Furred tunics,²⁵ kerchiefs,²⁶ and silver bracelets²⁷ appear too frequently in the evidence to accord fully with such an explanation, although there may, of course, have been individual cases of hardship which drove women to steal.

Returning to Pollak's hypothesis concerning the easily concealable nature of female offences, homicide was probably the least easily

disguised and, proportionately, the most frequently reported offence during the mediaeval period. During the 1388-1399 period, slightly more than sixteen per cent of all indictments, both male and female, were homicides, and this offence also accounts for sixteen per cent of the indictments involving women.²⁸ Such figures suggest that women were not as disinclined to physical violence as some authorities have suggested.

Lacking, perhaps, the sophistication of their southern European contemporaries, mediaeval English murderers of either sex appear not to have resorted to such subtle methods as poison to accomplish their ends.²⁹ The most frequently employed device was a sharp instrument. The body, either inadequately concealed or not hidden at all, was likely to be found and the crime was then investigated by the coroner. Occasionally a woman appears to have carried out such a crime unaided,³⁰ but more often she was accused of having worked with an accomplice or two.³¹ Her husband was frequently the victim, as in the lurid case of a woman who went at night with a knife and first made an enormous wound in her husband's stomach, then took a stick with which she broke his neck and killed him.³²

Such callous behaviour might appear to support the conclusions of an observer of modern female murderers who has asserted that "women being different from men in their mentality, thought-processes, intuition, emotional reactions and in their whole approach to life and death, when they murder do the deed in a way that man often would not contemplate."³³ Or could it be merely, in the case of the Gaol Delivery evidence, that such violent behaviour was so far removed from what was regarded as the female norm that a woman's actions, when she was involved in homicide, caused the usually spare and terse accounts of the court clerk to become lengthy and filled with colourful detail?

In other homicidal variations, a woman joined with her husband in the killing of another woman,³⁴ a woman is alleged to have aided her lover in the slaying of his wife, and there are even cases of unaided females killing other women.³⁵ Women also acted fairly frequently as accomplices and accessories to either murder or to theft. Such activities amount to almost twelve per cent of all the surviving indictments

of women for the 1388 to 1399 period, while the overall Gaol Delivery average for both sexes is only eight per cent. Almost six per cent of the female indictments consist of indictments for violent attacks, aiding escapes, and committing arson. Indeed, arson seems to have been something of a "woman's crime" during this period, for most of the cases of it among the Gaol Delivery indictments were ascribed to females.³⁶

The only example of a female suspect being accused of treason³⁷ to be found in these cases concerns one Alice Emson, said to have lit a warning beacon to aid the Scots.³⁸ The beacon was supposed to have given warning of the launching of the English fleet and thus destroyed the element of surprise which the fleet would otherwise have enjoyed. The roll is at pains to point out that the ships had been launched in order to punish the Scottish enemies of the King for their previous invasions and for other "enormities" which they had committed. The jury was in no doubt that Alice had in fact committed the act with which she was charged. Under normal circumstances she would have been liable for the traitor's punishment of drawing and hanging. However, the jury informed the Gaol Delivery justices that Alice had spent many years "as a subject of the King of Scotland" before marrying an Englishman and settling in England. After verifying her origins the judges declared Alice to be *sine die*³⁹ and released her. Such a decision was unusually sophisticated for a court in which verdicts were usually clear cut and sentences almost automatic.

The overall number of female indictments before the courts of Gaol Delivery shows considerable yearly fluctuation during the two decades studied. In the last ten years of Richard's reign the fluctuations generally seem to accord with the overall pattern of indictments. There are, however, a few interesting exceptions. As can be seen from Table I, there is a noticeable rise in the number of females indicted between Richard's twelfth and thirteenth years, a trend at variance with the overall indictment pattern for these years. While the overall indictment total makes a peak in Richard's fourteenth year, the peak for female indictments in the first half of the decade occurs in year fifteen. However, from this point on the female indictment pattern is in approximate conformity with the indictment pattern for both sexes combined.

