

## “OFFENDING WOMEN”: A DOUBLE ENTENDRE

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*Two of the most significant contributions of feminist criminology since the 1970s are the documentation of (1) the significant amount of violence against women and girls perpetrated by men and boys; and (2) how girls' and women's victimizations and trauma, often at the hands of abusive men, are risk factors for their subsequent offending or labeling as "offenders." On this one-hundredth anniversary of The Journal of Criminal Law and Criminology (Journal), I examined the nineteen articles written about women offenders in the first one hundred years, and in this Article, I summarize and critique the articles and place their findings in the context of current-day scholarship on feminist criminology. Overwhelmingly, these nineteen Journal "historical articles" were written primarily by women in the first three decades of the Journal (1910-1939), and they describe the characteristics of offending women and (speculations about) their offending, the reformatories and prisons in which these women were housed, and the laws regarding and leading to the implementation of women's reformatories. Unlike much of today's work on incarcerated women, these articles rarely consider race or the prisoners' lifetime traumas. When race is considered, it is frequently done so in a racist manner. The women's victimizations, if acknowledged, are typically indicated in a veiled manner. Still, these articles describe women who are highly marginalized by class and the conditions associated with economic marginalization: extremely poor health and very limited education and employment opportunities. At the same time, their survival behaviors, including prostitution, are criminalized alongside other offenses for which men are never incarcerated (such as having sex outside of marriage).*

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## I. INTRODUCTION

This Article is based on a careful reading of the articles published in the *Journal of Criminal Law and Criminology*<sup>1</sup> in its first one hundred years that address the histories, sentencing, housing (imprisonment), health, and other characteristics of women offenders.<sup>2</sup> The *Journal* published nineteen articles from 1913 to 1971 that fit these qualifications (about women offenders), and they are listed in Appendix 1. The articles range in topics, from what a women's reformatory should and did look like to descriptions of incarcerated women and the causes of women's criminal offending. The articles also vary in terms of the type and quality of research methods employed and the compassion, or lack thereof, the authors held for women offenders. Notably, most of the articles were written by women, and with the exception of one by Clarence Growdon,<sup>3</sup> the articles authored by men were not only the most sexist, but surprisingly, the most recent.<sup>4</sup>

In addition to a critical review of the nineteen articles, this Article also places the historical articles in the context of contemporary feminist criminology, a subfield which has grown exponentially in the past few decades. Although some themes are common in both older and more current studies, in other respects, the research differs. The most poignant difference is the invisibility of trauma, especially abuse, as a precursor to women's and girls' offending in the historical articles. In addition, the early articles either fail to address race and racism, or when race is addressed, it is nearly always done in a racist manner. Although this is not surprising given the time period in which these articles were written, it is still important to acknowledge. Despite some of the limitations, I do not want to diminish the importance of the topics these historical articles addressed, including the documentation of the dire consequences of poverty, "feeble-mindedness," "venereal diseases" (sexually transmitted infections), "epilepsy," and sexuality as risk factors for female offending, or more likely, labeling women as offenders.

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<sup>1</sup> This journal changed names a number of times over the first one hundred years, including the *Journal of the American Institute of Criminal Law and Criminology* and *Journal of Criminal Law, Criminology and Police Science*.

<sup>2</sup> Although the search for *Journal of Criminal Law and Criminology* articles to write this Article focused on adult women and offending, many of the studies on women's institutions included girls (minors), and a number of the studies discussed at least some of the women's childhoods.

<sup>3</sup> Clarence H. Growdon, *The Mental Status of Reformatory Women*, 22 J. AM. INST. CRIM. L. & CRIMINOLOGY 196 (1931).

<sup>4</sup> See Desmond P. Ellis & Penelope Austin, *Menstruation and Aggressive Behavior in a Correctional Center for Women*, 62 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 388 (1971); Val Beyer Satterfield, *Criminal Responsibility of Women*, 43 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 756 (1953).

Before reporting in detail on themes in the historical articles, it is useful to summarize the nineteen historical articles as a group. First, most of the historical articles were published in the first two decades of the *Journal* (1910 to 1929); indeed, twelve of the nineteen articles (six per decade for each of these first two decades) were published before 1930. Four of the historical articles were published in the 1930s, none in the 1940s or 1960s, only two in the 1950s, one in the 1970s, and none in the past three decades (1980 to 2010). Second, all but three of the nineteen articles were written by women. Interestingly, the two most recent articles were both written by men—Satterfield in 1953<sup>5</sup> and Ellis and Austin in 1971<sup>6</sup> (Austin is a female co-author)—and they are alone in their focus on women’s biological nature as causing their offending or distinguishing it from men’s offending. Third, the sixteen articles published in the first three decades were exclusively about women’s prisons and reformatories and women prisoners.

In considerable contrast to the sixteen articles that preceded them, the final three historical articles published in the first one hundred years of the *Journal* are about the role of women police officers,<sup>7</sup> “biological nature” as an explanation of women’s offending,<sup>8</sup> and the link between incarcerated women’s menstruation and their aggressive behaviors.<sup>9</sup> This Article will not address these final three articles in depth, mostly because they are aberrations compared to the other sixteen historical articles. For the most part, Higgins’s article is a somewhat defensive argument identifying the importance of having women police officers.<sup>10</sup> One can understand the defensive stance that Higgins and other women police assumed in 1950, given the intense resistance to women police officers that occurred two decades later when police departments were forced to hire women into patrol positions in unprecedented numbers after Title VII in 1972.<sup>11</sup> And while Higgins provides some compelling reasons to hire women police and notes their contributions to law enforcement (although sometimes in sexist

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<sup>5</sup> Satterfield, *supra* note 4.

<sup>6</sup> Ellis & Austin, *supra* note 4.

<sup>7</sup> See Lois Higgins, *Women Police Service*, 41 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 101 (1951).

<sup>8</sup> See Satterfield, *supra* note 4.

<sup>9</sup> See Ellis & Austin, *supra* note 4.

<sup>10</sup> Higgins, *supra* note 7.

<sup>11</sup> SUSAN E. MARTIN, *BREAKING AND ENTERING: POLICEWOMEN ON PATROL* (1980); Donna C. Hale, *Women in Policing*, in *WHAT WORKS IN POLICING? OPERATIONS AND ADMINISTRATION EXAMINED* 125 (Gary W. Cordner & Donna C. Hale eds., 1992); Dorothy M. Schulz, *Policewomen in the 1950s: Paving the Way for Patrol*, 4 *WOMEN & CRIM. JUST.* 5 (1993).

examples), her article on women police is almost entirely unrelated to the remaining articles that focus on female offenders.<sup>12</sup>

The two most recent *Journal* articles, comprise two of the three historical articles about women offenders written by men and are the most sexist of the nineteen historical articles—throwbacks to Cesare Lombroso's obsession with women's biological make-ups as contributing to their offending, Sigmund Freud's "anatomy as destiny," and Otto Pollok's focus on women's menstruation as symbolic of their deviance/offending.<sup>13</sup> While it is beyond the scope of this Article to pick apart in detail Satterfield's and Ellis and Austin's research, their articles will be revisited in the conclusion, in a discussion of how the focus on biology to explain offending is certainly growing in criminology currently.<sup>14</sup>

Before proceeding to a more detailed account of the *Journal's* historical articles on women offenders, it is worth noting the authors' backgrounds and accounting for the high quality of some of these same articles. Regarding the first point, although information on these women authors was often missing, it was clear that many of them were closely affiliated with the institutions about which they were writing. For example, in footnotes or in the articles themselves, the authors were often identified as superintendents, medical providers, or researchers for reformatories, prisons, or other agencies in the criminal legal system (such as the Crime Prevention Bureau or the Bureau of Research). Moreover, many of these women authors had impressive educational backgrounds, especially when one considers the time periods in which they were conducting research and writing. For example, in this small sample, at least three of the women authors were medical doctors (Spaulding, Guibord, and Potter), and at least three had Ph.D.'s (Bryant, Bowman, and Davis). Given research indicating a desire for the professionalization of women's reformatories' supervisors and wardens, perhaps it should come as no surprise that most of the women writing these articles were superintendents of or physicians in women's reformatories or prisons, or women statisticians for the prison system. In fact, the first two decades of the 1900s, the Progressive Era, saw a push for increased professionalism of the female prison/reformatory administrators and the incorporation of a medical model.<sup>15</sup> So, for the first time, the reformatories were managed by educated and experienced women professionals, and the Progressive Era was also distinguished by the establishment of physicians', psychiatrists', and psychologists' roles in

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<sup>12</sup> Higgins, *supra* note 7.

<sup>13</sup> Ellis & Austin, *supra* note 4; Satterfield, *supra* note 4.

<sup>14</sup> Ellis & Austin, *supra* note 4; Satterfield, *supra* note 4.

<sup>15</sup> NICOLE HAHN RAFTER, *PARTIAL JUSTICE: WOMEN IN STATE PRISONS, 1800-1935* (1985).

classifying offenders.<sup>16</sup> This finding by historian Nicole Hahn Rafter is reflected in these early *Journal* articles on offending women.<sup>17</sup>

Additionally, whether the women authors in the first hundred years of the *Journal* worked as superintendents of reformatories, medical doctors, doctors of philosophy (Ph.D.'s), or otherwise, most of them appeared to be committed to improving the lives of female offenders, and often passionately so. For example, four of the articles were authored or co-authored by Helen Worthington Rogers (between the dates of 1917 and 1929),<sup>18</sup> and all of these articles are about the laws and their impact on the housing of offending women in reformatories. Rogers was hugely committed to the implementation of reformatories for women, viewing such incapacitation of women as the only way to provide them with adequate treatment.<sup>19</sup> This is also consistent with prior research reporting that many of the first women lawyers in the United States were advocates for gender and racial equality.<sup>20</sup>

Of all the *Journal* articles reviewed, the author who likely had the longest scholarship legacy is the author of the first *Journal* article on women in prison. Katharine Bement Davis, born in 1860, was a truly remarkable individual who was active in such causes as abolition, racial civil rights, homosexuality studies, and women's suffrage, as well as

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<sup>16</sup> *Id.*

<sup>17</sup> See *infra* Table 1 for a summary of the *Journal* articles reviewed, which includes the authors' backgrounds and the topics they covered.

<sup>18</sup> Marlon Candy Dodd & Helen Worthington Rogers, *Tabulation of Laws Establishing Reformatories for Women in the United States*, 13 J. AM. INST. CRIM. L. & CRIMINOLOGY 408 (1922); Helen Worthington Rogers, *A History of the Movement to Establish a State Reformatory for Women in Connecticut*, 19 J. AM. INST. CRIM. L. & CRIMINOLOGY 518 (1929) [hereinafter Rogers, *A History of the Movement*]; Helen Worthington Rogers, *Digest of Laws Establishing Reformatories for Women in the United States*, 13 J. AM. INST. CRIM. L. & CRIMINOLOGY 382 (1922) [hereinafter Rogers, *1922 Digest*]; Helen Worthington Rogers, *Digest of Laws Establishing Reformatories for Women in the United States*, 8 J. AM. INST. CRIM. L. & CRIMINOLOGY 518 (1917) [hereinafter Rogers, *1917 Digest*].

<sup>19</sup> Three of Rogers's *Journal* articles (Dodd & Rogers, 1922; Rogers, 1917, 1922) are historical overviews of establishing reformatories for women in the United States, and Rogers's fourth *Journal* article is the history of establishing a state reformatory for women in Connecticut. In all four *Journal* articles, Rogers advocates for the necessity of women's reformatories, because “the problem of the delinquent woman is to be differentiated from that of the delinquent man,” Rogers, 1917 *Digest*, *supra* note 18, at 518, and “[t]he reformatory movement is indicative of the impulse to deal more intelligently, more scientifically and more humanely with the delinquent woman,” where “ultimately the sense of community justice will bring these [thirty-nine states without women's reformatories] also into action.” Dodd & Rogers, *supra* note 18, at 383.

