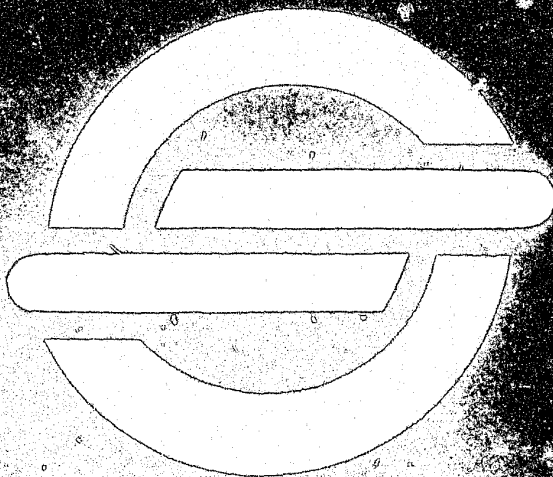


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# Persephone Chained: Parity or Equality in Women's Prisons?

Patricia A. Wheeler, Rebecca Trammell,  
Jim Thomas, and Jennifer Findlay\*

There remains concern that the conditions of incarcerated women in the United States are not equal to those of men. This difference is often attributed to broader gender relations that have shaped prison conditions and policy (Aylward and Thomas, 1984; Bershad, 1985; Kates, 1984; Leonard, 1983; Morris, 1987; Resnik, 1987; Rippon and Hassell, 1981; Schupak, 1986; Shaw and Meyer, 1982). Dissimilar conditions have led to reformist litigation and policies intended to achieve parity as a means of establishing equality.

The underlying assumption of equal protection legal theories, drawn particularly from civil rights litigation and legislation, was that parity would improve the conditions of incarcerated females (e.g., *Canterino v. Wilson*, 546 F.Supp. 174 ([W.D. Kentucky, 1982]); *Glover v. Johnson*, 478 F.Supp. 1075 ([E.D. Mich. 1979])). However, if males and females possess different gender-based phenomenological models of justice, Portia and Persephone, then attempts to establish parity between men's and women's prisons may hamper, rather than facilitate, the goal of equality.

We examine the legal activity of women in Centerville, a midwestern women's prison, and compare the experience of female law clerks, or jailhouse lawyers (JHL's), with their male counterparts to argue that parity may not be a desirable goal.<sup>1</sup> We conclude that while women share many of the same experiences as males, gender may also contribute to substantial differences. These differences, we contend, reflect the Persephone model of justice and preclude parity, whether in law or correctional policy, as the criterion of equality.

There are several ways to pose this issue, but we have chosen one: "Is parity in law identical to equality of law? By parity, we mean quantitative sameness or parallel standards of equivalence between two groups:

According to this approach, gender difference is the evil of women's situation because it enforces the nonsameness of women and men....To feminism, equality means the aspiration to eradicate not gender differentiation, but gender hierarchy (MacKinnon, 1987:22).

Equality, by contrast, is a normative, or qualitative, concept, by which we mean value equivalence. Paraphrasing Morris (1987:103), we suggest that equal treatment is not sufficient to bring about equality where, structurally, women are disadvantaged *vis-a-vis* men. We find the logic of Resnik's (1987) concerns with the limitations of parity convincing:

A first problem is one common to all equal protection claims: the claim is based upon comparison between two groups. Equality can be achieved either by bringing one

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group up to the other or by reducing the benefits of the group that was "better off." In the prison context, this ratchet aspect of equal protection is particularly painful. No one claims that men prisoners have it "good" in prison: all the arguments are about degrees of deprivation. A second difficulty with parity is that the concept is tied to resources. As overcrowding increases and interest in rehabilitation diminishes, many vocational and educational programs are reduced. If programs provided by men set the standard and those programs are ended because of budget cuts, parity is achieved by providing nothing for women or men (Resnik, 1987:28).

Equality, by contrast, requires a normative, rather than "due process," approach:

Commitment to the principle of equality means striving for interactions that are participatory, democratic, cooperative, and inclusive, characteristics that are incompatible with hierarchy, stratification, and centralized decision making. Thus, rules, which often are substituted for sensitive, respectful engagement of persons in cooperative problem-solving, should not be regarded as sacrosanct (Harris, 1987b:34).