The pattern of female indictments drawn from the sampling of cases from the first decade of the reign of Henry IV also shows some lack of conformity with the fluctuations of indictments in general. As can be seen from Table II, the first example of variance occurs in the second year of the reign where the total of surviving female indictments is in marked decline, while the combined total of male and female indictments shows a clear rise. Another point of variance is the period between Henry's seventh and eighth years. The overall total of indictments declines in year eight from a sharp peak in year seven, whereas the number of female suspects peaks in the latter year, equalling its high point for the entire Henrician decade. It may be noted also that the female totals rise quite sharply between years nine and ten while the pattern of overall indictments is in gradual decline.

The difficulty in tracing and attempting to account for rise and fall in the various components of the Gaol Delivery evidence is compounded by two main factors. The first and more serious problem stems from the likelihood that we are dealing with less than 50% of the original number of indictments before the court during our chosen period. While the survival rate of the records varies from a high in the area of 69% for the Northern Circuit to a low of 13.5% for the "Home" Circuit during the 1388 to 1399 period, the probable overall survival rate of indictments for the Ricardian period is in the area of 43%.⁴⁰ Thus it is conceivable, although not likely, that indictments which have been lost through the attrition of time might considerably modify the present profile. The other, less fundamental concern is that of the time lag between the alleged commission of the deed concerned and the day on which the prisoner was indicted for it before the court. The figures used here have all been compiled according to the date of first appearance in court, but it must be remembered that the crime to which the indictment refers would usually have taken place from one to three years previously.

Returning to the hypothesis concerning the higher criminal involvement of women in economically difficult periods,⁴¹ it may be observed here that the later fourteenth and early fifteenth centuries generally were not considered unduly difficult periods for England's rural

communities. While Froissart may well have been overstating the case when he remarked that one of the causes of the 1381 Peasants' Revolt had been the "ease and plenty" which the labouring classes enjoyed, the economic condition of the agricultural workers who provide the bulk of the Gaol Delivery evidence had probably been improving. The 1381 revolt may not have brought the sought for amelioration, but gradual improvement seems to have continued through the period. As we have seen in our examination of female theft, the types of articles stolen were often not of the subsistence kind, and we can observe no noticeable change in the nature of the crimes committed in either "peak" or "trough" years. Thus we cannot, it would appear, use economic factors to account for vicissitudes in female court indictments.

It has been observed that modern crime rates show a marked rise in the participation of females during war years "when male manpower became depleted and women assumed many roles formerly reserved to men."⁴² The period selected here does not find England involved in an all-out war as it had been, for example, in the middle years of the reign of Edward II or was to be again for most of the reign of Henry V. Anglo-French relations were in a "holding pattern" for the first half of the 1390's, with English bases in France being gradually surrendered as Richard tightened his control of the government and implemented his peace policy.⁴³ Thus, rather than a depletion of manpower, the reverse situation seems to have obtained, a fairly large scale return of demobilized soldiery which even Richard's two Irish expeditions, in 1394 and 1399, and his other minor military engagements can have done little to diminish. The first decade of the reign of Henry IV shows an almost total lack of involvement in external warfare, and the forces required to quell the endemic revolts of the reign cannot have engendered any significant manpower depletion. Thus here again a possible explanation for fluctuations in the proportion of female indictments must be discarded as being not applicable to the later mediaeval situation.

It may be, of course, that these fluctuations in the pattern of indictments do not reflect any actual changes in the proportion of female offenders who came before the courts. While, as has been previously indicated, there are possibly less than half the original total number

of Gaol Delivery rolls presently extant, it must also be remembered that the court of the Justices of the Peace was operating in a similar sphere and could have been entertaining more or fewer indictments of felonious females in any given year. However, there would seem to be no obvious reason why the activities of these justices should have attracted significantly more or fewer felonious women in one year than in another unless the number of women brought before the courts was also fluctuating; nor does it seem likely that the "lost" half of the sources would present a noticeably different picture.

In summary, then, we have observed the relatively small percentage of female suspects coming before the Gaol Delivery courts during the period 1388 to 1409. It has been suggested that such statistics may well be concealing at least as far as thefts are concerned, a larger involvement which escaped indictment. The Gaol Delivery material indicates that women tended to steal without violence but that their involvement in homicide was fairly high. An attempt has been made to explain the rather marked fluctuations in the surviving numbers of female indictments, but no clear correlation has been established with economic trends, with the effects of war, or with the operation of other legal agencies.

