

Article

Can a Patriarchal World Be Corrected by a Criminal Law? Feminist Struggles, Penal Justice and Legal Reform in France (1970–1980)

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Abstract: This article describes (1) the relationship between the demands made by feminist movements of the 1970s in cases of sexual violence and criticism of the criminal justice system by these movements and other groups, including the prisoners' movement; and (2) the relationship between this debate and the legal process of reforming the definition and punishment of rape. Two periods are analyzed. In the early 1970s, the common cause of very different movements targeting the law was the priority given to the defense against forms of repression and disciplinary institutions. After 1975, the demands of feminist and prisoner movements diverged and even conflicted. One camp called for an offensive approach to changing the legal punishment of rape whereas the other camp fought against penal reforms imposed by the government and, more specifically, against long sentences.

Keywords: feminism; sexual abuse; social movements; crime enforcement; French history; prison

1. Introduction

The feminist movements of the 1970s made sexual violence against women one of the central themes of their mobilizations. In many countries, these struggles resulted in reforms of the legal definition of sexual violence, specifically in order to make it indifferent to the gender of perpetrators and victims, and to put an end to the exclusion of violence committed in the context of marriage. Penal practices changed as well, with the number of complaints lodged increasing and the sentences handed down becoming harsher. Today, the link between the politicization of sexual violence and increasing efforts to curb it seems obvious, particularly because the activist movements largely based their criticism on the near-total impunity enjoyed by rapists¹.

In France, when feminist activists examined the state of laws regarding rape, they denounced the disparity between the letter of the law and its application by the courts. The measures against rape in the Penal Code were quite severe. Since the 19th century, the law had stipulated that “whosoever commits the crime of rape shall be punished by 10 to 20 years of incarceration”. The law did not define rape, but it had received a doctrinal definition: “illicit coitus with a woman that one knows has not consented to it” ([2], p. 42). However, the long-term history of legal action taken by women testifies to the obstacles ([3], p. 13). By examining “the accounts of women who were victims of rape in the 19th century”, Laurent Ferron established a “typology of cases that reached the courts”. These mostly

¹ For a critical assessment of these tendencies in the United States, see [1].

concerned: young women “rescued in time”, since this immediately made the attack public; “victims of gang rape” because their consent was not presumed; victims of “incest”, because attacks were multiple and could end up triggering a complaint in order to avoid a pregnancy during adolescence; or “seriously wounded women”. Conversely, “being a single woman, opening one’s door, letting someone walk you home, being alone in the evening and being a single mother were very serious faults, and rape seemed to be a crime whose harm was no longer seen when virginity had been lost long ago” ([4], pp. 130–38). The purpose of the women’s campaign against rape can be interpreted as the word-for-word reversal of this description: to put an end to the impunity of sexual violence committed against women who live alone, engage in sexual relations, have children, hitchhike, go out at night, *etc.*

The most well-known result of these mobilizations was a legislative reform passed in 1980 that altered the definition of rape and changed the stipulated penalties. Given this outcome, this mobilization would appear to share certain characteristics with what Howard Becker calls the “crusades” of “moral entrepreneurs”. According to him, “the prototype of the rule creator” is “the crusading reformer [who is] interested in the content of rules [because] the existing rules do not satisfy him [and] there is some evil that profoundly disturbs him”. The action of these entrepreneurs is “typically in the form of legislation to be proposed to a state legislature or Federal Congress”. One of the major consequences of a “successful crusade” is “the establishment of a new rule or set of rules, usually with the concomitant enforcement machinery”. The path taken by the mobilization against rape could be described as follows: the publication of a social issue, efforts by organizations to rally important political actors and legally translate a polysemic watchword into a penal law, and then the passing of the reform, signaling the movement’s success ([5], pp. 147–52).