To show the gap between parity and equality, we focus on two broad themes. First, we look at the legal needs for which women seek assistance. In recent years, federal court decisions have brought legal services in women's prisons to par with those of men's prisons, but if women possess different legal needs, parity at law may not provide equality of means to meet them. Second, we examine the problem solving activity of women law clerks to illustrate that women may speak in a "different voice," one in opposition to the "rule of law" on which legal reforms are based.

### *A Feminist Vision of Corrections*

A recent article in *The Prison Journal* argued with some cogency that one task facing criminal justice researchers and practitioners in the coming decades demands a "feminist vision of justice" (Harris, 1987a). Here, we take one step toward this vision by suggesting that the predominance of male prisoners has led to a situation in which "parity" means equality for males, but may exclude females from the intent of otherwise well-meaning reforms. At stake, as MacKinnon (1987:23) argues, is not gender difference, but the difference gender makes. In advancing a feminist view of justice, we do not expect all to share our perspective. We do, however, hope that the subtle influences of gender will be made clearer so policy can be adjusted accordingly.

There are two reasons why parity *in law* may not lead to equality *at law*. First, the use of law, the role of jailhouse lawyers, and the orientation to legal struggle differs between men and women. Second, most litigation is by males (Aylward and Thomas, 1984), which resolves male problems in a way that may be inappropriate for women (Morris, 1987; Resnik, 1987). Drawing from recent literature on gender socialization, we suggest that these differences lie in what has been described as women's "speaking in a different voice" (Gilligan, 1982). Although we recognize the latent essentialism underlying the concept (Daly, 1989), we nonetheless find the "different voice" metaphor useful for illustrating how women are placed at a disadvantage when parity at law becomes the standard for equal justice.

As developed by Gilligan (1982) and others (Harris, 1987a; Heidensohn, 1986; Menkel-Meadow, 1985), the "different voice" in which women speak reflects an alternative form of moral judgment, world perspective, and interaction patterns. Heidensohn (1986) has called the male voice the "Portia model," and the female voice the "Persephone model." Each represents a different orientation to justice: The former is based on "justice as fairness," the latter on "justice as caring."

Whereas justice as fairness involves seeing others thinly, as worthy of respect purely by virtue of common humanity, morally good caring requires seeing others thickly,

as constituted by their particular human face, their particular psychological and social self. It also involves taking seriously, or at least being moved by, one's particular connection to the other (Flanagan and Jackson, 1987:623).

The masculine Portia model is characterized by abstract and universalistic principles, rationality, "the rule of law," and procedural justice. The feminine Persephone model is personal, informal, grounded on relationships, and based on cooperation and negotiation (Heidensohn, 1986:203).

From these two models, several issues emerge. First, law is reactive to the extent that it is invoked as a response to a perceived dispute. If women do not have the same needs as men, the content of the legal needs of men and women will differ, and it would then appear that parity will not greatly benefit women. Despite the apparent similarity of material deprivation, this occurs because the changes in policies and conditions wrought by prison law may be predominately defined by, and therefore more beneficial to, males. More simply, the consequences of law may not be shared equally between males and females.

A second issue focuses on the use of law in dispute resolution. If Gilligan (1982) is correct in her claim that women tend to avoid confrontation and opt for negotiated and finessed strategies of dispute resolution more than men, then we expect the use of law by women to differ as well. If women are not as likely to use law as a weapon in resolving problems, we must then ask what they use it for. If "male" and "female" legal practices exist, the distinctions should be evident in law's use.

Finally, there is the issue of *responsiveness*. If law were truly autonomous, or not significantly affected by influences external to it, there need be no "feminist law," only *law* [2]. But, law is not truly autonomous, and, proceeding as if it were, sacrifices responsive policies to the blind formalism of institutional procedure (Nonet and Selznick, 1978:76).

Speaking in the voice of Portia, adherence to a perspective of autonomous law would ignore differences in legal needs, uses, and practices, and assume that differences that might occur between groups was the product of misapplication of rules rather than other penetrating factors. Autonomous law, with its emphasis on identical rule application, corresponds to the path described by MacKinnon (1987:33) by which "equality" for women is currently sought: "This path is termed gender neutrality doctrinally and the single standard philosophically. It is testimony to how substance get itself up as a form in law that this rule is considered formal equality" (MacKinnon, 1987:33).