In attempting to break down the Gaol Delivery evidence regarding female indictments for felony on a regional basis, while the ever present problem of lost records strictly limits the number and scope of conclusions which can be drawn, it is possible to make some analysis of variations apparent in the surviving evidence for the six circuits of England during the 1388 to 1409 period. It would appear from the evidence that the proportion of female suspects before the court in question varied considerably from one region to another. On the Midlands Circuit there are 99 female indictments surviving for the Ricardian period, a number which amounts to 46.9% of the total female indictments for all six circuits combined, 1388 to 1399, while this circuit provides only 35% of the country's total felony indictments. The Northern circuit provides 21.04% of the country's total felony indictments during the later Ricardian period and yields 18% of its female total, while the Western Circuit, although it provides some 19.84% of the total felony indictments, accounts for only 10.4% of the female total. On the Eastern Circuit female suspects

amount to 13.27% of the total, a figure very close to this area's share of all indictments, which is 13.31%. In the South-West, the only other region for which we can compile usable figures, the pattern is similar to that of the Eastern Circuit, with the area's share of all surviving felony indictments amounting to 9.2% of the total and the female element to 9.47% of all women on the surviving rolls of the 1388 to 1399 period.

Thus the Eastern and South-Western circuits may be said to show a proportion of female suspects consistent with their share of the total surviving felony indictments, while on the Western Circuit, the proportion of females brought before the courts is noticeably low and in the Midlands it is atypically high. The hypothesis that the involvement of females in crime tends to increase as they gain independence and self-sufficiency may be of some substance when we consider that the Midlands at the end of the fourteenth century were rapidly coming to be "industrialized" in the mediaeval sense and had a relatively high proportion of urban settlement, as opposed to the less developed and more agrarian western areas. However, such an explanation would not account for the apparently low involvement of women in the evidence from the Eastern Circuit or for the high proportion of females in the indictments from the North.

Following the female suspects through into the reign of Henry IV, the extant records of all circuits have been examined with the exception of the very lengthy Northern rolls, where only a sampling of cases has been studied. It is apparent from the Lancastrian evidence that the proportion of female suspects remains notably high on the Midlands Circuit, women from this area amounting to 69.38% of the total female suspects in a region which provides only 60% of the total felonious indictments.

However, in the Henrician period, the proportion of female suspects to be found in the evidence of the Western Circuit, an area which provides 14.7% of all indictments, has risen to a high 21.8% of the total. Conversely, in the East, while its share of the Henrician indictments amounts to 20%, women account for only 7.48% of the total for the whole country. Such figures militate, once again, against equating increased female independence with crime, for if this were to hold true we should

expect proportionately more women to be indicted in the prosperous cloth producing Eastern Circuit than in the relatively undeveloped Western region.

Thus, although the evidence of the Court of Gaol Delivery does provide some insight into the types of felony which women tended to be accused of committing and some evidence of the extent to which they were brought before the courts in the various regions of England, it does not provide any indication as to why some women turned to crime or, alternatively, why others did not. Nor can we ignore the probability that in dealing with suspects brought before the royal court we are seeing only the tip of a much larger iceberg of undiscovered and unreported offences.

To turn from the examination of the evidence of crime to analyse the evidence of punishment in the Court of Gaol Delivery is to enter an area which is less affected by uncertainties. The problems of undiscovered offences and of lost court records are less troublesome, since only the verdicts accorded in those cases which have survived are under consideration. In the section which follows the nature of the decisions arrived at by the Court of Gaol Delivery will be examined first, then an attempt will be made to compare them with the decisions of the court most similar in its operations to this one, that of the Justices of the Peace. Finally, the problem of to what extent such practices in sentence and punishment varied according to the sex of the prisoner charged will be discussed.

Before presenting the proportion of convictions and acquittals evident in the Gaol Delivery material, it is hardly necessary to point out that this material presents only a select group of suspects. However stern or unfeeling the decisions of the Gaol Delivery courts may appear, they were being imposed upon only a very small fraction of mediaeval society. If, with all the advantages of modern technology, the average twentieth-century police force is able to "clear up" only about 50% of all offences,⁴⁴ how much greater must have been the mediaeval felon's chances of avoiding detection or of making good her escape!⁴⁵ And, as will be demonstrated, despite the very rigorous punishments meted out by the courts, the chances for any suspect to win an acquittal from the Gaol Delivery justices were extremely high.