<sup>20</sup> See Clarice Feinman, *Women in the Criminal Justice System* (1986); KAREN B. MORELLO, *THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA, 1638 TO THE PRESENT* (1986).

penology and criminology.<sup>21</sup> Indeed, in 2000 she was honored as “a founding figure in the ‘Chicago school of homosexual studies.’”<sup>22</sup> Notably, Davis received her doctorate from the University of Chicago in 1900, at the age of forty, in political economy and sociology.<sup>23</sup> One of Davis’s biographers, Mary Jo Deegan, notes that in 1913, Davis published a chapter in an edited book in which “[d]rawing on her feminist pragmatism, she showed that unemployment, under-employment and low salaries led women to prostitution.”<sup>24</sup> As the first woman Commissioner of Corrections in New York City (1914-1916), Davis was instrumental and outspoken in her policies encouraging the racial integration of women prisoners, and she resisted characterizations of the women’s prisoners’ homosexuality (often “raced” by references to supposedly lecherous African-American women prisoners) as “perverted.”<sup>25</sup> Although Katharine Bement Davis was named one of the three most famous women in the United States in 1915, and one of the twelve greatest women living in the United States in a national League of Women Voters poll in 1922, she was forgotten by 1933.<sup>26</sup>

Today’s feminist legal or criminology scholar, with additional information published since the work reported in the first one hundred years of the *Journal*, would likely disagree with some of these women authors’ contentions and views. Still, most of these women authors in the first one hundred years of the *Journal* could be classified as at least pro-feminist, if not extremely feminist. Again, this is particularly laudable given the times during which most of these articles were written. And it is also a tribute to the *Journal* as an institution that these articles were published.<sup>27</sup> Other themes in the articles, discussed in more detail below, and certainly prevalent in contemporary scholarship on incarcerated women, include the deplorable conditions of the prisons/reformatories and the extremely poor physical and mental health of the women prior to, as well as during, their incarceration.

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<sup>21</sup> Mary Jo Deegan, *Katharine Bement Davis (1860-1935): Her Theory and Praxis of Feminist Pragmatism in Criminology*, 14 *WOMEN & CRIM. JUST.* 15 (2003).

<sup>22</sup> *Id.* at 33.

<sup>23</sup> *Id.* at 21.

<sup>24</sup> *Id.* at 25.

<sup>25</sup> *Id.* at 28.

<sup>26</sup> *Id.* at 32; THOMAS C. MCCARTHY, *NEW YORK CITY’S SUFFRAGIST COMMISSIONER: CORRECTION’S KATHARINE BEMENT DAVIS* (1997), available at <http://www.correctionhistory.org/html/chronicl/kbd/kbdfpdf.html>.

<sup>27</sup> I could not help wondering as I read some of these articles if there were other pro-feminist/feminist articles that were rejected, whether the pro-feminist/feminist authors had to tone down their feminism to get these published, and whether the *Journal* reviewers were all men.

Finally, some of the research methods in these *Journal* articles are worth reporting. In fact, the thoroughness and commitment of some of these researchers from the beginning of the last century is humbling. For example, Edith R. Spaulding, a physician, classified the mental states of over four hundred women in the Massachusetts Reformatory for Women.<sup>28</sup> In addition to publishing articles on incarcerated women in the *Journal* in 1915 and 1918,<sup>29</sup> she also published a book, *Psychopathic Delinquent Women*, in 1923. Another physician, Alberta S. B. Guibord, reported detailed information on the physical states of two hundred incarcerated women at the State Reformatory for Women at Bedford Hills, N.Y. in her 1917 *Journal* article.<sup>30</sup> Without a doubt, the singularly most impressive study in these historical studies was conducted by Louise Stevens Bryant, Ph.D., who was reported in a footnote as being in charge of the Department of Research and Statistics of the Municipal Court of Philadelphia.<sup>31</sup> She conducted a mixed-methods study that included an ethnography of the prison, analysis of prison records, interviews with prison administrators, and interviews with women prisoners. The design is impressive by any standard, and her description of the interviews with the prisoners is consistent with current ideals for feminist methods:<sup>32</sup>

I attempted to get the woman's own story of her life, beginning with the events leading up to the commitment, and working backward. Where there was any reluctance shown in answering questions I did not press for details, as my interest was not so much in ascertaining facts as it was in gaining an insight into the woman's mental condition and her point of view about life. For the most part the women seemed ready to talk.<sup>33</sup>

Bryant went on to report that she followed up on the injustices in the system that some of the women reported and, in some of these cases, was able to help the women with earlier releases. This form of praxis, while often lauded in feminist methods, is rarely seen and is a testament to Dr.

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<sup>28</sup> Edith R. Spaulding, *The Results of Mental and Physical Examinations of Four Hundred Women Offenders—with Particular Reference to Their Treatment During Commitment*, 5 J. AM. INST. CRIM. L. & CRIMINOLOGY 704 (1915).

<sup>29</sup> Edith R. Spaulding, *Value of Mental Physical and Social Studies of Delinquent Women*, 9 J. AM. INST. CRIM. L. & CRIMINOLOGY 80 (1918).

<sup>30</sup> Alberta S. B. Guibord, *Physical States of Criminal Women*, 8 J. AM. INST. CRIM. L. & CRIMINOLOGY 82 (1917).

<sup>31</sup> Louise Stevens Bryant, *Women at the House of Correction in Holmesburg Pennsylvania*, 8 J. AM. INST. CRIM. L. & CRIMINOLOGY 844 (1918).

<sup>32</sup> CAROLINE RAMAZANOĞLU & JANET HOLLAND, *FEMINIST METHODOLOGY: CHALLENGES AND CHOICES* (2002); SHULAMIT REINHARZ, *FEMINIST METHODS IN SOCIAL RESEARCH* (1992); *FEMINIST RESEARCH PRACTICE: A PRIMER* (Hesse Biber, Sharlene Nagy & Patricia Lina Leavy eds., 2007).

<sup>33</sup> Bryant, *supra* note 31, at 846.

Bryant's commitment to do more than document the characteristics and conditions of the many incarcerated women she studied. She actually went out into the community to interview people about the crimes for which the women were incarcerated if she thought the circumstances of incarceration were unjust. And in some cases, she was able to use this information to successfully change unfair sentences.<sup>34</sup>

In concluding this introduction, I want to report that I learned a great deal about the history of women offenders from reading many of these historical articles and am somewhat embarrassed to note that I never knew of most of them beforehand. I am grateful to have read what many of these committed scholars and activists wrote and have gained significant historical insight that I hope the reader will gain as well.

## II. PROCESSING OFFENDING WOMEN: ARREST, PROBATION, AND PRISON

Much of the current research on the incarceration of women reports a virtual explosion in the rates of women's imprisonment since the 1970s.<sup>35</sup> While the incarceration rate for men in 2008 was about eight times the rate it was in 1970, women's incarceration rate in 2008 was twenty times what it was in 1970.<sup>36</sup> Thus, some may be surprised to learn that some of the historical articles in the *Journal* report even higher rates in the early part of the twentieth century than those reported for 2008, when women constituted 7.2% of the nation's prisoners. Davis's study of New York's 1910 incarceration rates reported that women represented 12% of those sentenced to state prisons, reformatories, county jails, and workhouses,<sup>37</sup> and Bryant's Philadelphia study reported that women accounted for 20% of the city's prisoners in 1915. The figures she provided, from 1911 to 1914, indicate that women made up 26% of Philadelphia's prisoners.<sup>38</sup> Potter's article

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<sup>34</sup> *Id.* at 863-65.

<sup>35</sup> See, e.g., PAIGE M. HARRISON & ALLEN J. BECK, U.S. DEP'T OF JUSTICE, PRISON AND JAIL INMATES AT MIDYEAR 2004 (2005); Natalie J. Sokoloff, *Women Prisoners at the Dawn of the 21st Century*, 16 WOMEN & CRIM. JUST. 127 (2005); Julia Sudbury, *Celling Black Bodies: Black Women in the Global Prison Industrial Complex*, FEMINIST REV., July 2005, at 162.

<sup>36</sup> Specifically, in the United States, 190,794 men were incarcerated in 1970, and this number grew to 1,495,594 in 2008. For this same time period in the United States, 5,635 women were incarcerated in 1970, and this number grew to 114,852 in 2008. WILLIAM J. SABOL, HEATHER C. WEST & MATTHEW COOPER, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2008 46 (2009), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf>; BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PRISONERS 1925-81 2 (1982).

<sup>37</sup> Katharine Bement Davis, *Plan of Rational Treatment for Women Offenders*, 4 J. AM. INST. CRIM. L. & CRIMINOLOGY 402, 402 (1913).

<sup>38</sup> Bryant, *supra* note 31, at 845, 852.

identifies 1932 as the "new low" in women's incarceration, when they constituted only 4.3% of prisoners in state prisons or reformatories or federal prisons,<sup>39</sup> a rate that apparently remained relatively stable until the 1980s.<sup>40</sup>

Explanations for these extraordinarily high proportions of incarcerated women (relative to incarcerated men) reported in the *Journal*, and for the relatively high rates of female incarceration compared to today's rate (over 7%), could be due to workhouses and reformatories contributing to net-widening, where judges felt more comfortable sentencing women, especially for more minor infractions. However, the *Journal* article by Rosenbaum provides a more compelling explanation.<sup>41</sup> While Chesney-Lind has identified the "war on drugs" as a "war on women," one might say that the war on morality, with a focus on sexuality, of earlier generations was as well a "war on women."<sup>42</sup> Rosenbaum identifies a "sex delinquent" as a woman convicted of adultery, being lewd, wanton, and lascivious in speech and behavior, or prostitution.<sup>43</sup> Moreover, she found that over half of the women at the Massachusetts State Reformatory at Framingham had such "sex offense" charges. Similarly, Bowman's report of data from the same institution from 1931 to 1933 found that 48% of the women were in for "sex offenses" and 12% had been committed for being "idle and disorderly."<sup>44</sup> Similar to Rosenbaum, Bowman's "sex offenses" were not for sexually abusing anyone or coercing or forcing sex, but rather for consensual sexual behavior.<sup>45</sup> There is no such accounting of nor punishment for men's consensual sex, as can be seen in other historical work.<sup>46</sup>

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<sup>39</sup> Ellen C. Potter, *Problem of Women in Penal and Correctional Institutions*, 25 J. AM. INST. CRIM. L. & CRIMINOLOGY 65, 65 (1934).

<sup>40</sup> JOYCELYN M. POLLOCK, *WOMEN PRISON & CRIME* (2d ed. Wadsworth Thomson Learning 2002) (1990).

<sup>41</sup> Betty B. Rosenbaum, *The Sociological Basis of the Laws Relating to Women Sex Offenders in Massachusetts (1620-1860)*, 28 J. AM. INST. CRIM. L. & CRIMINOLOGY 815 (1937-38).

<sup>42</sup> Meda Chesney-Lind, *Reinventing Women's Corrections*, in *THE INCARCERATED WOMAN: REHABILITATIVE PROGRAMMING IN WOMEN'S PRISONS 3* (Susan F. Sharp ed., 2003); Meda Chesney-Lind, *Patriarchy, Prisons, and Jails: A Critical Look at Trends in Women's Incarceration*, 71 PRISON J. 51 (1991).

<sup>43</sup> Rosenbaum, *supra* note 41, at 815.

<sup>44</sup> Mary Jean Bowman, *Causes of Arrest of Women Committed to the Massachusetts State Reformatory*, 30 J. AM. INST. CRIM. L. & CRIMINOLOGY 77, 77 (1939).