For prisoners, the parity emphasis on autonomous law excludes differences in the ability to define a problem as legally meritorious, a willingness to engage in the often zero-sum nature of legal conflict, and the socialization processes by which some groups are more adept at certain types of conflict gaming than others. For this reason, the concept of access to law possesses different meanings. For some, it means "the doors of law are open to whomever wishes to enter." For others, however, it means, —as it did for Joseph K.'s gatekeeper in Kafka's *The Trial*— that the gates may appear open, but the obstacles to entry are prohibitive.

### *Law in Women's Prisons*

Prior to the 1960's, prisoners had little access to law to resolve personal problems, challenge their conviction, or rectify complaints of conditions of confinement.<sup>3</sup> Following the resurrection of post-Civil War civil rights statutes in *Monroe v. Pate*, 365 U.S. 167 (1961), the right of prisoners to pursue problems in courts expanded. In the next decade, numerous cases established both the right of prisoners to seek relief for a variety of claims in both state and federal courts and the right of prisoners to help other prisoners with legal problems (Calhoun, 1977; Palmer, 1984). With increased access,

JHL's became a major conduit between prisoners and the courts. Critics of prisoner litigation have argued that JHL's litigate for frivolous reasons, primarily as a means of hassling their keepers. Their assumption is that JHL's have little else to do but sit around their cells and misuse the law. However, most available evidence indicate that this is not the case, and that prisoners litigate to resolve legitimate problems (Mika and Thomas, 1988; Milovanovic and Thomas, 1989; Thomas, 1989; Thomas, Harris, and Keeler, 1987).

Most litigation research has focused on male prisoners. Historically, women have constituted a small proportion of the nation's prison population. Despite the increase in the number of women in prison, by July 1987, the percentage of incarcerated females was only 5 percent of all prisoners (U.S. Department of Justice, 1987). In the state in which this study was conducted, women initiate less than 1 percent of all prisoner actions filed in federal court, even though they constitute over 3 percent of the state's prison population. Not only do women constitute a smaller pool of potential litigants, but there is some evidence to suggest that women are not as likely as men to pursue law as a means of conflict resolution (Aylward and Thomas, 1984; Leonard, 1983). Alpert suggests three reasons for this:

They are: first, the attitudes and values brought into the prison from the outside world; second, the responses to the deprivation of prison life; and third, the institutional structures of the prison (Alpert, 1978a:313-14).

One female law clerk familiar with the litigation experiences of both males and females offered another explanation:

I think the focus is substantially different [for women]. For one reason, although this is changing, up to now women have traditionally received shorter sentences than men. Therefore, they have less time to focus on the problems directly related to their incarceration. Plus, that's number one, and number two, most of the women who come to Centerville, probably a good 80 to 85 percent, are the head of their households with minor children. And this disruption, this disruption of the household, has caused them to focus on the needs of their children, trying to deal with this. Most men who are incarcerated have wives or girlfriends who are taking care of the children, so they don't have this focus.

### *Method*

Our research combines a case study of female law clerks, or JHL's, responsible for aiding women seeking legal assistance between 1980-88 with data from records kept by these female law clerks. The data come from Centerville (a pseudonym), a women's prison in the midwest with an inmate population of about 750 in 1989. Because Centerville is the state's only women's institution, the characteristics of the residents differ somewhat from those of male institutions. The average time served by Centerville women is about 20 months, compared with about 30 months for men. In 1987, about 40 percent of the population was under sentence for murder (20 percent) or other violent offenses (19 percent). The remainder were sentenced for property or other nonviolent crimes, usually drug-related. The average age was 31.7 years (slightly older than the average for men), and the population was about two-thirds black (about the same as male institutions).

We have compiled a detailed statistical summary of the number of client contacts, reasons for seeking aid, and filing activity at Centerville. These clerical data were collected from 1984-86 by two law clerks who tabulated the number of daily contacts, the reasons for contacts, the number and nature of legal or institutional actions pursued, the outcome of legal actions, and the number of clerk-hours spent on attending to wo-

men's legal needs. In addition, we obtained a variety of institutional, legal, and other documents that illustrate and corroborate policies and legal problems for which women sought assistance.<sup>4</sup>

### *Women's Legal Needs*

The legal needs of men and women do not end when they enter prison. Each group may continue to contest their conviction in state or federal courts, and each experiences new problems that may arise because of their incarceration. For women, these new problems include name changes, divorce, child custody, or other family difficulties that arise from their new status. Centerville law clerks judged that, in non-criminal case matters, family-related problems were the most frequent.