During the period 1388 to 1399 we have found that almost 73% of all suspects, both male and female, indicted before the Gaol Delivery Court, won an acquittal.⁴⁶ With the exception of a fraction whose cases were dismissed on the grounds that they were insufficient in law (0.51%), a small number of prisoners who died while in custody (0.09%), and a very few cases the outcome of which was not recorded (1.55%), the remainder were all, technically, found guilty. But this did not mean that all were liable to receive the death penalty. When the cases of those receiving royal pardons are deducted (3.05%), along with cases of homicide found to have been committed by accident or in self-defence (2.35%), outlawries where the suspect was either a co-accused never taken into custody or who had escaped from custody,⁴⁷ cases where either clerical immunity or illegal removal from sanctuary was successfully claimed,⁴⁸ and the few cases where the crime, although found to have been committed, was discovered not to be felonious (0.36%), then only 13.08% of all suspects are left actually facing the extreme penalty. Moreover, there is no way of knowing what percentage of these managed to cheat the hangman and escape before their scheduled day of execution.⁴⁹

In the Henrician era sampled, the pattern of convictions which emerges is remarkably similar to the Ricardian one. Over 70% of all the cases examined resulted in a not guilty verdict (71.3%). After the usual deductions for pardons (7.53%), instances of killing in self-defence or by accident (0.94%), the various stages of outlawry,⁵⁰ escapes (0.21%), clerical immunity or sanctuary,⁵¹ and the few undetermined cases (0.48%), we are left with only 14.04% of the total number of indicted felons being found deserving of death. There is also some evidence to suggest that this seemingly high rate of acquittal was not peculiar to the Court of Gaol Delivery; indeed, it may well be that acquittals occurred even more frequently in other courts than they did in this one.

It is of interest to compare our findings from the Gaol Delivery evidence with what is known of the activities of the most similar other local court, that of the Justices of the Peace. The main problem in this regard is the uncertainty as to what extent these justices were, in fact, determining indictments of felony. Their restoration to full

powers in 1389, following upon the turmoil which accompanied the Peasants' Revolt and Richard's assertion of authority, need not necessarily have meant that these powers were being exercised.⁵² Unfortunately the survival rate for peace rolls has been nothing like as good as that for the Gaol Delivery records, and it would appear that all of those which have come down to us from this period were compiled for a pending visit of the King's Bench. Anticipating that the activities of the Bench would supersede the peace sessions, the scribes recorded only the undetermined indictments for the higher body's perusal.⁵³

E.G. Kimball, in her examination of some Warwickshire and Coventry Peace sessions, discovered a total of 231 indictments for felony. Of that number there were 169 cases for which she was able to discover some additional information, of which only 13 resulted in a death sentence.⁵⁴ Thus in this instance, although the number of suspects who do not appear and are therefore outlawed is much higher than in the Gaol Delivery sessions, where almost all suspects were already in custody awaiting trial, the rate at which felons were sentenced to death is not very dissimilar to that of the Gaol Delivery Court.

Kimball's Lincolnshire researches indicate that when the court of King's Bench visited Lincoln in 1396 and determined all the outstanding peace court cases, a total of some 255 felons was summoned. Of these only 54 bothered to appear, the remainder presumably being outlawed. Of those who did appear, 42 were acquitted, eleven produced pardons and were released, and not one appears to have been convicted.⁵⁵ Such apparent laxity makes the activity of the Gaol Delivery Justices seem highly efficient, but although the workings of this agency appear to have been largely ignored hitherto by researchers, there are indications that its conviction rate had declined from earlier in the century.⁵⁶

Returning to the discussion of woman suspects before the Court of Gaol Delivery, it would appear that the sex of the prisoner did have some effect both upon the rate of conviction and upon the type of sentence given, but it is suggested that this factor was less important than either the social class of the suspect or the nature of the crime involved. The almost inevitable acquittal received by members of the gentry class⁵⁷ or by alleged rapists⁵⁸ is much more apparent than is any

predisposition by the juries to take account of the suspect's sex. However, it would appear that for the female accused the chances of avoiding sentence of death were slightly better than those of her male counterpart.