This description gives a very incomplete picture of feminist mobilizations relating to rape. It leaves aside the fact that the struggle’s definition as *an effort to reform morals through penal law* resulted from a confluence of different ways of conceiving both the problem of rape and the solutions it requires. As Aya Gruber points out: “For progressives like feminists, there is always a certain feeling of discomfort when a subordinated group turns to state police power to achieve equality”. Although this feeling of discomfort has been constant, the place it has occupied in the definition of struggles and demands has changed according to the period and, in particular, according to how activist groups have determined which expectations they consider “realistic” ([1], p. 604).

This article aims to analyze the genesis of these controversies and the changes they underwent during the 1970s, approaching the subject principally from the angle of the relation between penal demands made by feminist movements and criticism of the penal system during the same period, made by other activist movements and by the feminist movements themselves. It is primarily based on written sources produced in the 1970s by feminist movements [6–21] and, more sporadically, by radical left-wing, prisoners, Maoist, Trotskyist [22–27] and homosexual movements (Homosexual Front for Revolutionary Action) [28–33]. Their more or less short-lived but widespread newspapers and magazines from the 1970s formed the base of my documentation. The article is also based on political and parliamentary debates generated by the actions these activists undertook in the context of court cases and legislative reforms.

The article looks back at the evolution of the political positions of these movements, and describes how relations between them were affected by these changes. The first part shows that in the early 1970s, movements that differed widely in their relationship to the law shared a belief in the paramount importance of fighting certain forms of punishment. The second part analyses the splitting of demands into different categories after 1975 and the polarization of activist movements into two camps: those demanding aggressive changes in the laws relating to sexual violence and those fighting reforms imposed by the government, particularly the reforms that lengthened long prison sentences.

2. Politicization of Penal Issues and Struggles against Repression (1968–1975)

The first years after May 1968 were marked by the emergence of second-wave feminist movements (MLF/Mouvement de libération des femmes) and the creation of a large number of organized protests against institutions denounced as repressive, including the army, the household, psychiatric hospitals and—first and foremost—prisons. These movements emerged within a short timeframe. The MLF became visible in August 1970 when a group of ten women placed a spray of flowers under the Arc de Triomphe in Paris, dedicating it “to the wife of the unknown soldier”. The first issue of the movement’s magazine *Le torchon brûle* appeared in December 1970, and it continued to be published until 1973. Movements targeting prisons arose in reaction to issues linked to the incarceration of radical left-wing activists and separately from them, as part of an autonomization process that lasted from 1970 to 1971. The creation of the Groupe d’information sur les prisons (GIP/Prison Information Group) was announced in February 1971 [34]. The Comité d’action des prisonniers (CAP/Prisoners’ Action Committee) was founded in November 1972 and started a magazine in 1973. These activist processes interacted with important political episodes that also unfolded within a short period of time. In the area of feminist movements, this would be the period that began with the Bobigny trial (late 1972) and ended with the Veil abortion law (January 1975). In the area of prisoner movements, this would be a period of revolt (mainly in 1971–1972 and summer 1974) and of subsequent penitentiary reforms in 1972 and 1975.

2.1. The Rejection of Popular Justice

As these feminist movements and prison movements emerged, they distanced themselves from the radical left-wing, Trotskyist and especially Maoist movements that had mobilized following the events of May–June 1968 [35,36]. These ruptures were due to general issues relating, for example, to the identification of the patriarchy as the “main enemy” rather than employers [37] or, in the case of prisoners, to the anarchist critique of the Marxist identification of common law prisoners with a *lumpenproletariat* subjected to the interests of the dominant classes. These differences received concrete expression in disagreements about the kind of action taken by radical left-wing activists, particularly Maoists who attempted to give their struggles the form of “popular justice”, turning severe penalization against bosses. Its most significant application took place in 1970. On 4 February of that year in Fouquières-lès-Lens, 16 minors were killed by a firedamp explosion. On 12 December, the Lens Popular Court held a session in which the mine’s managers were symbolically put on trial.