[If] I could put it in one area—it would be an area, rather than specifically one thing—family law. Family law, to me includes divorces, child custody, all matters affecting the marriage relationship and the child-parent relationship. And this includes things like husband and a wife, maybe a common-law husband and wife, being locked up in two separate institutions, and they're trying to correspond with each other, and then trying to deal with their children. That kind of thing.

The courts have been slow in recognizing the special relationship that women retain with their families after entering prison. The caring, personal relationship that women attempt to retain is blocked by security and other custodial demands that hinder the social bond between mother and child. In fact, the separation from families was considered to be the most severe emotional hardship for women:

It's an emotional, physical, and a material deprivation. It's an emotional deprivation because the women are cut off from their own family. The contact that is allowed and is permitted is basically very minimal.... And the very limited, frustrating, kind of contact you get with your family, the rules allow you two visits a week, and that's very frustrating, not really enough to keep in touch. There's limited phone call privileges every other day, 15 minutes a phone call, this kind of thing. By physical deprivations I do mean the deprivation in terms of your family and association with the people you were close to on the streets.

What are the broader legal needs of women?<sup>5</sup> Table 1 summarizes the issues for which women sought assistance. The bulk of women's legal needs (32.1 percent) in this institution are related to their incarceration, but not directly related to the proceedings of their original conviction.<sup>6</sup> Of these, the most common problem is that of calculation of credit toward time served (11 percent of all actions). Another common problem is that of refund by the state of bond money, which, according to both men and women prisoners, can be a slow process.

Requests for assistance in criminal or institutional actions each constitute about 25 percent of other requests for aid. Of institutional actions, the most common are requests for aid in resolving an institutional grievance (8 percent), followed by arbitrating other unresolved grievances (7 percent). These combined categories of "other matters" and "institutional actions" total 55 percent of all legal needs, suggesting that women do not seek aid as a means of hassling their keepers, but to address specific problems for which law is a legitimate and often the only avenue for relief.

Aid requests on civil actions constitute about 19 percent of all clerk contacts, and their nature illustrates the variety of legal problems incarcerated women may face. Assistance with filing for, or responding to, divorce constitutes the bulk of this category (9 percent). Other matters that women confront more than men are Department of Child



and Family Service (DCFS) problems and child custody or visitation issues. Questions relating to maintenance of the family (children and divorce) account for 16 percent of all problems. Judging from this, and from the variety of noncriminal queries, it would seem that women's legal needs, despite some shared problems common to both sexes, reflect substantial differences from those of men.

Table 1 suggests one crucial difference between male and female litigants. Although there is little comparative national evidence, there is some indication that men in this state use the law more as a means of attacking prison policies or practices than women (Aylward and Thomas, 1984; Thomas, 1988), or as a means of resisting the power of their keepers (Milovanovic and Thomas, 1989). Men seem more willing to recognize the utility of law as a weapon. By contrast, in a study of gender and litigation, Aylward and Thomas (1984) found that women rarely litigate in federal courts, and the data presented here indicate they do not litigate at a comparable level in state courts either.

**TABLE 1**  
**Reasons for Seeking Legal Assistance, 1984-86**

	1984	1985	1986	Totals
<b>Civil Actions</b>				
Name changes	0	7	1	8
Immigration matters	1	1	6	8
Social security appeals	1	6	4	11
Divorce responses	0	10	7	17
Child visitation	5	5	15	25
Answers as defendant	4	11	12	27
DCFS grievances*	0	10	35	45
Temp. child custody	5	40	60	105
Divorce petition	18	106	95	211
Subtotals:	34	196	235	465
Percent:	9.1	20.5	19.7	18.5
<b>Criminal Actions</b>				
State Habeas Corpus	0	1	0	1
Speedy Trial, federal	1	2	1	4
Federal Habeas Corpus	8	1	0	9
Speedy trial, non-Ill.	5	11	9	25
Sent. Reduct. Motion	0	21	15	36
Cert mot., Ill. Sup. Ct.	10	19	8	37
Postconviction Petitions	31	14	11	56
Notice of Appeal.	14	114	103	231
Speedy trial, Ill.	53	70	110	233
Subtotals:	122	253	257	632
Percentage:	32.9	26.5	21.6	25.1
* Department of Child and Family Services				
<b>Institutional Actions</b>				
Section 1983	9	6	2	17
Permission to correspond	1	6	12	19
Personal injury	4	7	15	26
Missing/lost property	1	18	28	47