Of the 211 female suspects appearing on the Gaol Delivery rolls during the period 1388 to 1399, some 177 or 84% of the total received an acquittal. Of the remainder, two-thirds were sentenced to death, 10.4% of all the females indicted, as compared with 13.08% for both sexes combined. Of those found guilty but not hanged, two had failed to appear and were outlawed, six were pardoned, and two had their punishment delayed because of pregnancy. The figures from the sampling of cases from the first decade of the reign of Henry IV show female suspects faring slightly better than in the previous reign, with almost 82% of those indicted being acquitted and only 10.2% being sentenced to death, while the overall rate for both sexes from our sampling of this period was 14.4%.⁵⁹

There is little to be found in the later mediaeval Gaol Delivery rolls of what one modern criminologist refers to as "chivalry and the general protective attitude of men towards women."⁶⁰ In terms of the actual sentence received, while there is some evidence that a woman might escape the mandatory drawing which accompanied hanging upon conviction for treason,⁶¹ she was clearly at a disadvantage as far as conviction for matrimonial homicide was concerned. Just as the killing of a master by his servant was considered a treasonable act during this period and was looked upon as a grave violation of loyalty, so was a woman considered guilty of treason if she killed her husband, and thus was sentenced to be burnt rather than hanged. Although by this time the adjective "proditore" is no longer used to describe the offence, the treasonable sentence continues and is frequently imposed.⁶²

Having been convicted of a felony the single inherent advantage that the female possessed over her male counterpart was her ability to become pregnant, for while the court would not temper justice on the grounds of her sex, it would not knowingly condemn her innocent unborn child. Once sentence was pronounced the woman would announce to the court that she was with child and a jury of twelve matrons from the area

would be immediately summoned to examine her and to ascertain the truth of her claim. They seem, most often, to have supported her assertion, and sentence of death was then ordered postponed pending the birth of the child. However, there are several instances where the examining matrons found that the convicted woman had lied to the court and was not in fact pregnant. In such cases execution would immediately follow.⁶³

Precisely what methods were used to verify a claim of pregnancy are not known, and it seems likely that many women in the earliest stages of gestation must have been hanged or burnt. However, since the days of Galen the foetus had been decreed not to possess a soul until the third month after conception, and thus such occurrences would probably not have been considered as the taking of an innocent life. Theoretically, once her confinement was at an end, the woman would receive her preordained punishment. Often this did occur,⁶⁴ but she sometimes managed to secure a pardon in the interim, occasionally one said to have been granted "at the intercession of the Queen."⁶⁵ Such cases speak for some degree of compassion, albeit a small one, in the attitudes of the mediaeval authorities towards the female offender.

Depending upon the character of the gaoler, a woman might find her sex of some advantage in lessening the rigours of her imprisonment. Women found themselves held in custody while awaiting trial, during pregnancy, on grounds of bad fame, or being punished for non-felonious theft; for some women escape seems to have been merely a matter of not returning from a customary stroll around the town.⁶⁶

Thus it may be seen from an examination of the Gaol Delivery evidence for the 1388-1409 period that the primary difference between male and female suspects was that women tended to come before the courts far less often. Whether this phenomenon means that the mediaeval woman possessed, as her modern counterpart is alleged to possess, "an inordinate talent for concealment and deception which both characterizes the female style and makes the female lawbreaker harder to catch,"⁶⁷ it has not been possible to ascertain. In all other aspects there has been observed no significant difference between the types of criminal behaviour ascribed to either sex or in the way in which such behaviour was dealt with by this court.

Although a notable difference has been seen in the proportion of female offenders between one circuit and another, it has not proved possible to identify probable causes of such variations. Yet the essential features of female crime and punishment may be said to vary little throughout the country. While the women's more limited physical strength may have tended to make her more likely to select smaller, inanimate objects when she set out to steal, she could, as we have seen, commit murder with the worst of them. While she was less likely than a male to become involved in violent assault, she might well achieve her revenge through arson. She seems only marginally more likely to win an acquittal from the court than was the male, and while her reproductive ability might postpone her death sentence, the mediaeval justices had no compunction about ordering her hanged or burnt once her pregnancy was at an end.

In short, while mediaeval society discriminated in so many ways against the female, regarding her as a mere chattel of her husband, bracketing her so often with children and imbeciles, and barring her from any important office, the evidence seems to suggest that when a woman stood accused of a felony before the later mediaeval Courts of Gaol Delivery she may be said to have "enjoyed" equality of treatment.