<sup>45</sup> *Id.*; Rosenbaum, *supra* note 41, at 815.

<sup>46</sup> MARA L. DODGE, "WHORES AND THIEVES OF THE WORST KIND": A STUDY OF WOMEN, CRIME, AND PRISONS, 1835-2000 (2002).

In this and other articles, we see what Clarice Feinman<sup>47</sup> and other historians of women prisoners and prisons<sup>48</sup> reported for this time period: women were largely incarcerated for being “immoral,” and much of their immorality had to do with prostitution and other consensual sex that was not prostitution. Indeed, according to Davis’s article, women’s immorality was linked to the call for indeterminate sentencing for female offenders, due to a need for individual treatment “to fit the criminal rather than an attempt to make the punishment fit the crime.”<sup>49</sup> Another *Journal* article, a study by Growdon using 1930 data, reported that adultery and bigamy were felonies (apparently only applied to women).<sup>50</sup> Notably, this same article identified assault and battery as misdemeanors, providing further support for the contention that the priority of the era was punishing women’s consensual sex.

Bryant’s 1918 *Journal* article indicated highly chivalrous treatment by both police and magistrates for the women offenders, reporting that women had numerous encounters with the police before they were arrested and with magistrates before they were committed to prisons/reformatories.<sup>51</sup> Bryant suggested that this might be due to the police and magistrates’ frustration with the sexist and petty laws, expecting them to arrest and incarcerate women for such minor infractions (such as public lewdness). Similar to more recent research, Bryant’s study also suggested that such chivalrous treatment was reserved for white women and unavailable to black women.<sup>52</sup>

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<sup>47</sup> CLARICE FEINMAN, *WOMEN IN THE CRIMINAL JUSTICE SYSTEM* (1986); Clarice Feinman, *Sex-Role Stereotypes and Justice for Women*, in *WOMEN AND CRIME IN AMERICA* 383 (Lee H. Bowker ed., 1981); Clarice Feinman, *A Historical Overview of the Treatment of Incarcerated Women: Myths and Realities of Rehabilitation*, 63 *PRISON J.* 12 (1983).

<sup>48</sup> DODGE, *supra* note 46; RAFTER, *supra* note 15; Nicole Hahn Rafter, *Gender and Justice: The Equal Protection Issue*, in *THE AMERICAN PRISON* 89 (Lynne Goodstein & Doris Layton MacKenzie eds., 1989).

<sup>49</sup> Davis, *supra* note 37, at 403.

<sup>50</sup> Growdon, *supra* note 3.

<sup>51</sup> Bryant, *supra* note 31.

<sup>52</sup> BIKO AGOZINO, *BLACK WOMEN AND THE CRIMINAL JUSTICE SYSTEM: TOWARDS THE DECOLONISATION OF VICTIMISATION* (1997); ANNE M. BUTLER, *GENDERED JUSTICE IN THE AMERICAN WEST* (1997); RUTH CHIGWADA-BAILEY, *BLACK WOMEN’S EXPERIENCES OF CRIMINAL JUSTICE: A DISCOURSE ON DISADVANTAGE* (1997); M.A. Bortner, Mary L. Sunderland & Russ Winn, *Race and the Impact of Juvenile Deinstitutionalization*, 31 *CRIME & DELINQ.* 35 (1985); Candace Kruttschnitt, *Social Status and Sentences of Female Offenders*, 15 *LAW & SOC’Y REV.* 247 (1981); Michael J. Leiber & Kristin Y. Mack, *The Individual and Joint Effects of Race, Gender, and Family Status on Juvenile Justice Decision-Making*, 40 *J. RES. CRIME & DELINQ.* 34 (2003); Trina N. Seitz, *The Wounds of Savagery: Negro Primitivism, Gender Parity, and the Execution of Rosanna Lightner Phillips*, 16 *WOMEN & CRIM. JUST.* 29 (2005); Cassia Spohn, John Gruhl & Susan Welch, *The Impact of the Ethnicity and Gender of Defendants on the Decision to Reject or Dismiss Felony Charges*, 25 *CRIMINOLOGY* 175 (1987); Darrell Steffensmeier, Jeffery Ulmer & John

Many of the women authoring the historical articles championed indeterminate sentencing for women,<sup>53</sup> with one who was otherwise sympathetic to the women suggesting that most of the incarcerated women, despite their horrible histories, should stay in the institutions.<sup>54</sup> More recent feminist prison scholars have derided indeterminate sentencing for resulting in women serving much longer sentences compared to men for the same offenses or for behaviors that are not considered criminal when men commit them, such as adultery.<sup>55</sup> Additionally, that men are equally, or likely more, "immoral" was treated by Davis in her 1913 *Journal* article:

There is little doubt in the minds of those who have had much experience in dealing with women delinquents, that the fundamental fact is that they belong to the class of women who lead sexually immoral lives. This is probably true also for the criminal man but no statistics can be had on this point, and unless men can be proved to have engaged in the white slave trade or of living upon the earnings of prostitution, nothing can be done by law.<sup>56</sup>

Thus, it was not immoral for men to employ prostitutes, only to earn money off of women prostitutes. Moreover, as this same article points out, most of the disorderly conduct and public intoxication charges against women that resulted in their incarceration were indications of their immorality, while such behavior was tolerated when done by men.<sup>57</sup> In one 1918 *Journal* article, a twenty-year-old woman's offense that resulted in her incarceration was "contracting venereal disease in the practice of debauchery."<sup>58</sup>

Bryant's study found that three-fifths of the incarcerated women had been incarcerated previously, one-third had four or more prior commitments, and the average number of commitments per prisoner was 5.5.<sup>59</sup> Six months was considered a long sentence for women, and the average sentence was three months.<sup>60</sup> This was the same study that concluded the magistrates were not following legislation about sentences

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Kramer, *The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male*, 36 *CRIMINOLOGY* 763 (1998).

<sup>53</sup> Bryant, *supra* note 31; Davis, *supra* note 37; Rogers, 1917 *Digest*, *supra* note 18.

<sup>54</sup> Bryant, *supra* note 31.

<sup>55</sup> DODGE, *supra* note 46; Clarice Feinman, *Criminal Codes, Criminal Justice and Female Offenders: New Jersey as a Case Study*, in *THE CHANGING ROLES OF WOMEN IN THE CRIMINAL JUSTICE SYSTEM: OFFENDERS, VICTIMS AND PROFESSIONALS* 41 (Imogene L. Moyer ed., 1992); Carolyn E. Temin, *Discriminatory Sentencing of Women Offenders: The Argument for ERA in a Nutshell*, in *WOMEN, CRIME, AND JUSTICE* 255 (Susan K. Datesman & Frank R. Scarpitti eds., 1980).

<sup>56</sup> Davis, *supra* note 37, at 403.

<sup>57</sup> *Id.*

<sup>58</sup> Spaulding, *supra* note 29, at 81.

<sup>59</sup> Bryant, *supra* note 31.

<sup>60</sup> *Id.*

for repeat convictions and that this was likely due to the magistrates' belief "that it is unjust to punish these relatively harmless persons more severely than so-called real criminals."<sup>61</sup> It is also important to keep in mind that these reformatories were largely filled with women who had committed very minor offenses such as prostitution, public disorder, or drunkenness. At the same time, women were sentenced to the reformatories for such illegal yet exceedingly minor offenses as being a "worthless person" and first time drunkenness charges.<sup>62</sup>

The pettiness of offenses that landed women in prison is exemplified in Sanborn's case study of Cora (a fictitious name): a young woman whose first three arrests were all for "drunkenness" spread over a five year period starting when she was eighteen years old.<sup>63</sup> In 1916, ten months after her third "drunkenness" arrest, "with her long-time evil chum, [Cora was] arrested on railroad bridge between two towns where with two men they were carousing boisterously"; the men had left and the "two women, trying noisily to climb a telegraph pole, were taken into custody. By their vile actions and obscene talk they proved to be the most vicious women ever recalled by the arresting officers or court officials. Both were sent, for drunkenness, to the reformatory" where Cora served ten months.<sup>64</sup> She was in and out of reformatories and insane hospitals for the remainder of her records (seven more years).

Few of the historical *Journal* articles addressed parole, but Rogers's first *Journal* article on the history of women's reformatories noted that the conditions of women's parole sometimes included that they must secure suitable employment, money, and clothing prior to release.<sup>65</sup> It is not clear if such demands were ever made of male prisoners. A later article by Rogers identifies most of these same requirements as well as "good physical condition" as a legislated requirement for prison/reformatory release, which seems, from what is said about the nutrition, medical care (or lack thereof), and other conditions in prisons, almost impossible. Women prisoners were regarded as largely in very poor physical and mental health in these historical articles.<sup>66</sup> Potter appears nonplussed about the inherent sexism in her statement that "the problem in [women's] parole" is "inherent in the sex," in that prison staff needed to find good homes for the released

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Barbara W. Sanborn, *An Analysis of the Population of the Reformatory for Women at Framingham, Mass.*, 16 J. AM. INST. CRIM. L. & CRIMINOLOGY 127, 140 (1925).

<sup>64</sup> *Id.*

<sup>65</sup> Rogers, 1917 *Digest*, *supra* note 18.

<sup>66</sup> *Id.*

women to work in as maids.<sup>67</sup> She adds that this requires "a tremendous amount of character development [by women prisoners]."<sup>68</sup>

### III. THE INSTITUTIONS

#### A. CUSTODIAL AND REFORMATORY INSTITUTIONS

As stated previously, four of the nineteen historical articles reviewed for this Article were authored or co-authored by Helen Worthington Rogers, identified as a member of the Committee on Delinquent Women of the Connecticut Prison Association.<sup>69</sup> All four of her *Journal* articles document the development of, resistance to, and historical trajectory of the implementation and operation of women's reformatories. Most simply, reformatories can be distinguished from what are typically labeled the "custodial" institutions, the latter being the more conventional prisons and penitentiaries. A more recent account of the history of women's reformatories notes that their implementation was very much involved with controlling women's sexuality:

[M]any women's reformatories were built during World War I and soon thereafter when a growing concern emerged about the effect of both venereal diseases on men preparing to go to war and on women's and infants' health. Believing "immoral" sex to be the culprit, society began a somewhat aggressive campaign to eliminate sexual immorality by incarcerating women prostitutes for reformation. To the extent that women were the primary targets of this campaign, discriminatory practices occurred in apprehension, trial, and imprisonment.<sup>70</sup>

Since the publication of the historical *Journal* articles on women in prison, more recent feminist historians, writing in the 1970s and 1980s, have documented the pros and cons of the women's reformatory movement.<sup>71</sup> The reformatories were designed more with a cottage-style and homey architecture (often compared to college campuses) than the custodial prisons, but the reformatories included an often patronizing

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<sup>67</sup> Potter, *supra* note 39, at 72.

<sup>68</sup> *Id.* at 72-73.

<sup>69</sup> See *supra* note 18 and accompanying text.

<sup>70</sup> Rudolph Alexander, Jr., Lola Butler & Patricia Sias, *Women Offenders Incarcerated at the Ohio Penitentiary for Men and the Ohio Reformatory for Women from 1913-1923*, 20 J. SOC. & SOC. WELFARE 61 (1993).