Disc. ticket defense	22	31	50	103
Grievance, arbit. of	30	75	82	187
Grievance, Instit.	15	70	127	212
<hr/>				
Subtotals:	82	213	316	611
	22.1	22.2	26.6	24.3
<hr/>				
<b>Other Matters</b>				
Interstate inst. trnsf.	0	1	0	1
Writ of mandamus	1	6	0	7
Parole rehearings	0	4	6	10
Mittimus Correction	5	28	6	39
Attorney grievances	8	18	38	64
Executive clemency	47	28	10	85
Bond refund	24	52	86	162
Special res. projects	40	55	80	175
Jail time credit	8	102	156	266
<hr/>				
Subtotals:	133	294	382	809
Percentage:	35.8	30.8	32.1	32.1
<hr/>				
Totals:	371	956	1,190	2,517
Percentage:	14.7	38.0	47.2	100.0

### *Seeking Aid*

Who are the women who seek legal assistance for problems? Alpert (1977) has suggested that such variables as age, prior experiences with the law, and adjustment to prison life and culture are among the most powerful predictors of who will seek aid. However, our data suggest that, in this prison, nearly all women will eventually seek some assistance, and turn to the JHL's for counseling.

Although we did not track individual women longitudinally, in any given month, the number of women seeking a single interview averaged about 66 percent of the population.<sup>7</sup> Over a given year, this resulted in an estimate of no less than three-quarters of the population consulting with clerks at least once. Interviews with law clerks and other prisoners indicated that women with relatively short sentences were much less likely to seek legal aid because they could better resolve their problems on release. Another reason why the women in this prison have been more willing to ask for legal help than those in Alpert's study may be due to the growth of legal services for prisoners in the past decade together with a recognition of the utility of jailhouse lawyers.

### *Federal Litigation*

Male litigants are prolific in federal court, especially in addressing such issues as prison violence, staff misconduct, and prison conditions. Table 2, by contrast, shows that female law clerks assisted in very few federal lawsuits (which numbered 41, or 3 percent of all court actions), and other studies also indicate that federal courts are not a common avenue by which women pursue problems (Aylward and Thomas, 1984). State court actions reflecting a variety of personal rather than institutional problems comprise the bulk of additional court activity. Most were responses to or initiations of noncriminally related matters.

TABLE 2

## Distribution of Actions in State and Federal Courts, 1984-86

Year	Federal Court	State Court	Totals
1984	22	158	180
1985	10	494	504
1986	9	499	508
<hr/>			
Totals	41	1,151	1,192
(Percent)	3.4	96.6	100

*Doing Law in Women's Prisons: Portia or Persephone?*

One way to assess the different experiences that define the relationship between law and gender is by looking at how women do law in prison. If doing law reflects a "different voice," one for which the principles of autonomous law seems inappropriate, then the utility of parity for establishing equality must be challenged.

Contrary to public conceptions (c.f. Thomas, 1988; Thomas, Harris and Keeler, 1987), male law clerks are not primarily motivated by an urge to hassle their keepers. The women law clerks in Centerville are no exception to this pattern, and, in fact, a substantial part of their time and energy is channeled into assistance that is nonlitigious. If gender-based differences occur, examining the practices of male and female practitioners should reveal them.

Both male and female JHL's may embark on their careers for similar reasons, but the qualities required to succeed may differ. As with any profession, becoming a JHL requires certain personal and intellectual attributes necessary for success. Males tend to identify aggressiveness as by far the most important, followed by "love of law" and "caring about others" (Thomas, 1988). The clerks at Centerville, by contrast, indicate "caring for others" as the most important attribute required for female JHL's, followed by intellectual competence and tact; aggressiveness is rarely mentioned. For men, struggle and conflict are guiding metaphors of litigation (Thomas, 1988), but women JHL's proceed from an ethic of care in which sensitivity to others' needs and not "winning a case" guides activity. As a consequence, the psychology of women, described as distinctive in its greater orientation toward relationships and interdependence, implies a more contextual mode of judgment and action (Gilligan, 1982:22), and seems to guide women JHL's as well. Of the differences between male and female JHL's, two of the most salient include tasks and goals.