The desire to severely penalize the dominant classes entered into tension with a fundamental element that emerged out of the struggles that followed May 1968: the May movement was immediately defined by the challenging of forms of discipline². This is a reference to all of the struggles against the presumption of minority of certain people living and/or studying and/or working in educational, social assistance, healthcare or correctional institutions, a presumption that made it possible to exercise discretionary power in a single, more or less closed environment, to borrow Dominique Memmi’s terminology ([39], p. 36). The critique of these relations of subordination was presented by the strikers of May 1968 who rejected the factory order ([40], p. 13). These disputes extended beyond the walls of factories. They were taken up by feminist movements and other movements that opposed the operation of the penal system. For this reason, they struck out on their own by breaking with the Maoist conception of popular justice ([41], p. 420; [42], p. 11). The Maoists’ desire to twist the arm of justice and turn penal repression against those who are usually protected from it clashed with the desire to “shatter” it by opposing all repressive institutions [43].

² For example, see [38].

2.2. Multitudes of Prisons

One important point of convergence between feminist movements and movements against repression was the denunciation of prisons for women. The 1970 issue of *Libération des femmes, année zéro* contains a personal account by a former prisoner. She analyzed the specificity of women's imprisonment and showed that it was a "caricature of the repression that a woman suffers at home and at work" ([20], p. 156). The second issue of the newspaper *Les Pétroleuses*—launched in 1974 by feminists closely associated with the Revolutionary Communist League—contained a description of its meeting with a woman released from prison [44]. The article showed the ordinary operation of prison domination and discipline: isolation, solitary confinement for up to 90 days, harassment, and underpaid work granted only in exchange for good behavior. The newspaper asserted a close association with the Prisoners' Action Committee. However, their close relationship did not lead to significant shared action. Female prisoners were a small minority of the prison population (3.8% in 1968, 3.1% in 1980) and the PAC kept its focus on the situation of men who were in the middle of significant revolts in those years. Moreover, the fight against the punishment of abortion, which dominated the activist agenda in those years, found expression in trials, but not so much in the defense of women sent to prison [45].

However, more generally, analyses of the repressive operation of prisons were strategic because they served as a model for criticism of many other institutions viewed as forms of prison, where women saw themselves as prisoners. The first issue of *Le Torchon brûle* featured an article on a day in the life of a woman who says, as she leaves for work: "I'm going to prison" [46]. Denunciations of the *prison-form* of institutions that locked up women were communicated through protest movements within various institutions that housed/imprisoned young women whose sexual behavior was considered deviant. For example, *Le Torchon brûle* supported a collective movement at a high school for pregnant girls in Plessis-Robinson, where students were demanding a "complete change in the house rules" and asserting "the rights of minor single mothers" [47]. The same issue denounced as "comfortable prisons" the hotels in which single mothers without resources were forced to live.

The description of these "1000 Bastilles to capture" was also important in the prisoners' movement [48]. The first brochure by the Prison Information Group proclaimed that prison was "intolerable", but so were "courts, the police, hospitals, asylums, school, the military, the press, television, the state" ([34], p. 80). The CAP described the protest in the "orphan prison" in Meudon [49], based on documents supplied by the Orphanage Information Group. It also expressed support for the Committee for the Struggle of the Disabled, confined to *Ateliers protégés* (Protected Workshops) and assistance-through-work centers "where they are exploited for a very small salary" [50]. Activists' denunciation of closed institutions gave rise to a common critique of the repressive methods they used: confinement of people who disturbed the social order, repressive house rules, blackmail by the institution to obtain good behavior, and exploitation through underpaid work. The various movements formulated their protests in terms that had a very close kinship with those used to criticize the prison system itself: the desire to give inmates a voice in the public debate, politicization of the use of confinement, and the demand for rights instead of arbitrariness.