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NOTES

¹ See, for example, the pioneering work of Caesar Lombroso and William Ferrero, *The Female Offender* (1897; rpt. London 1959).

² Geoffroy De La Tour Landry, *The Book of the Knight of the Tower* (first published by Caxton, 1484); EETS, O.S. 33 (Oxford 1868; rev. 1906).

³ L.O. Pike, *A History of Crime in England*, 2 vols. (1873-76;

rpt. Montclair, N.J. 1968) I, 255.

⁴ However, their value is lessened for the researcher by the fact that most of the surviving rolls contain only undetermined cases. See, for example, B.H. Putnam, *Proceedings before the Justices of the Peace, Edward II to Richard III* (London 1938), and below, pp. 100-101.

⁵ 5,603 cases for the period 1388-1399 and 3,276 cases for the 1400-1409 period (Justices Itinerant 3/176 to J.I.3/190 in the Public Records Office, London).

⁶ This was the case of a knight's wife, apparently living apart from her husband; in 1407 she was accused of stealing books, silver vessels, and other goods from him (J.I.3/189, m. 14).

⁷ See the further discussion of probable lost records below, p. 95.

⁸ See this writer's discussion of the backgrounds of the various Gaol Delivery Justices in "'No Peace Nor Love in England?' An Examination of Crime and Punishment in the English Counties, 1388-1409," Unpublished doctoral dissertation, University of Toronto, 1977, pp. 158-180.

⁹ "'No Peace Nor Love . . .'," Appendix A, p. 431.

¹⁰ A. Steel, *Richard II* (Cambridge 1941).

¹¹ The "Home" or Southern Circuit, the Midland Circuit, the Northern Circuit, the Western (sometimes called the "Oxford Circuit," e.g. by J.S. Cockburn, *History of the English Assizes* [Cambridge 1972] 19), the Southwestern Circuit (called the "Western Circuit" by Cockburn and by R.B. Pugh, *Imprisonment in Medieval England* [Cambridge 1968] 281), and the Eastern Circuit. There do not seem to have been any "official" contemporary names for the circuits.

¹² Women form 3.76% of all Ricardian suspects and 4.48% of all Henrician ones.

¹³ The ratio of indictments in modern Britain is approximately 7 males for every female (see F.H. McClintock and N.H. Avison, *Crime in England and Wales* [London 1968] 25-26) and in modern Canada approximately 14 to one (see W.T. McGrath, ed., *Crime and its Treatment in Canada* [Toronto 1965] 70).

¹⁴ J.M. Beattie, "The Criminality of Women in Eighteenth Century England," *Journal of Social History*, 8 (1975) 80-116.

15 O. Pollak, *The Criminality of Women* (New York 1961) 1-2.

16 Pollak, p. 2..

17 E.g., on the Coventry Roll, Assize Roll 976, 18-20 Richard II, printed by E.G. Kimball (*Rolls of the Warwickshire and Coventry Sessions of the Peace* [London 1939]), of 80 indicted only 7 were women. Similarly in the roll from Worcestershire, printed by B.H. Putnam (*Proceedings Before the Justices of the Peace, Edward II to Richard III* [London 1938]), there was not a single woman among the 35 indicted. Many more examples might also be cited.

18 These figures and those following are, of course, the result of analysis of only those records which have survived.

19 The overall percentage of property offences for the Ricardian period is 62.5%. Among women it is 66%, 140 of 211 indictments.

20 E.g., J.I.3/178, m. 39; J.I.3/180, m. 34d; J.I.3/177, m. 75.

21 J.I.3/177, m. 76; J.I.3/180, m. 6; J.I.3/177, m. 55.

22 J.I.3/176, m. 1; J.I.3/194, m. 1d; J.I.3/177, mm. 44d, 80d, 89.

23 J.I.3/176, m. 5d; J.I.3/180, mm. 20, 36d; J.I.3/177, mm. 48d,

50.

24 B.H. Westman tests this thesis against her evidence in "A Study of Crime in Norfolk, Yorkshire and Northamptonshire, 1300-1348," Unpublished doctoral dissertation, University of Michigan, 1970.

