

# STEPS AND MISSTEPS TOWARD A LEGAL HISTORY OF WOMEN

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N.E.H. Hull. *Female Felons: Women and Serious Crime in Colonial Massachusetts*. (Urbana: University of Illinois Press, 1987). x + 171 pp. Notes, tables, appendices, index. \$21.95.

Women's history has made extraordinary gains in the last ten years. From its beginnings as a marginal field that male scholars dismissed as blithely as they did their female colleagues, it has won general, if grudging, acceptance as a legitimate area of academic inquiry. Raised consciousness may account for part of this acceptance, but far more important has been the work of women's historians themselves. Their imagination and methodological sophistication have extended the limits of social history and made women's history one of the most consistently interesting fields of current scholarship. Only historians of willful intellectual misogyny can continue to deny that the history of women is an essential part of the historical enterprise.

For all the recent success of women's history, a legal history of women has been longer coming. For too long, the only serious consideration of women and the law in early America was a single chapter in Morris's *Studies in the History of American Law* (1930). In fact, apart from the solitary exception of Morris's essay, the only extended depictions of women and the legal system were in studies of the Salem witch trials or, less often, the Antinomian controversy—but those were histories of events rather than legal histories of women.

A legal history of women is, however, finally beginning to emerge. Salmon (1986) and Basch (1982) have written important books on women and the law of property. Lebsack (1984) and Norton (1980), while not legal historians, have used legal records with exceptional sensitivity to illuminate the experiences of women. And promising younger historians, notably Dayton (1986), have begun work that bids to carry the field to maturity.

Missing from the literature is any sustained work on women and the criminal law in early America. The omission is curious, particularly because historians have generally regarded criminal law as more accessible than civil law, not to mention of greater intrinsic prurient interest. The gap is a serious one. Thus it is with hope that one picks up N.E.H. Hull's *Female Felons: Women and*

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*Serious Crime in Colonial Massachusetts.* Hope quickly turns to disappointment, however, even before the Introduction is out.

The overriding problem is that Hull is determinedly presentist in her inquiry. She asserts that some historians—whom she never identifies—have argued that the criminal law and courts of early Massachusetts were biased against women. Her purpose is to test that argument. Thus from the beginning Hull subordinates studying a complex topic to answering a single, anachronistic question. The question of whether gender-based bias existed is, to be sure, interesting, but it is a secondary question—one needs a foundation before posing it. It should follow historical inquiry, not precede it, and certainly not direct it.

Moreover, Hull explicitly harnesses her study to a modern agenda—to put the “controversy over the putative sexism of America’s criminal justice system into perspective” (p. 2). To accomplish this, in her concluding chapter she compares rates of crimes committed by women in colonial Massachusetts and in twentieth-century America and announces that “historical perspective . . . allow[s] us to see modern crime figures in a different light” (p. 156)—a claim that is both obvious and, in view of the conclusions she then draws about “postmodern” society, pretentious. The distortions wrought by her perspective are unfortunate, because Hull has used an extraordinarily detailed set of records that might have yielded answers to properly phrased questions.

The records and files of criminal proceedings that Hull used include indictments, trial proceedings, warrants, depositions, coroners’ inquests, and more. They form the basis for the heart of her book—three chapters that trace felony proceedings against women from the initial report to the trial and then to sentencing and punishment. Hull examines each stage for signs of bias against women. To her apparent surprise, she finds comparatively little. As patriarchal as Puritan society and its eighteenth-century successor were, the criminal justice system appears not to have singled women out for harsh or unfair treatment. It dealt severely with all criminals, regardless of sex.

Because Hull makes the search for gender bias the organizing principle of her inquiry, her failure to find any leaves her without a thesis. Her book is, after all, ostensibly about female felons. But the apparent absence of sex-based discrimination means that her discussion of the criminal justice system tells us nothing about female felons other than that the law treated them more or less as it did male felons. Hull’s description of criminal justice in early Massachusetts thus necessarily becomes a description of elements that were independent of the sex of the defendant. One consequence is that Hull cites cases that involved women to illustrate points that by her own findings applied equally to cases that involved men. Although it is certainly useful to know that criminal justice in early Massachusetts was not inherently sexist, that piece of infor-

mation alone does not further our understanding of women and crime.

If Hull had not allowed herself to be sidetracked by an anachronistic pursuit to determine the presence or absence of gender bias in Puritan criminal justice, she might have made something of the opportunities she had to explore the involvement of women in the criminal justice system. For example, early on she observes that “in this land of saints and sinners, [women] were viewed as both saintlier and more sinful than men” (p. 4). The special position accorded women meant that women who committed crimes deviated from social norms in ways that men did not. She also suggests that the overwhelmingly male composition of courts and courtrooms, coupled with the subordinate status of women in society, meant that the legal process had a different subjective impact on women than it did on men (pp. 94–95). These are interesting points, but Hull leaves them as unexplored observations.

Hull’s failure to ask the questions that would have revealed anything about female felons beyond the minimal finding that the legal system did not discriminate against them may lie in the fact that she appears to be unfamiliar with the work of other historians of women and the family. For example, she repeatedly notes the predominance of women among accused witches without referring to the work of Karlsen (1980) and with only slight acknowledgment of Demos’s (1970, 1982) path-breaking studies. Similarly, she puts forward an explanation based on changes in child-rearing without mentioning Greven (1977).

On the other hand, Hull does refer extensively to modern criminal justice literature. But she uses it in a way that is only superficially interdisciplinary. Rather than digging deeply into the literature and absorbing its insights, she simply cites it as authority without bothering to explore its applicability to the colonial period. Although her use of the interdisciplinary literature is consistent with her general habit of eschewing analysis for argument by assertion, it has the added effect here of adding to the presentism of her discussion.

*Female Felons* is a deeply disappointing book. There is undoubtedly much of value in Hull’s statistical tables and appendices (even Appendix 3, “The External Causes of Crime in Massachusetts, 1700–1774,” which is an offer to debate Flaherty [1981] on a topic that has nothing to do specifically with women), but the story they tell remains to be discovered. When it is, we will have a history of women and the criminal law.

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