2.3. Struggles Against Repression

Though the sites of struggle were multiplying in number, this this did not prevent them from employing cross-disciplinary critical vocabularies that influenced how sexual violence was tackled. The 1970 issue of *Partisans* included an article on rape. It was a personal account that described the rapist's total unawareness of the nature of his act, as well as the inability of loved ones to understand what had happened. When the law is evoked, it is its accusatory side, citing the fear of an unwanted pregnancy and the distress of a secret abortion. The author wondered if abortion was allowed in this case and if, to this end, the victim would be able to "prove the rape" ([20], p. 95). During her deposition on the occasion of the famous Bobigny trial in 1972, Marie-Claire, a young woman prosecuted for having an abortion, told the court that she had been raped during the sexual relations

that had led to her pregnancy. The presiding judge made no reply. A bit later Gisèle Halimi, the lawyer of Marie-Claire's mother, denounced the threats of the young man who had "forced" Marie-Claire. However, the fact was treated as marginal in the trial.

This marginality shows how difficult it was to get an account of rape heard in a courtroom. However, in those years, it also showed the precedence that activists gave to defense against the justice system. This is illustrated by the account that concludes Gisèle Halimi's book, *La Cause des femmes*. It tells the story of a fifteen-year-old girl impregnated by the eldest son of a neighboring family. She did not tell anyone, gave birth alone and then accidentally killed the infant because she did not know how to cut the umbilical cord. She was harassed by the courts and then the charges were dismissed. Her mother subsequently appealed to the women's movement Choisir la cause des femmes (also called Choisir). In a letter to Gisèle Halimi, the mother explained that "everyone is advising us to sue him for corruption of a minor", but that she and her husband wanted to "avoid that". She was undoubtedly continuing the long tradition of silence about rape, for the purpose of safeguarding the family's reputation. But Gisèle Halimi did not make this point. On the contrary, she stressed the benefits of terminating legal action and instead including it in a collective approach: the young woman "is doing better, she's smiling, working, campaigning [...]. For the first time in her life, she finds herself surrounded by warm-hearted, active girls" ([51], pp. 186–88). The context in which the ordeal she suffered could be described, recognized and transformed was not so much the courts, but rather activist sociability.

In the early 1970s, the fight against sexual violence was not an autonomous cause. At a time of prison revolts, radical feminist movements "viewed legal norms and forums as pillars of the patriarchal institutions to be combatted" [52]. They understood sexual violence in the context of a broader structure of domination: not as a rare act of deviance, but rather as the extreme form of the hierarchical relations underlying the patriarchal social organization ([53], p. 10). Therefore, one of the activists' tasks was to defend, against this organization, their right to engage in sexual practices that placed them at risk of being penalized. The same went for young gay activists in those years, who defended their right to engage in consensual sexual relations under the age of majority and denounced the punishment of which they were victims. One common feature of the social movements that emerged during these years was their conception of the politicization of penal issues as a way of preventing the punishment of their practices.

3. Splits among Activists in the Area of Sexual Violence

This situation changed in the mid-1970s, which represented the "dark turning point of this period, when expectations of a utopia of revolutionary hope and a bright future gave way to the economic and social crisis, the struggle against job cuts and mass unemployment" ([54], p.12). The most radical movements, like the Maoist groups or the Front homosexuel d'action révolutionnaire (FHAR/The Homosexual Front for Revolutionary Action), decline or disappear. In the feminist movement, the controversies around the legalization of abortion (e.g., should the abortion act be reserved to state structures or allowed to militants doctors?) have pitted radical groups and reformists. The text and the passing of the law in 1975 marked the dominance of reformists, particularly the movement Choisir, led by lawyer Gisèle Halimi. In the second half of the 1970s, the voices of activists hostile to cooperation with the State have not disappeared, as we shall see, but they are not the strongest. During these same years, the government denounced a surge in delinquency and, in the penal realm, refreshed the range of figures representing delinquency ([55], p. 12) by characterizing the people considered as responsible for security problems: young, poor, marginal, foreign men living in large residential complexes [56,57]. This reorientation spread to the highest level of government ([58], p. 23). The same applied to immigration. As Patrick Weil explains it, "in 1977, it looked like the crisis was going to persist, and unemployment became the French population's primary concern: Valéry Giscard d'Estaing decided to make the repatriation of non-European immigrants a priority" ([59], p. 252).