Centerville JHL's served a variety of functions. In addition to the primary task of providing legal services, they aided in problem solving, acted as "therapy counselors," devised self-help strategies for others, and attempted to implement modest reforms of conditions or policies. Staff, on occasion, even used the skills of JHL's to resolve problems with other inmates perceived as disruptive:

For instance, in terms of [Hawkeye, a "problem" prisoner], during the two years that we were working with her, they frequently would call us over there to cool her out. They saw us in some cases as an effective check on difficult problems in difficult situations.

Some of the tasks involved nonlegal activities, particularly in developing programs for child visitation, writing literature for resolving institutional grievances,

and helping women deal with the emotional trauma of incarceration. In one example, some prisoners expressed problems in explaining to their children why they were in prison. Two female JHL's wrote a children's coloring book, enlisted a third to illustrate it, and prison officials distributed the book to children in a successful program that helped ease women's transition from mother to prisoner.

The potential for implementing small reforms often produces its own reward. Prisoners in this state continually complain of incompetent or ineffective counselors (John Howard Association, 1987). When JHL's serve the function of counselors, the latter are often forced to take a more active role in meeting inmate needs:

We were a royal pain in the butt to the counselors, because we made them do their job, and they hated it. They didn't have time to be counselors, all they had time to do was to fill out forms. But when somebody would come in with a problem that a counselor should handle, we'd get the counselor on the phone and scream at them until they did what they were supposed to do, and of course they hated it. Because we knew what they were supposed to do.

Male JHL's consistently identify pride and improved self-concept as a product of their labor (Thomas, 1988). Women, by contrast, identify a more personal and nurturing aspect of their work as the primary satisfaction.

Probably the biggest thing I got personally was it made me feel like a real human being in a situation that was unreal, that was unnatural ... You feel that you could actually accomplish something in an environment where it's impossible to actually accomplish anything. And you can really do it. But the thing is, it takes a lot of determination and a lot of perseverance. We used to sit sometimes at night and say to ourselves, "why in the hell are we doing it? Why are we doing this?" But then when you just win one thing, one something, one grievance, it makes it worthwhile, and it gives you that little push to go on maybe a little longer. The only thing, I think, the experience— I don't know if that's good or bad, because I know it's something I'll never be able to forget—it's going to be with me forever and ever, and I don't know if that's good or bad, I really don't— but, it lets you see so many different people, where they come from, how they got to be where they are, and it lets you understand so many different things that you never really thought about before. I think it makes you tolerate life better. I think it makes you more appreciative of life.

Sometime helping other inmates provides both motivation and satisfaction. Two female JHL's were active in helping a prisoner who was perpetually disciplined for "not being with the program:"

In the two years of hard work [with "X"] we got her transferred from [this state's] Department of Corrections to [another state]. And after everything she had gone through at Centerville— they kept her in solitary confinement for over five years, and treated her virtually like an animal—watching her walk out that door and knowing she was getting a second chance in life through our efforts, made it all worthwhile.

Although male JHL's demonstrate considerable empathy with clients (Thomas, 1988), women may become even more emotionally involved, especially in nonlegal matters. For men, an emotional "loss" generally constitutes a defeat in court. For women, examples of frustration at powerlessness to alleviate a problem may be emotionally more straining:

The most frustrating thing was, I think the most frustrating thing would be Christmas day of '87, when we went to the hospital, and held [Bonnie's] hand, and all of these so-called scholarly folks we had could not help her in any way shape or form. Nobody would help her. And there were no legal remedies, there were no remedies at all. That was the most frustrating time for me, [Bonnie's] ordeal.

Although acknowledging their responsibility in helping others, males tend not to feel it as pressure-inducing. Women, by contrast, identify their responsibility as highly stressful, and one woman summarized the feelings of others in describing how caring for the fate of others affected her:

... I was always afraid of taking too much responsibility. Just being a law clerk, in itself, is a tremendous responsibility, because in reality you're taking on responsibility for someone's life, what's going to happen with them. When you take on an action in court, whether you win or lose, you are raising a person's hopes, and when those hopes are dashed, because in court today, it's so hard to win, and you don't win that many, and it's a rare case when you win it, but the people always think you're going to win, and to raise their hopes like that, it's a big responsibility. Scary. Because it's hard to keep morale up anyway, and when it's a false hope, it's very hard. I think the responsibilities that I felt were to be as truthful as I could be to everyone, to offer them alternatives, to make them aware of what they could do, and try to leave the responsibility of making the final decision up to them. In some cases, granted, I wouldn't even give them the final responsibility if I knew there was no way they could win, I wouldn't even give them the opportunity to go ahead with it. You see too many cases where they've done that, and the after effects were devastating.