<sup>71</sup> See RAFTER, *supra* note 15; Clarice Feinman, *Sex-Role Stereotypes and Justice for Women*, *supra* note 47; Estelle Freedman, *Nineteenth-Century Women's Prison Reform and Its Legacy*, in 1 WOMEN AND THE LAW: A SOCIAL HISTORICAL PERSPECTIVE 141 (D. Kelly Weisberg ed., 1982); Rafter, *supra* note 48; Feinman, *A Historical Overview of the Treatment of Incarcerated Women*, *supra* note 47; Estelle B. Freedman, *Their Sisters' Keepers: An Historical Perspective on Female Correctional Institutions in the United States: 1870-1900*, 2 FEMINIST STUD. 77 (1974).

atmosphere, aimed at reinforcing gender stereotypes for women, such as “helping” them to be good wives and maids. In her earliest article, Rogers reported that the legislation establishing the first ten women’s reformatories in the United States typically identified the purposes of these institutions as “[c]ustody, preservation of health, reformation of character, education for self-support and the prevention of young offenders from becoming hardened criminals.”<sup>72</sup> She also noted that “women’s reformatory legislation may be said to be uniformly based on the principle that the best protection of society is gained through the reformation rather than by the punishment of the offender.”<sup>73</sup>

Rogers tracked how the implementation of the reformatories for women occurred with separate, and also less physically intimidating, structures for juveniles (both girls and boys). She also traced both the legislation and the finished buildings for women’s incarceration, beginning with legislation in 1869 in which “Indiana established a separate prison, managed and officered by women, to which all women prisoners confined in the state prison were transferred” at its opening in 1873.<sup>74</sup> In a forty-one-year period, from 1861 to 1910, only four states (Indiana, Massachusetts, New York, and Ohio) passed legislation and implemented women’s reformatories; between 1910 and 1915 (a five-year period), six more states did so (New Jersey, Ohio, Pennsylvania, Wisconsin, Maine, and Minnesota). Rogers identified three other states (Alabama, Oregon, and Nebraska) that claimed to have reformatories for women passed by legislation and implemented, but wherein the reformatories did not fit her criteria of age limits or a voluntary commitment clause.<sup>75</sup> She then conducted a survey of the ten reformatories that met her designation of reformatory. In all of her articles, she championed not only the implementation of reformatories, but the need for women as supervisors, board members, and staff in women’s reformatories.

In her last article, Rogers documented the fifty-three-year battle for the government to enact a separate correctional institute, a reformatory, for women in the state of Connecticut.<sup>76</sup> The final paragraph of this article is poignant and powerful:

Taken as a whole, the woman’s reformatory movement in Connecticut was built, like the coral reef, by the contributed efforts of countless, forgotten and unthanked men and women in many and varied organizations and as individuals in public health, in social hygiene, in churches, in clubs and in other groups but it finally came to rest

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<sup>72</sup> Rogers, 1917 *Digest*, *supra* note 18, at 528.

<sup>73</sup> *Id.* at 553.

<sup>74</sup> *Id.* at 518.

<sup>75</sup> *Id.*

<sup>76</sup> Rogers, *A History of the Movement*, *supra* note 18.

upon the laps of the progressive and public spirited women of the community, for many years waiting their emancipation from lack of sympathy with the handicapped of their own sex, from their reluctance to appear publicly in their behalf, from their inexperience in cooperative effort and from their lack of influence in the body politic.<sup>77</sup>

It is relatively easy to be frustrated with these early advocates for women prisoners who championed indeterminate sentencing without seeing how it could lead to net-widening and longer sentences for women compared to men. But when I read of the unbelievably poor physical and mental conditions of so many of the incarcerated women, I could not help but wonder if prison was safer for some of them, especially the large number of “feeble-minded” women. Even in some of my own more recent research, many incarcerated delinquent girls reported that they would rather be incarcerated than be at home.<sup>78</sup> In addition, as I read these *Journal* articles written by women from 1913 to 1934, I often wondered about the political climate in which these women scholars were writing and advocating. Could it be that in order to succeed in implementing sex-segregated incarceration, the women reformers had to include sexist programming and indeterminate sentencing? More specifically, in order to enhance incarcerated women’s safety by having separate prisons for women and led by women, did they have to “give in” to indeterminate sentencing? Or perhaps it was the case that these reformers did not understand how the restructuring could increase women’s likelihood of incarceration and length of sentence.

#### B. PROGRAMMING IN AND PRIOR TO WOMEN’S INCARCERATION

In one of the most compassionate *Journal* articles reviewed, Elva M. Forncrook, Director of the Women’s Division of the Probation Department in Detroit, described an existing and very innovative, flexible probation program with highly trained probation officers, who appeared to be exceptionally skilled and patient in addressing the individual needs of women offenders, particularly the “feeble-minded.”<sup>79</sup> The program appeared to be highly successful and could possibly be implemented with success today, although it is difficult to imagine the public sector providing the funding for it.

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<sup>77</sup> *Id.* at 541.

<sup>78</sup> Joanne Belknap & Kristi Holsinger, *The Gendered Nature of Risk Factors for Delinquency*, 1 FEMINIST CRIMINOLOGY 48 (2006).

<sup>79</sup> Elva M. Forncrook, *Probation for Women*, 14 J. AM. INST. CRIM. L. & CRIMINOLOGY 605 (1924).

Significantly, many of the historical *Journal* articles advocated for better education for the women offenders.<sup>80</sup> At the same time, much of that education is consistent with the types of education documented by women prison scholars in the 1980s and since,<sup>81</sup> including such characteristics as “self-restraint,”<sup>82</sup> “religious instruction” and “purity,”<sup>83</sup> and “hygiene.”<sup>84</sup> One historical article noted that the educational system for the prisoners should include “some academic work,” but also training in appreciating beauty in “nature, art or character,” and that “patriotism and Americanism should be inculcated into their daily lives.”<sup>85</sup>

For the most part, these historical *Journal* articles indicated that the major activity of the prisoners was one of working to run the prison, and this work was grueling (usually related to cleaning and sewing) and exhausting (lasting up to twelve hours a day with little relief).<sup>86</sup> The incarcerated women were typically locked in their cells from 5:30 p.m. to 6:30 a.m. and given exceptionally little food.<sup>87</sup> A historical *Journal* article by Potter<sup>88</sup> claimed that administrators used women’s smaller numbers as an excuse not to supply programming for women that was even remotely similar as that available to men prisoners. Indeed, Potter referred to this “per capita” problem as a “bugbear” in which “industrial, vocational, cultural, academic [training] in a woman’s institution has many limitations which no amount of imagination can overcome.”<sup>89</sup>

#### IV. THE ADMINISTRATION AND STAFF

Bryant<sup>90</sup> provided a touching portrayal of the prison/reformatory matrons, describing them as very helpful to the prisoners and generous in terms of offering the women clothes, money out of their own pockets, help in securing employment, and letters to the women post-incarceration. The matrons’ hours were described as “long” and “constant,” and their care for

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<sup>80</sup> See Bryant, *supra* note 31; Davis, *supra* note 37; Forncrook, *supra* note 79.

<sup>81</sup> RUSSELL P. DOBASH, R. EMERSON DOBASH & SUE GUTTERIDGE, *THE IMPRISONMENT OF WOMEN* (1986).

<sup>82</sup> Davis, *supra* note 37, at 408.

<sup>83</sup> *Id.*; Anna M. Petersen, *Administrative Problems of a Women’s Reformatory*, 13 J. AM. INST. CRIM. L. & CRIMINOLOGY 438 (1922) at 443; Rogers, 1922 *Digest*, *supra* note 18, at 397.

<sup>84</sup> DOBASH, DOBASH & GUTTERIDGE, *supra* note 81, at 52.

<sup>85</sup> Petersen, *supra* note 83, at 443.

<sup>86</sup> Bryant, *supra* note 31.

<sup>87</sup> *Id.*

<sup>88</sup> Potter, *supra* note 39.

<sup>89</sup> *Id.* at 72.

<sup>90</sup> Bryant, *supra* note 31.

the prisoners was described as “genuine devotion.”<sup>91</sup> Moreover, Bryant concluded, “[t]he House of Correction of Philadelphia is strikingly free from any signs of harsh, humiliating or degrading treatment. The officers are uniformly kind, and in three months I never heard anything approaching complaint by the inmates as to personal treatment.”<sup>92</sup>

Given that the vast majority of the historical articles were written by women, it is probably not surprising that they advocated for hiring only women supervisors and hiring primarily or only women staff.<sup>93</sup> Some of the historical studies identified as unfair and too demanding the starkly low pay for matrons and staff, the excessively long hours, and the expectation that matrons and staff would live in the institutions.<sup>94</sup>

## V. THE PRISONERS

### A. DEMOGRAPHIC DESCRIPTIONS OF THE FEMALE OFFENDERS

*Age.* Spaulding’s study of four hundred women in a Massachusetts reformatory reported that the women ranged in age from seventeen to eighty-one years, with a mean age of 27.4 years old, and more than 70% of the women under the age of thirty.<sup>95</sup> Bryant’s study of three hundred women in Philadelphia found the mean age was forty years, with 46% of the population under the age of forty.<sup>96</sup>

*Education.* The historical studies reported that many of the women offenders never attended school or only attended for a few years prior to incarceration. One study reported that only 3% of the women completed grammar school, and that those who attended school often went to schools sorely lacking in equipment; another study reported that only 4% of the women had attended school past grammar school.<sup>97</sup> Yet another study reported that a quarter of the women had no schooling and only 44% went beyond the fourth grade.<sup>98</sup> Another reported that 9% of women on probation had no schooling, and 73% went above fourth grade.<sup>99</sup> Moreover, “no schooling” was highly correlated with repeat prison

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<sup>91</sup> *Id.* at 847.

<sup>92</sup> *Id.* at 885.

<sup>93</sup> *See, e.g.*, Rogers, 1922 *Digest*, *supra* note 18, at 402-03.

<sup>94</sup> *See, e.g.*, Bryant, *supra* note 31, at 887; Petersen, *supra* note 83, at 440; Potter, *supra* note 39, at 74.

<sup>95</sup> Spaulding, *supra* note 28, at 715.

<sup>96</sup> Bryant, *supra* note 31, at 855.

<sup>97</sup> Spaulding, *supra* note 28, at 706.

<sup>98</sup> Bryant, *supra* note 31, at 877.

<sup>99</sup> Forncrook, *supra* note 79, at 616-17.

convictions.<sup>100</sup> Forncrook reported, “The most striking single feature is the lack of education. Further education for the adult [offending] woman is difficult, as she is sensitive about entering classes, or feels unable to do so. Also, it is difficult to fit her into the educational system.”<sup>101</sup>

*Employment.* Guibord’s large-scale study of incarcerated women’s personal histories found that almost 75% had been employed in domestic labor or factories, and 3% “as anything as skilled as office work.”<sup>102</sup> (The study does not indicate where the remaining women worked or if they worked.) Another large study found that women had primarily worked doing housework for others, did not work, or worked in factories.<sup>103</sup> A study of women on probation found that almost half were “housewives,” 10% were maids, 9% were unemployed, 7% worked in factories, and the remainder worked a variety of jobs, mostly low paying.<sup>104</sup>

*Immigrant Status.* Most studies, if they addressed immigrant status, only did so in passing rather than identifying it as a risk factor<sup>105</sup> as has been done in more recent historical studies of women’s incarceration.<sup>106</sup> One study of three-hundred women prisoners, however, reported that over two-fifths were immigrants, with English-speaking countries contributing the most (particularly Ireland).<sup>107</sup> A study of women on probation in Detroit found that 31% were immigrants and noted that “[m]any women are taken on probation because of their ignorance of American standards of living.”<sup>108</sup> A study of the Ohio Reformatory for Women conducted between 1925 and 1930 found that 20% of the population included immigrants and all of these immigrants were white women.<sup>109</sup>

*Race.* As mentioned in the introduction, “race” is curiously absent from most of the articles, and when it is included, it is often used in highly racist depictions and assumptions. The first time race is mentioned is in Guibord’s study,<sup>110</sup> in which she identifies race as an overall non-significant factor but later notes that cephalic (head/skull) measurements “bear out the fact already established that the cephalic index is smaller for a negro than for a Caucasian group. . . . This fact probably has direct relation to the

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<sup>100</sup> Bryant, *supra* note 31, at 877.

