

Women, Witches, Scolds!



WOMEN, CRIME AND THE COURTS IN EARLY MODERN ENGLAND

Edited by J Kermode & G Walker
(University College London Press 1994 pp 216 \$80)

As the first full length work to focus on the historical relations between women and the law in the pre-industrial period, *Women, Crime and the Courts in Early Modern England* makes a ground-breaking contribution to the analytical consideration of this complex issue. The insights of this book are of interest to sociologists and lawyers as well as historians.

The overarching argument of this collection of essays is that women were active participants in legal processes in early modern England. This thesis is at odds with traditional interpretations of both past and contemporary female legal undertakings but it is persuasively argued. Although then, as now, far fewer women came to the courts than men, the emphasis of this work is not on presenting these female litigants as overwhelmed and helpless victims but as engaged and effective disputants. Jenny Kermode and Garthine Walker write in the introduction that 'more than anything else ... this volume is characterised by its emphasis upon female agency in the face of a legal system institutionally biased towards men Rather than offering essentialist explanations of the differential power of men and women, the overall theme of this book encompasses female power, female knowledge and female experience' (p 21).

This intention relates to contemporary legal criticism as it questions the ways in which female crime and female criminals are conceptualised. This approach queries the traditional methodologies used in interpretations of both past and contemporary societies. For example, Kermode and Walker accept that fewer women than men acted as litigants in early modern England, but they do not wish to simply 'count and discount' women. A recurring theme in *Women, Crime and the Courts in Early Modern England* is the suggestion that those analysing female legal activities should use qualitative as well as quantitative records.

All the essays in *Women, Crime and the Courts in Early Modern England* approach the relationship of women to the law in slightly different ways. The first two essays deal with scolding litigation in ecclesiastical courts.¹ Laura Gowing convincingly argues that women were accused of slander far more often than men. She claims that this was seen as a typically female crime, one which suited women's tendency to fight with their tongues rather than with their fists. More importantly, she shows the importance of reputation (which was defined by other people's opinions) in the early modern period. Seen in this way, the words of women — both

1. Scolding was unrestrained slander — accusations implied both acts of slander and improper aggression by the defendant.



Losing litigant: a cucking-stool in operation, circa 1700.

in the form of slander and in the form of statements by female witnesses in scolding trials — had social significance and power. Her article is well argued, though it talks as much of social status in general as of direct interaction with the courts.

On the other hand, Martin Ingram's article on slander is of less even value. It is a refutation of David Underdown's contention that scolding litigation was a sign of an early modern obsession with gender relations. Ingram argues instead that slander was less common than has been assumed and resulted from personal incompatibilities between the disputants. Given the emphasis placed on broader concepts of gender relations elsewhere in *Women, Crime and the Courts in Early Modern England*, this claim is curious and unconvincing. More importantly, Ingram also argues in his article "Scolding Women Cucked or Washed": a Crisis in Gender Relations in Early Modern England? that traditional conceptions of scolding as a solely female crime should be reconsidered. He points out that barratry (the offence of habitually inciting quarrels through divisive words) could be pursued at common law and that men were often named as defendants in these very similar cases. His article raises a series of wider questions about the processes of labelling by contemporaries and by critics.

Garthine Walker's essay, 'Women, Theft and the World of Stolen Goods' fruitfully considers the difference between male and female patterns of theft. The relative infrequency with which women were named in felonious crimes (except witchcraft and infanticide) means that their actions are often under-emphasised in contemporary interpretations of past crimes. Walker suggests that a purely quantitative approach must be supplemented with a sophisticated qualitative analysis. Thus in her article the social and economic conditions of women are developed as the background to allegations of theft. This more 'fluid model' (p 99) allows her to

ask new questions about the ways women were involved in crime and to answer old ones more satisfactorily. It could, perhaps, be adapted to contemporary interpretations of women's criminality.

The other essays in *Women, Crime and the Courts in Early Modern England* deal with less mainstream legal issues. Geoffrey Hudson's article on the ways civil war widows claimed their pensions portrays women as active, indeed eager, participants in court proceedings. Tim Stretton's piece on the relative roles of customary law and equity is a useful one, as customary law is generally overlooked in favour of the better known jurisdictions. He rightly highlights the way customary law was adapted through oral transmission to fit the needs of changing communities.

Excellent though these articles are, it is noticeable that the authors look in the more obscure nooks of the law to find assertive female litigants. The two articles on the subject of witchcraft accusations are still less convincing in their assertion of independent legal manoeuvres by women. While Jim Sharpe's article 'Women, Witchcraft and the Legal Process' does show that women were actively involved as defendants, plaintiffs and witnesses, Malcolm Gaskill's close study of the trial of Margaret Moore for witchcraft is less persuasive. Gaskill sees power in a rather Foucaultian fashion; it floats everywhere and can be seized by anyone at any time. His description of witchcraft as 'just another form of power' (p 136) is a particularly extreme example of this tendency. His theoretical perspective ignores the actualities that women found guilty of witchcraft were burned and that women in general were excluded from activity in the courts.

In these circumstances, it is hard to say that the position of women in early modern courts was entirely positive, though the authors are, in general, correct in pointing out the ways women challenged, subverted and overrode these restrictions. The picture developed in *Women, Crime and the Courts in Early Modern England* shows that women had some knowledge of the law as well as practical legal experience, despite their legal disadvantages. These insights will undoubtedly be taken up by other historical, legal and cultural critics analysing the nexus of women, the courts and power.

More importantly, perhaps, the different methodologies of these articles could be usefully adapted to other studies of the relations between women and the law. The authors raise many questions about the reasons why women can be found in legal records. Though they are not always successful, their endeavours offer fresh inspiration to those who seek to understand the ways women used the courts in the past and how women interact with the law in contemporary societies.

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