25 J.I.3/180, m. 6.

26 J.I.3/177, m. 72d.

27 J.I.3/177, m. 92d.

28 15.63%

29 It may be, of course, that some of them did and were astute enough not to have been detected.

30 E.g., J.I.3/178, m. 9d; J.I.3/179, m. 25; J.I.3/180, m. 35.

31 J.I.3/180, m. 31 has two to help her; J.I.3/177, m. 27 has three.

32 J.I.3/178, m. 9d. Both the cases cited above were also husband murderers.

33 G. Sparrow, *Women Who Murder* (London 1970) 7.

34 J.I.3/175, m. 1.

35 J.I.3/179, m. 12.

³⁶ E.g., J.I.3/177, mm. 3, 41d; J.I.3/180, m. 29d; J.I.3/182, m. 6d.

³⁷ As opposed to petty treason which might include falsifying the coinage or forgery.

³⁸ J.I.3/176, m. 2.

³⁹ While she could not be acquitted as she was found to have committed the act of which she had been accused, she was released with no day specified for her reappearance in court.

⁴⁰ See Garay, "'No Peace Nor Love . . .'," tables facing p. 132.

⁴¹ See also Barbara (Westman) Hanawalt's general discussion in "Economic Influences on the Pattern of Crime in England, 1300-1348," *American Journal of Legal History*, 18 (1974) 231-97.

⁴² Pollak, p. 64.

⁴³ See the excellent study of Anglo-French relations by J.J.N. Palmer, *England, France and Christendom, 1377-1399* (London 1972).

⁴⁴ Manuel Lopen-Rey, *Crime: An Analytical Appraisal* (New York 1970) 61. The average in England and Wales during 1967 was 46.25%.

⁴⁵ I suggest that the lack of any national police force, the notoriously bad state of the roads, and the consequent geographical fragmentation of the country must have made justice much more easy to elude during the mediaeval period.

⁴⁶ 72.9%, 4,048 cases out of 5,603. This percentage almost totally reverses the modern pattern. In Canada during 1972, 95,131 suspects were charged with indictable offences of whom 77,650 or 81.6% were convicted and 9,943 or 10.4% were acquitted. See *Statistics of Crime and Other Offences*, cat. 85, 201, Statistics Canada, 1972, pp. 118-19.

⁴⁷ Capias 10 cases, exigend 43 cases, outlawry 48 cases, escapes after conviction 15 cases.

⁴⁸ Clergy 122 cases or 2.177%, sanctuary 7 cases.

⁴⁹ J.I.3/176, m. 23.

⁵⁰ Outlawry 1 case, capias 55 cases, exigend 1 case.

⁵¹ Clergy 55 cases or 1.67%, sanctuary 5 cases.

⁵² As J.S. Cockburn has observed in *A History of the English Assizes, 1558-1714* (Cambridge 1972) 87, an act of 1394 "specifically enjoined gaol delivery on the justices of the peace." If this act had any

force at all, the J.P.'s must have been determining felonies.

⁵³ The number of prominent men of law named to the peace commissions during this period (see e.g. *Calendar of the Patent Rolls*, V, 1391-1396, 587 ff.) would seem to suggest that felonies were being determined. However, if this were the case how do we account for the frequent appearance in the G.D. rolls of cases where the suspect is said to have been initially indicted before a Justice of the Peace?

⁵⁴ *Rolls of the Warwickshire and Coventry Sessions of the Peace, 1377-99* (London 1939) xlvi.

⁵⁵ *Some Sessions of the Peace in Lincolnshire*, Lincs. Record Society, 49, vol. 1 (Hereford 1953) li-liii. Many other examples from published peace rolls might also be cited.

⁵⁶ L.O. Pile, in his analysis of the Gaol Delivery rolls of Edward III, year 22, finds 24.6% of all indictments resulting in conviction; see *A History of Crime in England*, p. 480.

⁵⁷ See Garay, "'No Peace Nor Love . . .'," pp. 245-53, 349, where there has not been a single conviction found.

⁵⁸ Later mediaeval attitudes towards rape and the ease with which suspected rapists avoided conviction will be discussed in a forthcoming article by the author. See also "'No Peace Nor Love . . .'," pp. 345-347.

⁵⁹ The modern female suspected of crime would appear to be at a greater advantage. A study of crime statistics for New York State indicates that of 20,000 men arrested in 1940, 57% were convicted. In the same year only half as many females were arrested and of these only 43% were convicted. See Pollak, p. 5.