Although men spend a significant proportion of their time meeting clients, an estimated 75 percent involves legal research and other tasks directly related to the practice of law. For women, however, this is reversed. Centerville clerks spent the bulk of their time interviewing and counseling potential clients.

Table 3 illustrates the caseload, time spent, and number of actions filed.<sup>8</sup> Between July 1984 and December 1986, the two clerks conducted nearly 9,000 interviews. The increase after 1984 may have been caused by the recognition that the clerks were exceptionally competent, thus giving inmates both the confidence and motivation to increasingly seek consultation. Although some interviews included multiple contacts with the same client over time, most clients (two thirds) visited only once. There was no recorded instance of any single client seeking aid more than four times in a single month. As a consequence, new problems arose daily that required a multiplicity of legal interactional skills.

Male JHL's constantly complain of insufficient time to perform their tasks, and it is not common for them to work the equivalent of overtime to manage their caseload. This problem also plagues women, and Table 3 shows that the two clerks combined for an average of about 419 hours a month in 1985 and 392 hours in 1986. One clerk was also enrolled as a college student during this period, which decreased the time available to devote to legal assistance. In a civilian career, this would average about ten hours a day on a Monday through Friday schedule. As a consequence, just as males invest their "hearts and souls" into the enterprise of law, it appears that women, too, devote an inordinate amount of time to their tasks. This suggests that the underrepresentation of litigation by women does not occur because of lack of effort.

Table 3 indirectly suggests another gender difference in the approach to law and the role of law clerks. When male prisoners seek assistance, it is generally with the intent to litigate, and male JHL's report that about half of their contact with clients results in some legal action. This is not true for women. Table 3 shows a low proportion of contacts resulting in any court action. We find only 13.2 percent, or less than one in seven contacts, ultimately invoking the formal legal process. Because the bulk of legal actions are responses as a defendant, rather than as an initiator of action, we suggest that women may take a more passive stance to law as a means of struggle. Although the data only indirectly support this, we interpret the low interview/legal action ratio to mean that women's access to law does not result in "more law," and that the work of female law clerks may serve functions not directly related to law. If we are correct, then the

delivery of legal services to women must take this into account if equality, rather than merely parity, is to be attained.

**TABLE 3**  
**Annual Totals of Interviews, Hours, and Actions Taken,**  
**July, 1984 Through November, 1986**

	1984*	1985	1986	Totals
Interviews	1,591	3,678	3,730	8,999
Interviews Outside law library	290	612	1,040	1,942
Total clerk hours**	424	5,024	4,704	10,152
Avg. hours per case	1.5	1.4	1.3	1.3
Total court actions taken	180	504	508	1,192
Percent interviews resulting in court action	10.5	13.7	13.6	13.2

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\* Figures for six months only

\*\* Figures incomplete

### *Conclusion*

We have drawn from the legal needs of women and from the experiences of women jailhouse lawyers to illustrate the nature of women's problems in prison and the different orientation they have to solving problems. Our data suggest that women in fact approach law and problems in a different voice than men. Their legal needs and use of law reflect a justice model of care, informal counseling, nurturing, responsibility, and cooperation, rather than universalistic and rational principles guided by formalistic rules of due process underlying the dominant autonomous "rule of law" ideology. More simply, it is Persephone, not Portia, who is enchained.

We base this conclusion on the following summary of our findings. First, although women prisoners approach parity with men in access to law, this access does not seem to resolve the most serious problems of women, such as family visitation or child care.

Second, women have a different approach to law than males. Clerk's tasks are more nurturing, involve more extralegal problem solving, are more likely to address personal rather than broader institutional issues, are service-oriented, and tend to seek alternatives to law. These differences each reflect a model of law based on informal networks, care and responsibility, and what some researchers have called a specifically feminine approach to morality and justice.

Third, the filing patterns of women differ dramatically from those of men. Women are simply not likely to litigate, even though they do not hesitate to seek assistance from clerks for ostensibly legal problems. Further, women are not generally inclined to pursue their civil rights claims in federal court. Instead, there appears to be a tendency to avoid legal channels to resolve problems. Men, by contrast, tend to avoid negotiation

and view litigation as a weapon. Hence, women's guiding metaphors for action are quite different from men's.