<sup>101</sup> Forncrook, *supra* note 79, at 617.

<sup>102</sup> Guibord, *supra* note 30, at 85.

<sup>103</sup> Bryant, *supra* note 31, at 866.

<sup>104</sup> Forncrook, *supra* note 79, at 616.

<sup>105</sup> See, e.g., Sanborn, *supra* note 63; Spaulding, *supra* note 28, at 707.

<sup>106</sup> See, e.g., DODGE, *supra* note 46.

<sup>107</sup> Bryant, *supra* note 31, at 862.

<sup>108</sup> Forncrook, *supra* note 79, at 618.

<sup>109</sup> Growdon, *supra* note 3, at 199.

<sup>110</sup> Guibord, *supra* note 30, at 84, 87-88.

generally low average intelligence of the group."<sup>111</sup> (This is particularly disconcerting since, on other issues, Guibord offers some of the least sexist insights.) Notably, none of the *Journal* articles mention the women being racially segregated within the reformatories, although other historical accounts report this.<sup>112</sup>

Bryant is the first of the *Journal* historical authors to identify racial makeup of the women prisoners, and she reported that in her study of prison records in Philadelphia in 1915, 14% (n=16) of an otherwise white population were black (or "colored" as she identified them).<sup>113</sup> Forncrook's study of women on probation in Detroit in 1922 reported that 16% of the 682 women coming through the courts were black.<sup>114</sup> A study of the Ohio Reformatory for Women conducted between 1925 and 1930 found that 40% of the population was black.<sup>115</sup> Taken together, these articles suggest a growing rate of criminalizing women of color over time.

Notably, Bryant<sup>116</sup> found that compared to the white women, black women had better leadership skills in the prison, and both she and the matrons noted that the black women were "of a higher class" on the whole compared to the white women; they were also more docile, obedient, and worked better.<sup>117</sup> In addition, the black women were more educated, more literate, more likely to be born in the United States, less likely to suffer from alcoholism, more likely to be committed due to prostitution, and less likely to be committed due to habitual drinking than the white women.<sup>118</sup> The black women were also far less likely than the white women to present with mental abnormalities.<sup>119</sup> These findings suggest less chivalry available to black than white women.

One of the few historical *Journal* articles written by a man, Growdon,<sup>120</sup> was the only such article devoted to racial comparisons and was conducted to determine the "mental ages" (an intelligence measure) of women incarcerated over a five-year period in Ohio, 1925 to 1930, and to compare them to the mental ages of men in the military as a control group.

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<sup>111</sup> *Id.* at 87-88.

<sup>112</sup> See, e.g., BUTLER, *supra* note 52; DODGE, *supra* note 46; Freedman, *Nineteenth-Century Women's Prison Reform and Its Legacy*, *supra* note 71, at 141-57; Alexander et al., *supra* note 70; Vernetta D. Young, *Race and Gender in the Establishment of Juvenile Institutions: The Case of the South*, 73 PRISON J. 244 (1994).

<sup>113</sup> Bryant, *supra* note 31, at 878.

<sup>114</sup> Forncrook, *supra* note 79, at 116.

<sup>115</sup> Growdon, *supra* note 3, at 199.

<sup>116</sup> Bryant, *supra* note 31.

<sup>117</sup> *Id.* at 877-88.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 884.

<sup>120</sup> Growdon, *supra* note 3.

The gist of the findings was that (1) among women prisoners, white women had higher mental ages than black women, (2) the control group of men in the military during “the World War” (World War II) had higher mental ages than the incarcerated women, but (3) “white female prisoners deviate[d] from their racial norm to a far greater extent than negroes deviate[d] from their racial norm.”<sup>121</sup> The author made no allowances for the likely differences in poverty and educational opportunities between the black and the white women or between incarcerated women and men in the military in World War I. Nor did he account for how the tests themselves may have been racist or sexist.

#### B. INCARCERATED WOMEN’S TRAUMATIC HISTORIES

Perhaps the single most important contribution of feminist criminology is in the development of the “pathways” perspective or approach. In the third edition of my book, *Invisible Woman: Gender, Crime, and Justice*, I trace “pathways” as beginning in the 1970s with James and Meyerding’s<sup>122</sup> study of prostitutes, finding hugely abusive child histories.<sup>123</sup> In short, the pathways perspective holds that traumas and victimizations are risk factors for offending, and in fact, a great deal of research has documented the extensive trauma and abuse histories of female offenders.<sup>124</sup> As noted earlier in this Article, a review of the *Journal’s* articles about women

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<sup>121</sup> *Id.* at 219.

<sup>122</sup> Jennifer James & Jane Meyerding, *Early Sexual Experiences and Prostitution*, 134 AM. J. PSYCHIATRY 1381 (1977).

<sup>123</sup> JOANNE BELKNAP, *THE INVISIBLE WOMAN: GENDER, CRIME, AND JUSTICE* 70-78 (3d ed. 2007).

<sup>124</sup> See, e.g., BARBARA OWEN, “IN THE MIX”: STRUGGLE AND SURVIVAL IN A WOMEN’S PRISON (1998); BETH E. RICHIE, *COMPELLED TO CRIME: THE GENDER ENTRAPMENT OF BATTERED BLACK WOMEN* (1996); Joan W. Moore, *Gang Members’ Families*, in *FEMALE GANGS IN AMERICA: ESSAYS ON GIRLS, GANGS AND GENDER* 159 (Meda Chesney-Lind & John M. Hagedorn eds., 1999); Virginia E. Pendergrass, *Innovative Programs for Women in Jail and Prisons: Trick or Treatment*, in *THE FEMALE OFFENDER* 67 (Annette M. Brodsky ed., 1975); Regina Arnold, *Processes of Victimization and Criminalization of Black Women*, 17 SOC. JUST. 153 (1990); Kathleen Daly, *Women’s Pathways to Felony Court: Feminist Theories of Lawbreaking and Problems of Representation*, 2 REV. L. & WOMEN’S STUD. 11 (1992); Emily Gaarder & Joanne Belknap, *Tenuous Borders: Girls Transferred to Adult Court*, 40 CRIMINOLOGY 481 (2002); Mary E. Gilfus, *From Victims to Survivors to Offenders: Women’s Routes of Entry and Immersion into Street Crime*, 4 WOMEN & CRIM. JUST. 63 (1992); Candace Kruttschnitt, *Contributions of Quantitative Methods to the Study of Gender and Crime, or Bootstrapping Our Way into the Theoretical Thicket*, 12 J. QUANTITATIVE CRIMINOLOGY 135 (1996); Cathy McDaniels-Wilson & Joanne Belknap, *The Extensive Sexual Violation and Sexual Abuse Histories of Incarcerated Women*, 14 VIOLENCE AGAINST WOMEN 1090 (2008); Emily J. Salisbury & Patricia Van Voorhis, *Gendered Pathways: An Quantitative Investigation of Women Probationers’ Paths to Incarceration*, 36 CRIM. JUST. & BEHAV. 541 (2009).

offenders reveals that the authors barely addressed trauma and abuse, yet it was possible to see some indications, which are detailed in this Part. Sadly, in some of the historical articles, little was done to account for the women’s pasts, and sometimes when this was done, the women were blamed for the deplorable conditions of their childhoods. For example, Spaulding’s article emphasized the need to understand “his [sic] past life” in her study of four hundred women offenders, and she viewed the women offenders’ anti-social behaviors as due to such factors as “heredity, training and environment.”<sup>125</sup>

A refreshing exception to the invisibility of traumatic histories was found in Alberta S. B. Guibord’s study published in 1917,<sup>126</sup> in which her opening suggests an approach consistent with the more truly “social” inclusive biosocial theory:

The difficulty in the way of making such a study lies obviously, in the well-nigh irreducible complexity of makeup of the adult human organism . . . [that] is the product of three factors more or less completely separable and measurable, the physical, the psychological, the sociological, and of another, the hereditary factor, so subtly bound up with each of the others that its value as a separate entity cannot be accurately computed.<sup>127</sup>

Guibord was the first and one of the few to address trauma, or “traumata” as she identifies it. In addition to documenting the very poor educational access the women had in her large-scale study, she also reported “that forty-two per cent had, before the age of fifteen, disturbed home conditions through parental separation of one sort or another and that eleven per cent during some period of the childhood were inmates of orphan asylums are facts that hold the attention.”<sup>128</sup> Guibord concluded her extensive study with the hypothesis that adverse socio-economic conditions are the primary risk factor for women’s offending and stated that “only 5% of the cases lived in childhood surroundings that approached even a minimum grade of culture or of wholesomeness.”<sup>129</sup>

Guibord also reported that the medical findings on incarcerated women’s tegumentary system, or skin, are “not of particular value,” yet notes that 45% of the women had scars of a “traumatic origin,” indicating “lack of intelligent care, [while] those of inflammatory origin (12%) point to adverse metabolic influences.”<sup>130</sup> These findings seemed to be of no value to Guibord, but they certainly suggest abuse and violence to this

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<sup>125</sup> Spaulding, *supra* note 28, at 704.

<sup>126</sup> Guibord, *supra* note 30.

<sup>127</sup> *Id.* at 82.

<sup>128</sup> *Id.* at 85.

<sup>129</sup> *Id.* at 95.

<sup>130</sup> *Id.* at 88.

reader. Guibord also noted the high rates of cervical and inguinal (groin area) swelling, which she related to venereal infection but perhaps could also be a result of sexual abuse resulting in sexually transmitted infections. Coker and her colleagues' study of incarcerated women almost ninety years later found that those who reported having experienced forced sex before they were seventeen years old were six times as likely to have cervical dysplasia (abnormal organ cell growth) than incarcerated women who reported no such sexual abuse histories.<sup>131</sup>

Spaulding's case study of eight incarcerated women, while troubling in her racist depictions in the case of the one black woman, does document the histories of parental abandonment and parental death, and is the first to describe a rape, although she does not use the word "rape." She wrote, "He [a man in a distant town] had forced her [a prisoner when she was seventeen years old] on one occasion only, she says, to have sexual relations with him, and when she found she was pregnant as a result, she was ashamed to take him home."<sup>132</sup> Other descriptions among the eight cases read similarly to current research, describing girls who had run away from home, a girl who had nightmares when her mother remarried, boyfriends who forced them into prostitution at age fifteen (and other ages), cohabitating with older men when they were as young as thirteen, and so on.<sup>133</sup> Forncrook had similar but even more limited and vague innuendos in three case histories she included with her quantitative analysis, and these case histories also hinted at the possibility of abusive upbringings.<sup>134</sup>

The first article to use the word "rape" was also the first to specify what would be referred to as intimate partner abuse or violence today. Sanborn described an incarcerated woman who was raised in a home in which her father brutalized her mother and all of his children, and another incarcerated woman whose father sometimes threatened to shoot her mother.<sup>135</sup> The article also noted such characteristics that seem obvious red flags of child sexual abuse, such as one incarcerated woman who had been diagnosed as an "imbecile" by a school psychologist when she was nine years old and treated for gonorrhea at age thirteen. The woman previously noted, who grew up with a father who threatened to shoot her mother, was described as a "bright, likable schoolgirl, but pleasure-loving and insistent," who would sneak out at night to go to dances and worked at a mill where

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<sup>131</sup> Ann L. Coker et al., *Childhood Forced Sex and Cervical Dysplasia Among Women Prison Inmates*, 4 VIOLENCE AGAINST WOMEN 595, 595 (1998).

<sup>132</sup> Spaulding, *supra* note 29, at 94.