This discourse led to public security issues being placed on the political agenda in 1977, when the report *Responses to Violence* was drafted under the authority of Alain Peyrefitte, who said that “violence now dwells at the heart of the city” ([60], p. 24). This trend translated into the establishment of security periods for those serving long sentences in 1978, and into the long process of drafting and passing the so-called “Security and Freedom” law in February 1981. These reforms put anti-repression movements on the defense and resulted in a restructuring of the field. The Prisoners’ Action Committee, the Union of the Magistracy and the Lawyers’ Union of France joined forces with older human rights groups like the Human Rights League to form a front against these reforms. The component of these protests that strictly related to prisons focused on the public security orientation of prison policy, and more specifically on the high security wings that housed prisoners serving long sentences [61,62].

3.1. Rape: A Crime with No Punishment?

These activist initiatives against the fate of prisoners who were handed the longest sentences added an element of conflict to penal demands relating to sexual violence. In fact, the second half of the 1970s saw a change feminist movements’ relationship with the law. Two important trials took place in Aix-en-Provence in 1975 and 1978. These judicial periods were accompanied by mobilization periods, peaking with the “10 hours against rape” protest that brought several thousand women together at La Mutualité on 26 June 1976. Their main slogan called for recognition that *rape is a crime*. This enabled them to denounce the silence of society, the police and the courts on the subject of sexual violence, and it federated women’s movements whose political orientations were otherwise different. This is what happened in Marseille in 1975, when three men were tried for “assault and battery” after raping two young Belgian women camping in the calanques. This trial brought together the Women’s Rights League, Psychoanalysis and Politics, the French wing of the International Tribunal on Crimes Against Women, the Pétroleuses and “women of the MLF who placed themselves beyond rigid tendencies, definitions and alternatives” ([63], p. 236).

Although there was consensus on the need to press charges in order to get a male-dominated court system to recognize the criminal reality of rape, the meaning of this recourse to the courts was a subject of disagreement. In the spirit of *penal subversion*, was it a way to confront the judicial system with its contradictions in order to reveal its classist and/or sexist nature? Or, through action to bring a *selective reinforcement of penal severity*, was it a way to obtain more frequent, heavier sentences for people found guilty of rape—sentences that would be social transformation factors in themselves? The politicization of the trials included a great deal of criticism of how courts operate when handling rape cases.

In the newspaper *Quotidien des femmes*, a young rape victim described the atrocious reaction of the police when she lodged her complaint on the morning of the crime. By threatening to inform her family immediately, they temporarily persuaded her to withdraw her complaint [64]. This lack of understanding continued during the investigation and in court. For her, recourse to the justice system ended in failure: “repressive laws” only “reinforced and sustained rape and violence, and it would be heresy for the MLF to fall into this trap”. A feminist journal that focused on class struggle, *Femmes travailleuses en lutte*, expressed concern that battles in the court system would be taken over by the ideological framework of the bourgeoisie [65]. Activist jurists took a similar view. Odile Dhavernas, a jurist who, throughout the 1970s, was involved in feminist research and critical works on the law as a member of the Movement for Judiciary Action, the Lawyers’ Union of France and the Criticism of Law movement, explored the “legalist illusion”. She supported the campaign against rape but, in her view, the “judicial institution” was the “the quintessential adversary’s territory” ([66], pp. 375–80).

In 1976, the Women’s Rights League stated that “imprisoning the aggressor will not change his mentality and teach him that a woman is a human being”. It considered this punishment “pointless”

and “sexist”³. In 1976, Choisir took comparable positions [68]. In autumn of that year, as council for the plaintiff in a rape case in which the defendants had been placed in provisional detention, and their counsel had submitted a request for release, Gisèle Halimi said she “approved of her colleagues’ request” because her organization was “against detention in general” [69]. Feminist movements reflected on how they could really and concretely take into account the rape victim and her words, far from the mocking or hostile indifference of men and judicial inquisitions.