⁶⁰ Pollak, p. 151.

⁶¹ E.g., J.I.3/179, m. 16.

⁶² E.g., J.I.3/178, m. 9d; J.I.3/180, m. 31; J.I.3/177, m. 22.

⁶³ E.g., J.I.3/177, m. 49; J.I.3/185, m. 18.

⁶⁴ E.g., J.I.3/177, m. 97; J.I.3/186, m. 4.

⁶⁵ E.g., J.I.3/188, m. 25; J.I.3/177, m. 56.

⁶⁶ J.I.3/179, m. 47.

⁶⁷ E. de Rham, *How Could She Do That?* (New York 1961) 5.



TABLE I Indictments of women compared with overall Gaol Delivery indictments 1388-1399

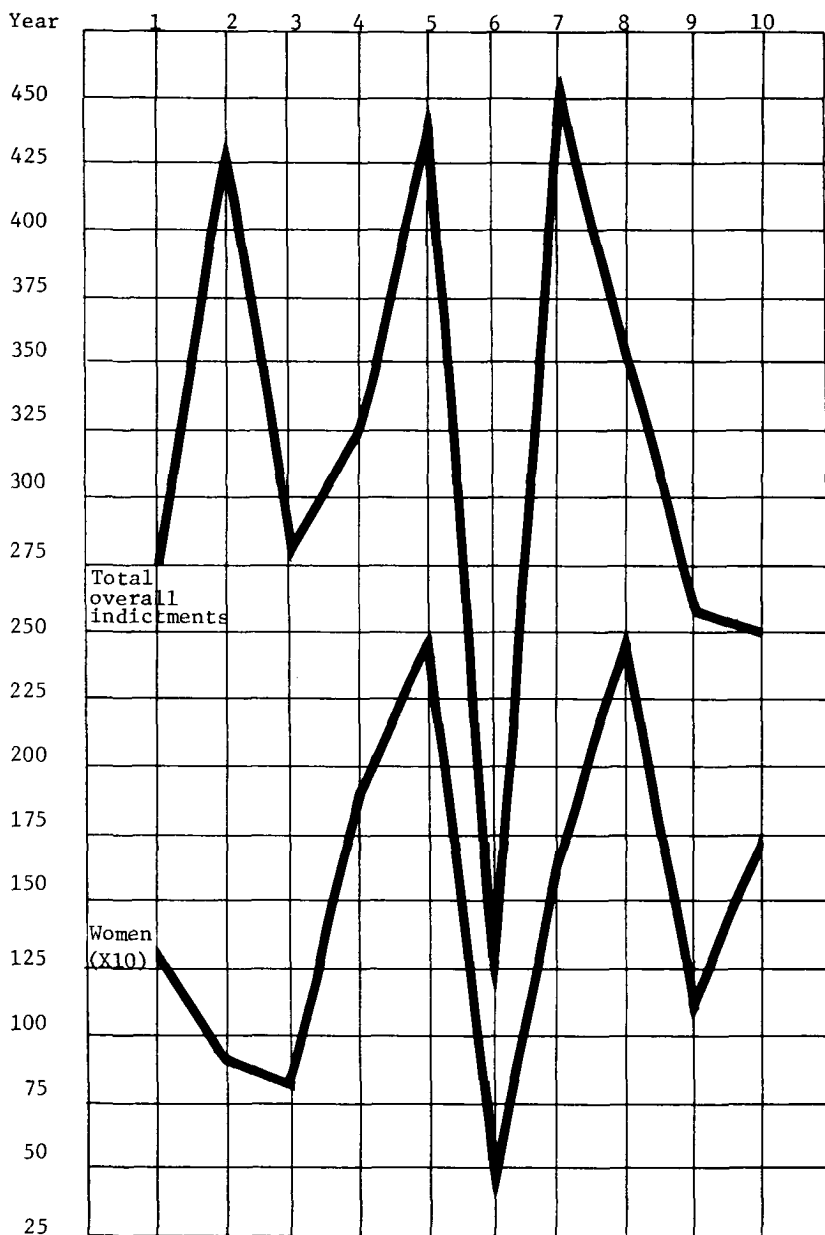


TABLE II Indictments of women compared with overall Gaol Delivery indictments 1400-1409