<sup>133</sup> *Id.*

<sup>134</sup> Forncrook, *supra* note 79.

<sup>135</sup> Sanborn, *supra* note 63.

she made friends with the “least desirable companions.”<sup>136</sup> At the home of one of these undesirable companions she “first learned to drink, and soon while under influence of liquor was raped. Utter loss of self-respect followed and consequent acquiescence to all immoral suggestions.”<sup>137</sup> This woman’s arrests started when she was eighteen and were for “drunkenness”; her third arrest, at age nineteen, led to commitment to the reformatory (rather than paying a fine and release).<sup>138</sup>

Although many of the historical articles portrayed the women as what might be described as angry, sullen, and acting out in today’s verbiage, Bryant’s excellent ethnography described them as “passive” and reported that “discontent” was “rarely shown or expressed.”<sup>139</sup> But, after some time of observation, she concluded that the absence of discontent was a disadvantage, “convinced that there is literally nothing to stimulate hope or ambition for better things.”<sup>140</sup>

In addition to the very limited information on the women’s trauma histories, Bryant documented how unreliable the women’s demographic data were from her observations of the intake interviews with these prisoners.<sup>141</sup> Petersen also noted the amazing lack of information that came with the sentenced women when they arrived at the institution:

With rare exceptions no history comes with the commitment and we write to the judge or clerk of the court and the probation officer or police officer who handled the case, only to find that they have the meagerest history and it is appalling to find not a few cases in which the persons who have been instrumental in sending the girl to the institution admit that they know nothing about the case.<sup>142</sup>

### C. INCARCERATED WOMEN’S PHYSICAL HEALTH

The physical descriptions of the women in some of the historical studies, reminiscent of Cesare Lombroso, indicated the smaller skulls of African-American women and the “flat chests, protruding abdomens,” and “undeniable oddity of appearance” that were apparently disproportionately common among incarcerated women.<sup>143</sup> One historical study conducted and authored by the resident physician of the Massachusetts Reformatory for Women reported that 46% of the women were in “very poor physical

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<sup>136</sup> *Id.* at 139.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 140.

<sup>139</sup> Bryant, *supra* note 31, at 847.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> Petersen, *supra* note 83, at 442.

<sup>143</sup> Guibord, *supra* note 30, at 88.

condition” and that even this was a “conservative estimate.”<sup>144</sup> Moreover, Spaulding found that having a poor physical condition was highly correlated with belonging to the “moron group.”<sup>145</sup> Spaulding also noted that 22% of the women suffered from alcoholism or drug addiction.<sup>146</sup> Bryant’s large study reported that over half the women were poorly nourished, a full one-third suffered “extreme emaciation,” and there were “very few who might be called fairly healthy.”<sup>147</sup> Despite the horrifically high rates of many medical problems among the women prisoners, a large 1915 study reported that the intake medical exam included a nose, eyes, mouth, and vaginal inspection, “for the purpose of detecting the presence of acute contagious disorders,” but no examination of the heart, lungs, or bones, and no bacterial or blood testing.<sup>148</sup>

As noted in the introduction, a surprisingly common theme in the articles was documenting epilepsy, typically in a manner that assumes a link with criminality.<sup>149</sup> Clearly, there was a history of viewing epilepsy as “madness” and even “demonic possession.”<sup>150</sup> Still, the rates of epileptics reported in the historical *Journal* studies are astounding, suggesting a strong tendency for the criminalization of epilepsy: estimates of the portion of epileptics in the women’s prison population range from 1.0%, to 15.2%.<sup>151</sup> Only Guibord questioned why epilepsy and other “convulsions” were treated criminally: “It would seem the extreme of injustice to treat a case of epileptic excitement or a case of choreic [sic] instability by severe disciplinary measures as is now frequently done.”<sup>152</sup>

Ironically, more recent research indicates that the belief that epilepsy is associated with violent behavior is due to the “increased incidence of epilepsy in prisoner populations,”<sup>153</sup> a self-fulfilling prophecy. Interestingly, and somewhat disturbingly, some contemporary research also

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<sup>144</sup> Spaulding, *supra* note 28, at 710.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> Bryant, *supra* note 31, at 870.

<sup>148</sup> *Id.* at 850.

<sup>149</sup> See, e.g., Davis, *supra* note 37, at 405; Petersen, *supra* note 83, at 442; Rogers, 1917 *Digest*, *supra* note 18, at 534; Spaulding, *supra* note 28; Spaulding, *supra* note 29.

<sup>150</sup> See, e.g., Allan F. Mirsky & Connie C. Duncan, *Pathophysiology of Mental Illness: A View from the Fourth Ventricle*, 58 INT’L J. PSYCHOPHYSIOLOGY 162, 163-64 (2005).

<sup>151</sup> Bryant, *supra* note 31, at 847; Davis, *supra* note 37, at 408; Guibord, *supra* note 30, at 86; Spaulding, *supra* note 28, at 715.

<sup>152</sup> Guibord, *supra* note 30, at 86.

<sup>153</sup> A. James Fessler & David M. Treiman, *Epilepsy and Aggression: Proceed with Caution*, 73 NEUROLOGY 1720, 1720 (2009); see also Steven Whitman et. al., *Epilepsy in Prison: Elevated Prevalence and No Relationship to Violence*, 34 NEUROLOGY 775 (1984).

reports high rates of epilepsy among offending populations,<sup>154</sup> and some debate how epilepsy might be used in defending violent offenders.<sup>155</sup>

A more recent historical accounting of women's incarceration by Alexander, Butler, and Sias identifies "venereal diseases," and their connection to prostitution and "sexual immorality," as "a major concern of society in the early 1900s" and World War I.<sup>156</sup> Indeed, Alexander and his colleagues describe the War Department as influential in the building of women's reformatories.<sup>157</sup> Also raised in the introduction was how frequently "venereal diseases" (sexually transmitted infections by today's labels) were raised,<sup>158</sup> which makes sense given the incredibly high rates that were documented by blood tests at the time. One historical study reported that one category of prison intake questions was "habits," which were listed as "tea and coffee, cigarettes, alcohol, drugs and sex."<sup>159</sup> The "venereal diseases" documented were always syphilis and gonorrhea. The rates of having either or both syphilis and gonorrhea ranged from 44% to 86% of the women offenders.<sup>160</sup> Indeed, one author noted that the problems with assigning work to prisoners in an institution "with 11.2% only being free from venereal disease, [is] to find a sufficient number of women who are available for positions requiring 'clean' women, such as those in dining rooms, kitchens, dairies, etc."<sup>161</sup> As Guibord concludes, certainly the incarcerated women's incredibly poor physical and mental health can be linked to their extraordinarily high rates of syphilis and gonorrhea.<sup>162</sup> Guibord discusses the prevalence of laparotomy operations (incisions through the abdominal wall into the abdominal cavity) that were performed on 20% of the incarcerated women.<sup>163</sup> It is unclear why these were performed, but she noted that surgical sterilization occurred in "only three cases."<sup>164</sup> Notably, while the historical *Journal* articles addressed the prevalence of the sexually transmitted infections (STIs) of syphilis and

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<sup>154</sup> Hideki Miura et al., *Influence of History of Head Trauma and Epilepsy on Delinquents in a Juvenile Classification Home*, 59 *PSYCHIATRY & CLINICAL NEUROSCIENCES* 661 (2005).

<sup>155</sup> David M. Treiman, *Violence and the Epilepsy Defense*, 17 *NEUROLOGIC CLINICS* 245 (1999).

<sup>156</sup> Alexander et al., *supra* note 70, at 63-64.

<sup>157</sup> *Id.* at 65.

<sup>158</sup> See, e.g., Bryant, *supra* note 31; Guibord, *supra* note 30; Spaulding, *supra* note 28.

<sup>159</sup> Spaulding, *supra* note 28, at 714.

<sup>160</sup> Forncrook, *supra* note 79, at 617; Guibord, *supra* note 30, at 91; Spaulding, *supra* note 28, at 712.

<sup>161</sup> Spaulding, *supra* note 28, at 713.

<sup>162</sup> Guibord, *supra* note 30, at 92.

<sup>163</sup> *Id.* at 87.

<sup>164</sup> *Id.*

gonorrhea among incarcerated women, current research identifies a crisis of HIV/AIDS among women prisoners,<sup>165</sup> with prevalence of HIV/AIDS more prevalent among incarcerated women than incarcerated men.<sup>166</sup> Yet, women's prisons today are poorly equipped to attend to HIV-positive women,<sup>167</sup> although one study found they constituted a quarter of the prisoners.<sup>168</sup>

The first time I ever "visited" a women's prison was in the mid-1980s when I was on the Ohio Governor's Task Force for Women in Prison. One day, the task force was able to meet with about eight women in a room without any of the prison officials. One of the questions we asked of the women was about the changes that were needed most in the prison. Immediately, one woman said, "The dental stuff." When asked to explain, she said, "You can tell who's been farmed out here, because they don't have any teeth."<sup>169</sup> Similar to current day problems for incarcerated women, these historical *Journal* articles document the incredibly poor

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<sup>165</sup> See, e.g., CLAIRE E. STERK, *FAST LIVES: WOMEN WHO USE CRACK COCAINE* (1999); Tammy L. Anderson, *Issues in the Availability of Health Care for Women Prisoners*, in *THE INCARCERATED WOMAN: REHABILITATIVE PROGRAMMING IN WOMEN'S PRISONS* 49, 51 (Susan F. Sharp ed., 2003); Barbara H. Zaitzow & Angela D. West, *Doing Time in the Shadow of Death: Women Prisoners and HIV/AIDS*, in *THE INCARCERATED WOMAN: REHABILITATIVE PROGRAMMING IN WOMEN'S PRISONS*, *supra* note 165, at 73; M. Katherine Maeve, *Adjudicated Health: Incarcerated Women and the Social Construction of Health*, 31 *CRIME, L. & SOC. CHANGE* 49 (1999); Janet L. Mullings et al., *Assessing the Relationship Between Child Sexual Abuse and Marginal Living Conditions on HIV/AIDS-Related Risk Behavior Among Women Prisoners*, 24 *CHILD ABUSE & NEGLECT* 677 (2000).

<sup>166</sup> LAWRENCE A. GREENFELD & TRACY L. SNELL, U.S. DEP'T OF JUSTICE, *WOMEN OFFENDERS* 8 (1999), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/wo.pdf>; THE NAT'L CTR. ON ADDICTION AND SUBSTANCE ABUSE AT COLUMBIA UNIV., *BEHIND BARS II: SUBSTANCE ABUSE AND AMERICA'S PRISON POPULATION* 43 (2010), available at <http://www.casacolumbia.org/articlefiles/575-report2010behindbars2.pdf>; see also LAURA M. MARUSCHAK & RANDY BEAVERS, BUREAU OF JUSTICE STATISTICS, *HIV IN PRISONS, 2007-08* 2, available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/hivp08.pdf> (showing higher HIV rates among incarcerated women than incarcerated men); OFFICE ON DRUGS AND CRIME, UNITED NATIONS, *WOMEN AND HIV IN PRISON SETTINGS* 6 (2007), available at [http://www.unodc.org/documents/hiv-aids/Women\\_in\\_prisons.pdf](http://www.unodc.org/documents/hiv-aids/Women_in_prisons.pdf); Catherine A. Hankins et al., *HIV Infection Among Women in Prison: An Assessment of Risk Factors Using a Nonnominal Methodology*, 84 *AM. J. PUB. HEALTH* 1637 (1994); Maeve, *supra* note 165.