Fourth, female JHL's take on a variety of additional tasks unrelated directly to law, but directly related to dispute resolution and problem solving. Further, for women, intangible rewards seem more important than for men, and the qualities of a "good" male or female JHL differ in that female JHL's value nurturing rather than aggressiveness. Women also opt for alternatives outside the legal arena when possible.

What does all this mean for prison policy? The assumptions that guide the current punitive process remain grounded in ostensibly gender-neutral, but still male-derived, policies and conditions. This creates an imbalance between male and female punishment that is perpetuated by parity and which reinforces inequality rather than reduces it. Following Wishik (1985), we suggest that different gender experiences, both in and outside of prison, must be considered when assigning punishment.

A new feminist vision of justice, one that leads to gender equality, would require tempering the application of universal rules with evaluative ones oriented toward an outcome that recognizes the substantive differences between male and female offenders:

...the idea of justice in the domain of gender may be understood either in terms of process or result. The result-oriented approach specifies the attributes of a good society as these relate to gender, and proposes rules aimed at bringing about that good society. This conception presupposes that the collectivity knows that it wants concerning relations between sexes and, more broadly, the relevance of gender in our public lives; it conceives of government action as spiriting us away from a flawed present to a substantively happier future (Kirp, et al., 1986:12).

Given the current ideology of autonomous law and principle of parity, we are not optimistic about resolving the gender inequality in women's prisons. Further, given the state of men's prisons, it strikes us as ironic to vie for parity when the resources available to both groups remain so low. However, we suggest that Heidensohn (1986:297) provides one answer in her call for a separate penal system for women. If it is true that people experience punishment differently and that our current system is male-derived, then there is continued injustice in subjecting women to an unequal experience. More simply, we call for a responsive model of justice that recognizes that difference gender makes when inflicting punishment.

#### *Footnotes*

<sup>1</sup>Although the two terms are not fully identical, we use "jailhouse lawyer" and "law clerk" synonymously. We cannot present data from male institutions in a short paper. However, we draw from our previous works with male prisoner litigants (e.g., Thomas, 1988, 1990 [forthcoming]; Milovanovic and Thomas, 1989).

<sup>2</sup>We draw here from Nonet and Selznick (1978:54), who characterize autonomous law as (a) separated from politics, (b) based on the sanctity of universalistic rules, (c) guided by invariant procedures, and (d) faithfully adhered to (at least in principle) by those practicing it.

<sup>3</sup>For a discussion of the history and processes of law in men's prisons, see especially Thomas (1988). For a legal history of the expansion of prisoner case law, see Palmer (1984). For discussions of women's litigation, see Alpert (1982); Aylward and Thomas (1984); Kates (1984); Leonard (1983); and Resnik, (1987).

<sup>4</sup>We have also relied on our experiences with women prisoners. One author has monitored Centerville since 1980 for the John Howard Association, and two authors have worked as legal aides to women prisoners for the past five years. The bulk of the interview

data were tape recorded (about two-thirds). The remainder of the data were re-constructed from field notes. All quotes are taken from female jailhouse lawyers, unless specified otherwise.

<sup>5</sup>For other studies of women's legal needs in prison and their reasons for seeking legal aid, see the corpus of Alpert's works (1982, 1978a, 1978b, 1976); Alpert and Huff, 1981; Alpert et. al (1978); Alpert and Wiorkowski (1977); Kates (1984), Leonard (1983); Resnik, (1987).

<sup>6</sup>"Original case" assistance refers to requests for help regarding the conviction or other proceedings that resulted conviction or incarceration. These issues usually center on how one might obtain release. "Conviction-related," by contrast, implies that one accepts the conviction and is not looking for an avenue out, but rather has a problem that stems from conviction, such as calculation of jailtime served or failure to receive bond refund. The totals of reasons for seeking legal assistance exceed the total number of interviews because many women have multiple needs.

<sup>7</sup>This figure should be interpreted with some caution, however, because some contacts were repeaters in subsequent months. Further, because of the turnover of the population, there was a steady influx of those requiring assistance, and newcomers were more likely to seek aid than "old-timers."

<sup>8</sup>The data for 1984 in Table 3 exclude January-June, because monthly data for the first six months were not consistently maintained. Data in Tables 1 and 3 include figures for the entire year.

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