<sup>167</sup> See VERONICA COMPTON-WALLACE, *EATING THE ASHES: SEEKING REHABILITATION WITHIN THE US PENAL SYSTEM* 13 (2003); Travis & Fawkes, *supra* note 166; Leslie Acoca, *Defusing the Time Bomb: Understanding and Meeting the Growing Health Care Needs of Incarcerated Women in America*, 44 *CRIME & DELINQ.* 49 (1998); Judith Clark & Kathy Boudin, *Community of Women Organize Themselves to Cope with the AIDS Crisis: A Case Study from Bedford Hills Correctional Facility*, 17 *SOC. JUST.* 90 (1990); Hankins et al., *supra* note 166.

<sup>168</sup> Acoca, *supra* note 167, at 5.

<sup>169</sup> "Farmed out" is a term some prisoners use for having a life sentence, at least at this prison.

condition of incarcerated women’s teeth.<sup>170</sup> Bryant reported that the prison did not provide toothbrushes and “very few” of the women had them.<sup>171</sup> Guibord reported that only about one-third of the women had “good” teeth, which she described as teeth having “no abnormality other than is explicable on the ground of lack of care.”<sup>172</sup> She also reported that another third of the women had “teeth so poor as to force the conclusion that an unusually destructive process has been at work,” and as a physician, Guibord described some of the women’s “very poor” teeth as “showing unquestionable signs of congenital syphilis.”<sup>173</sup>

My recent visits to women’s prisons in the United States, as well as some of my prior research, highlights the abysmal dental care available to incarcerated women.<sup>174</sup> In her 1918 article, Bryant noted that there was no attempt to treat dental problems; in my 2000 study, the incarcerated women reported that the only dental “care” available was tooth extraction. In my study, the women reported that their teeth were never cleaned, cavities were never filled, and sometimes the dentist failed to change latex gloves between patients.<sup>175</sup> One of my colleagues recently visited a large prison in the Northeast to observe an “empowerment” workshop.<sup>176</sup> One of the women, while covering her mouth, told the workshop leader that she had no teeth, and it was hard to imagine how she could get any job without teeth (and she obviously could not afford dentures). In October 2009, I had dinner with a physician for women’s prisons in Alaska, and she told me that the single most disturbing problem was how many of the women didn’t have teeth. She had spoken to some dentists who could fit women with dentures without charging for their labor, but the cost per woman was still at least \$500, something for which state funding did not exist.<sup>177</sup>

One of the main reasons that dental problems are so rampant in today’s prisons is the widespread use of methamphetamines; crystal meth and other methamphetamines that have a particularly devastating effect on teeth,

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<sup>170</sup> See Bryant, *supra* note 31, at 850; Guibord, *supra* note 30, at 89.

<sup>171</sup> Bryant, *supra* note 31, at 850.

<sup>172</sup> Guibord, *supra* note 30, at 89.

<sup>173</sup> *Id.*

<sup>174</sup> Joanne Belknap, *Programming and Health Care Accessibility for Incarcerated Women*, in STATES OF CONFINEMENT: POLICING, DETENTION, AND PRISONS 109, 116-17 (Joy James ed., 2000).

<sup>175</sup> Joanne Belknap, *Access to Programs and Health Care for Incarcerated Women*, FED. PROBATION, Dec. 1996, at 34, 36-37.

<sup>176</sup> Interview with Claudia Bayliff, Attorney at Law, in Washington, D.C. (Oct. 30, 2009).

<sup>177</sup> Interview with Rebecca Bingham, Alaska Dep’t of Corr., in Anchorage, Alaska (Oct. 31, 2009).

known as “meth mouth.”<sup>178</sup> Another colleague of mine, the director of a large state delinquent institution, told me a number of years ago that she can tell the minute she meets a new girl whether she has a “meth problem” from the state of her teeth.<sup>179</sup>

Vision problems were also noted in a number of the historical studies.<sup>180</sup> One study described the prisoners selecting through “trial and error from the stock of glasses” owned by the prison “until they find a pair that apparently [gave] them better vision.”<sup>181</sup> This same study reported that 45% of the women had vision problems.<sup>182</sup> It was noted that the poor condition of the women’s teeth and eyes upon leaving the institutions made the women unlikely candidates for decent employment,<sup>183</sup> a sentiment that echoes in women’s prisons today.<sup>184</sup>

One study reported that 4% of the women had defective hearing.<sup>185</sup> This disproportionately high rate of women with hearing problems was similarly reported in Butler’s recent historical analysis of women’s prisons in the Western United States in which she found that deaf women were disproportionately represented in the incarcerated women populations.<sup>186</sup>

#### D. INCARCERATED WOMEN’S MENTAL HEALTH

A startling number of these historical articles identified women with such labels as “mental defectives,” “degenerates,” “morons,” “imbeciles,” and especially “feeble-minded.”<sup>187</sup> Feeble-mindedness is described in one article as the characteristic of being “unlikely to maintain [oneself] in

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<sup>178</sup> See Vivek Shetty et al., *The Relationship Between Methamphetamine Use and Increased Dental Disease*, 141 J. AM. DENTAL ASS’N 307 (2010).

<sup>179</sup> Interview with Laura Shipman-Hamblin LCSW, CACII, Program Director, Betty K. Marler Youth Services Center/Rite of Passage, in State of Colorado Division of Youth Corrections, Denver, Colo. (Feb. 21, 2003).

<sup>180</sup> See Bryant, *supra* note 31; Spaulding, *supra* note 29.

<sup>181</sup> Bryant, *supra* note 31, at 850.

<sup>182</sup> *Id.* at 850, 871.

<sup>183</sup> *Id.*

<sup>184</sup> See BELKNAP, *supra* note 123, at 208-10; interviews with prisoners and staff, A Professional Pre-Release Conference for Women, Hiland Mountain Correctional Center, Eagle River, Alaska (Oct. 31, 2009).

<sup>185</sup> Bryant, *supra* note 31, at 871.

<sup>186</sup> ANNE M. BUTLER, *GENDERED JUSTICE IN THE AMERICAN WEST* 156-57 (1997).

<sup>187</sup> Bryant, *supra* note 31; Davis, *supra* note 37; Rogers, 1917 *Digest*, *supra* note 18; Spaulding, *supra* note 28.

society.”<sup>188</sup> The historical studies report the number of the women offenders who are “feeble-minded” range from 2% to 36%.<sup>189</sup>

“Insane” is also a common label that was given to women prisoners,<sup>190</sup> which makes the reader, as well as some of the authors of these articles, wonder why such women were placed in prisons instead of other institutions or homes. The historical studies reported that the proportion of the women offenders who are “insane” ranged from 3 to 7%<sup>191</sup> and the proportion who were “hysterical” was at least 11%.<sup>192</sup> Not surprisingly, one study found that the women with more mental problems had more repeat prison commitments.<sup>193</sup>

One particularly telling case study is that of a woman who as a girl had been “obedient and truthful until a peculiar and at first undefined change at [thirteen and a half] years.”<sup>194</sup> The author described the change as including sleeping in school, talking less, not smiling in school, progressing to being “noisy,” and telling neighbors her parents whipped her for being with a strange man.<sup>195</sup> These behaviors are alarmingly consistent with modern research that documents severe changes in a child’s behavior resulting from abuse or trauma.<sup>196</sup> Within three months of this girl’s changed behavior, at the age of thirteen and three quarters years old, she was committed to a hospital for the insane because she “admitted [to] masturbation and some sex relations” in a psychological examination.<sup>197</sup> She was in this insane asylum for eight months before returning home, where she instantly started acting bizarrely again. She was then sent to a “state school” for twenty-three months, then back to the same insane hospital, this time for fifteen months, then back with her parents, and finally sentenced to a reformatory for being “idle and disorderly.”<sup>198</sup>

In many of the historical articles, a strong indication of the poor mental health, or even criminality, of the incarcerated women is the bearing of “illegitimate children” and other pregnancies outside of marriage.<sup>199</sup>

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<sup>188</sup> Davis, *supra* note 37, at 404.

<sup>189</sup> Bryant, *supra* note 31, at 883; Davis, *supra* note 37, at 404; Sanborn, *supra* note 63, at 129; Spaulding, *supra* note 28, at 705.

<sup>190</sup> Davis, *supra* note 37, at 404-05.

<sup>191</sup> Bryant, *supra* note 31, at 874; Davis, *supra* note 37, at 404.

<sup>192</sup> Spaulding, *supra* note 28, at 715.

<sup>193</sup> Bryant, *supra* note 31, at 875.

<sup>194</sup> Sanborn, *supra* note 63, at 137.

<sup>195</sup> *Id.*

<sup>196</sup> Astrid Heger et al., *Children Referred for Possible Sexual Abuse: Medical Findings in 2384 Children*, 26 CHILD ABUSE & NEGLECT 645, 645-59 (2002).

<sup>197</sup> Sanborn, *supra* note 63, at 137.

<sup>198</sup> *Id.* at 138.

<sup>199</sup> Davis, *supra* note 37, at 404; Petersen, *supra* note 83.

Authors that gave such accounts rarely wondered whether the “illegitimate” children and pregnancies were the result of rape, or survival sex (prostitution or cohabitation to feed one’s self). An exception is Guibord’s highly sophisticated and insightful study of numerous women’s institutions, which identified girls’ and young women’s “early and involuntary” pregnancies as frequently their initiation into delinquency, in which the young woman is considered “ruined” and thus without hope for legalized status unless she can find someone to marry her.<sup>200</sup>

Some of the more colorful accounts of the women’s mental health follow:

[For the 37% with “aberrational mental types,” it is difficult to find prison work for them] where they will not be too much a menace to their neighbors and can find sufficient and suitable outlet for their superfluous and unstable energy.<sup>201</sup>

[The prostitutes] furnish less than their quota of those free from mental abnormality.<sup>202</sup>

The most that can be done at the present time is to put our patient and as many of her sisters as possible in a custodial institution for the feeble-minded, or, at least, in some restricted environment in which they will be sufficiently protected from the usual temptations of the community, and the community in turn will be protected from them. Our great need now is to increase our facilities for dealing with the feeble-minded, so that we shall be able to care for the large percentage of mental defectives who are at present being sent most unjustly, as a last resort, to reformatory and penal institutions.<sup>203</sup>

## VI. CONCLUSIONS

In conclusion, the adage “the more things change, the more they stay the same” is appropriate in this overview of the historical *Journal* articles. There are two overriding themes in this temporal consistency, or stagnation, in responding to women offenders. First, attempts to identify the causes of offending were often caught up in biological explanations then, and as stated, evolutionary explanations and funding for biological explanations are taking off again now.<sup>204</sup> Second, the responses to incarcerated women were sexist and highly deficient then, and they remain so today.<sup>205</sup>

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<sup>200</sup> Guibord, *supra* note 30, at 86.

<sup>201</sup> Spaulding, *supra* note 28, at 714.

<sup>202</sup> Bryant, *supra* note 31, at 874.

<sup>203</sup> Spaulding, *supra* note 29, at 86.

<sup>204</sup> Joshua D. Duntley & Todd K. Shackelford, *Darwinian Foundations of Crime & Law*, 13 *AGGRESSION & VIOLENT BEHAV.* 373 (2008); Marie Ratchford & Kevin M. Beaver, *Neuropsychological Deficits, Low Self-Control, and Delinquent Involvement: Toward a Biosocial Explanation of Delinquency*, 36 *CRIM. JUST. & BEHAV.* 147 (2009); John Paul

To address the first point about the renewed focus today on biological explanations at the risk of ignoring important sociological, economic, and political explanations, it is useful to start with one of the earlier *Journal* articles by Guibord.<sup>206</sup> Guibord not only conducted one of the most extensive studies of women prisoners, but she also offered the insights most consistent with those offered by feminist criminologists today.<sup>207</sup> In her documentation of the women’s childhoods, she painted a picture of extreme poverty, and her accounts of the women’s medical health once incarcerated were harrowing. She identified the adverse socio-economic conditions and extreme poverty most of the women experienced in childhood as the major risk factors for their trajectories to prison, prescient of the pathways theory of today.<sup>208</sup> Indeed, when I was reading her conclusion, it reminded me of the saying and bumper sticker from the 1990s: “It’s the economy, stupid!” but replacing it with, “It’s poverty, stupid!” The former was used in Bill Clinton’s successful campaign against George H. W. Bush to try to explain the problems of the United States in the early 1990s; the latter could summarize Guibord’s overall frustration with what she called the “New Penology” in her article published in 1917:

The writer cannot close this study without mentioning what seems after personal contact with the problem to stand out as the most compelling conviction of the experience namely, that in our zeal to demonstrate some obscure scientific fact at the base of delinquency we swallow the camel while straining at the gnat. We institute with naïve enthusiasm intricate laboratory research or, impatient at the roundabout methods of science, we put into immediate practice in our penal institutions some high ethical formula. We journey about the earth to confer on the historical, the psychological, the philosophical, the eugenic aspect of crime. We, in short, talk all around the edges of the subject meanwhile closing our eyes except for an evasive squint to the one clearly evident fact that at the base of practically all cases sentenced to reform institutions is the one common fact of poverty. . . . Discussion of the socio-economic aspect of the problem may, quite properly, be considered out of place in a study such as this. When however the truth is faced that the high degree of physical defectiveness shown by this investigation is the result primarily of adverse socio-economic conditions it seems like futile dilettantism to treat any other phase of the problem before striking at the root.<sup>209</sup>

This last point seems symbolic given the resurgence in the last couple of decades regarding evolutionary, including genetic, explanations of

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Wright & Danielle Boisvert, *What Biosocial Criminology Offers Criminology*, 36 CRIM. JUST. & BEHAV. 1228 (2009).

<sup>205</sup> BELKNAP, *supra* note 123, at 189-225.

<sup>206</sup> Guibord, *supra* note 30.

<sup>207</sup> The notable exception in Guibord’s compassionate and progressive take was her racist assumptions about brain size, as previously noted.

<sup>208</sup> See, e.g., BELKNAP, *supra* note 123, ch. 2 (providing an overview of pathways theory).

<sup>209</sup> Guibord, *supra* note 30, at 94-95.

offending,<sup>210</sup> and the increase in funded research to examine genetic markers' relationships to offending, while research examining sociological factors as predictors of offending is less likely to be funded. This shift in priorities seems short-sighted, as the policy-relevant outcomes for the genetic-based research seems questionable at best, and sociological markers for offending provide far more effective policy implementations and changes. Similarly, if we just read the last two of the *Journal* articles reviewed here, they would have us believe that key problems in women's offending relate to women's biological nature. For Satterfield, it is the biologically "maladjusted women" who "frequent the taverns and dance halls."<sup>211</sup> The solution, according to Satterfield, is teaching these women "the marital state." Indeed, "the female who does not know how to be a wife and mother is a special type of social delinquent."<sup>212</sup> For Ellis and Austin, prison guards and women prisoners both need to learn that menstruating prisoners should not manipulate situations to "get away with anything."<sup>213</sup> The policies put forth in response include requiring, as part of administrative routine, women prisoners to complete "daily menstrual logs."<sup>214</sup> Moreover, all women who kill or maim their husbands, children and others, should be asked: "What was her menstrual condition at the time of the event?"<sup>215</sup>

After reading the first sixteen of the nineteen *Journal* articles on women offenders, the true answer seems not to involve teaching women the "marital state"—not when some of the *Journal* studies, reported in the first few decades, touched on the danger caused by the incarcerated women's husbands and boyfriends. Women's menstruation as the problem, as emphasized by Ellis and Austin,<sup>216</sup> is not only unwieldy to address but, more importantly, seems almost laughable if it were not so devastating for the women described in the early article. To this point, the conclusions have focused on how history is repeating itself in terms of trying to focus on biological predictors of offending, increasingly to the extent of minimizing or even avoiding socioeconomic factors. We could see this in the historical *Journal* articles, and we can see it today in terms of the push for criminological research funded by the federal government.

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<sup>210</sup> See, e.g., John Paul Wright & Danielle Boisvert, *What Biosocial Criminology Offers Criminology*, 36 CRIM. JUST. & BEHAV. 1228, 1228-40 (2009).

<sup>211</sup> Satterfield, *supra* note 4, at 761.

<sup>212</sup> *Id.* at 762.

<sup>213</sup> Ellis & Austin, *supra* note 4, at 395.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

The second important déjà vu that occurred in reviewing these articles and putting them in the context of the present day is the problem of what types of treatment and services incarcerated women are provided. In her 1917 article, Bryant stated that “[t]he House of Correction does not correct women” and added that 70% of the women required “medical rather than correctional treatment.”<sup>217</sup> Further,

[T]he fact remains that the women, at least, are neither “corrected” nor “reformed.” It is probable that only a small proportion of the women are fit subjects for reformatory treatment, even of the most approved sort. The few, however, should be given the benefit of this, and for the others the same treatment would be the best means of studying them and making provision for their permanent care. . . . [R]eformation is possible only with the most complete attention to the needs of each separate individual, and with treatment varied in accordance with this.<sup>218</sup>

Sadly, today this is still true. There is little to nothing about “corrections” in women’s prisons today. Rather, contemporary U.S. women’s prisons largely “serve” to house women with drug problems from poverty-stricken backgrounds, and the entire system is highly racialized. Moreover, the exit strategy for women in these institutions makes it almost impossible for them not to violate parole, with such unrealistic expectations as requiring women to find a place to live without another individual with a conviction (though many of these women have intimate partners who have been imprisoned) and to find legal employment. In most areas of the United States, it can be very difficult to find a landlord willing to rent an apartment or house to someone coming out of prison, and it is not as if many of the incarcerated women can afford their own condominiums or houses.<sup>219</sup> Also, there is often a requirement that newly released women show they have housing and employment before they can regain custody of their dependent children. As it was one hundred years ago, the system today is set up so that women fail.<sup>220</sup>

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<sup>217</sup> Bryant, *supra* note 31, at 884.

<sup>218</sup> *Id.* at 885.

<sup>219</sup> Kimberly Collica, *Surviving Incarceration: Two Prison-Based Peer Programs Build Communities of Support for Female Offenders*, 31 *DEVIANT BEHAV.*, 314, 318, 338 (2010).

<sup>220</sup> Most of this information on women’s re-entry into their communities from prison I have learned from talking to wardens of women’s prisons, social workers, and lawyers who help women find housing and regain custody of their children.

**Table 1**  
*Journal of Criminal Law & Criminology* Articles Reviewed

<b>Date</b>	<b>Author</b>	<b>Author's Background</b>	<b>Topic</b>	<b>Title</b>
1913	Katharine Bement Davis	Ph.D. and Superintendent of the New York State Reformatory for Women, Bedford Hills, New York <sup>221</sup>	incarcerated women's health and status; laws and ideals regarding reformatories	A Plan of Rational Treatment for Women Offenders
1915	Edith R. Spaulding	resident physician, Massachusetts Reformatory for Women, South Framingham, Massachusetts	health and treatment of incarcerated women	The Results of Mental and Physical Examinations of Four Hundred Offenders—With Particular Reference to Their Treatment During Confinement
1917	Alberta S. B. Guibord	physician; former staff member of the Laboratory of Social Hygiene at Bedford Hills, New York	incarcerated women's health	Physical States of Criminal Women
1917	Helen Worthington Rogers	Committee of Delinquent Women of the Connecticut Prison Association	laws for establishing women's reformatories	A Digest of Laws Establishing Reformatories in the United States
1918	Louise Stevens Bryant	Ph.D. and in charge of the Department of Research and Statistics, Municipal Court, Philadelphia, Pennsylvania	health and treatment of incarcerated women	The Women at the House of Correction in Holmesburg, Pennsylvania

<sup>221</sup> It was not apparent from the *JCLC* article that Davis had a doctorate, but in a biography by Deegan (2003) it was reported that she received a doctorate in political economy and sociology from the University of Chicago in 1900, seventeen years before this article was published.

**Table 1**  
(continued)

<b>Date</b>	<b>Author</b>	<b>Author's Background</b>	<b>Topic</b>	<b>Title</b>
1918	Edith R. Spaulding	(Not identified in this article but in her previous article reported above in this figure, is a medical doctor.)	health and treatment of incarcerated women	The Value of Mental, Physical and Social Studies of Delinquent Women
1922	Helen Worthington Rogers		laws for establishing women's reformatories	A Digest of Laws Establishing Reformatories in the United States
1922	Anna M. Petersen	Superintendent for the Connecticut State Farm for Women	running a women's reformatory	The Administrative Problems of a Women's Reformatory
1922	Marlon Candy Dodd & Helen Worthington Rogers		laws for establishing women's reformatories	Tabulation of Laws Establishing Reformatories for Women in the United States
1924	Elva M. Forncrook	Director of the Women's Division of the Probation Department, Detroit, Michigan	health and other characteristics of women offenders	Probation for Women
1925	Barbara W. Sanborn	Chief of the Research Department, Reformatory for Women, Framingham, Massachusetts	health and other characteristics of women offenders	An Analysis of the Population of the Reformatory for Women at Framingham, Mass.
1929	Helen Worthington Rogers	Edgehill Terrace, New Haven, Connecticut (appears to be a home address)	laws for establishing women's reformatories	A History of the Movement to Establish a State Reformatory for Women in Connecticut

**Table 1***Journal of Criminal Law & Criminology* Articles Reviewed (page 3)

<b>Date</b>	<b>Author</b>	<b>Author's Background</b>	<b>Topic</b>	<b>Title</b>
1931	Clarence H. Growdon	Research Director, Ohio Bureau of Juvenile Research, Columbus, Ohio	health and other characteristics of women offenders	The Mental Status of Reformatory Women
1934	Ellen C. Potter	medical doctor; Director of Medicine, Department of Institution and Agencies, Trenton, New Jersey	characteristics of incarcerated women and their status in the criminal legal system	The Problem of Women in Penal and Correctional Institutions
1938	Betty B. Rosenbaum	reports that the articles are based on her Masters Thesis for the Department of Sociology, Boston University in 1937, and possibly a professor at Radcliffe College when article was submitted	historical examination of women as sex offenders	The Sociological Basis of the Laws Relating to Women Sex Offenders in Massachusetts (1620-1860)
1939	Mary Jean Bowman	appears to have been collected while collecting her dissertation data for her Ph.D. at Harvard, from which she graduated in 1938	incarcerated women's arrest histories	Causes of Arrest of Women Committed to the Massachusetts State Reformatory
1950	Lois Higgins	M.S.W.; L.L.D.; Assistant Director of the Chicago Crime Prevention Bureau; instructor at Loyola University; Chicago police officer	women in law enforcement/policing	Women Police Service

**Table 1**  
(continued)

<b>Date</b>	<b>Author</b>	<b>Author's Background</b>	<b>Topic</b>	<b>Title</b>
1952	Val Beyer Satterfield	consultant psychiatrist to the St. Louis Police Academy; Assistant Professor of Clinical Psychiatry, Washington University, St. Louis, Missouri; active in the formation of the Academy of Forensic Sciences; active in nerve and psychiatric clinics in St. Louis.	how women's biological nature is significant to understanding their offending	Criminal Responsibility of Women
1971	Desmond P. Ells & Penelope Austin	Assistant Professor of Sociology, University of North Carolina (Ells); doctoral candidate in Sociology, University of North Carolina (Austin)	how women's biological nature (in particular menstruation) is significant to understanding their offending	Menstruation and Aggressive Behavior in a Correctional Center for Women