The theme of self-defense developed as a way to get beyond the choice between appealing to the state and being resigned to vulnerability. In the view of *Femmes travailleuses en lutte*, the solution was to “mount a direct, collective fight against each rape, against each attempt, fostering solidarity among women, between them, and put an end to gossip, and one must think about self-defense before the rape, and no longer just about getting revenge” [70]. The cover of *Quotidien des femmes*, announcing the anti-violence action at La Mutualité on 26 June 1976, consisted of a photograph showing a young woman lying in ambush at a street corner, holding a machine gun [64]. It was the visual version of the position expressed by the organization *Information des femmes*: “Women’s self-defense: let’s learn to fight so we no longer fear assaults at night on the street” [71]. Monique Antoine, an activist who long fought for feminist causes, encouraged women to reflect on alternatives to court action, for example: “bringing rapists before a ‘popular court’ of women and giving the debates a large audience”, or at the very least, ensuring that the people in the rapist’s social circle are made aware of his act [72].

Feminist writer Françoise d’Eaubonne expressed the view that on the one hand, “there is no valid reason to swell the herd of prisoners; there is no law, however harsh (on the contrary even), that prevents the ‘rape’ phenomenon”. On the other hand, she believed that there was no need for activists to “go easy on the oppressors”. In her view, the solution lay in autonomous action by women, both to protect themselves and to crack down ([73], pp. 75–76). The idea of defending women by instilling fear in men was given radical but marginal expression during a conference on “women and violence” held in Sainte-Baume in 1977: “Someone from the ‘spectacular violence’ group is advancing one of the ‘hare-brained’ ideas they came up with: to make men feel just as much fear in the streets as we do, female commando groups should be formed to beat up men chosen at random...or maybe based on the look on their face (therefore telling them: ‘you look like you want to rape’, just as they tell us ‘you look like you want to be raped’)”. The idea received “support”, but also provoked “intense protests” [74].

3.2. Controversies on Court Action

The desire to subvert ordinary courts became more difficult as judges were forced to make rulings in rape cases. In March 1977, activist lawyer Josyane Moutet expressed concern that court records “were providing an alibi for the media hype on crime” [75]. In 1977, the criminal court of Le Mans heard the case of “André Pasquier, 28 years old, married, father of two children, [...] truck driver”. The trial was accompanied by a feminist mobilization, but it deeply disappointed the activists. “Immediately trapped by the power of the judicial apparatus, all three [victims] had to stick strictly [to the] facts” and could say nothing about the rape’s “social, medical, police, ideological” dimensions [76]. In their defense speeches, the lawyers for the plaintiff spoke of “the inopportunities of punishing this rapist in particular”. André Pasquier was sentenced to five years in prison. The courtroom erupted with “free Pasquier”, provoking an “indescribable look of surprise on the faces of the jurors”. This story illustrated the links that still existed between feminist activism and anti-prison activism. It was written by CAP activist and former prisoner Catherine Leguay in the journal *Histoire d’elles*, created by feminist journalists in 1976.

The impossibility of making non-punishing use of penal justice became even clearer after a trial held at the criminal court of Beauvais in February 1978. It was that of Lakhdar Setti, an immigrant laborer tried for rapes and assaults. The lawyers of one of the two plaintiffs pleaded for recognition of

³ Quoted by ([67], p. 85).

the crime but against incarceration. However, the criminal court scoffed at this request and, agreeing with the second victim's lawyer, sentenced the man to twenty years in prison. The debate triggered by this trial exacerbated divisions. A few days after the trial, under the title "Rape: the Pitfall of Imprisonment", the newspaper *Libération* published a long interview with two activist feminist lawyers who had worked on the Setti trial. Monique Antoine denounced the way in which the court system had been hijacking feminist arguments for the purpose of incarceration [77].

The fact that mobilizations of women's movements were resorting to the law, even in order to challenge it, caused cracks in the close political relationship with prisoner movements. In April 1976, the women sitting on the Prisoners' Action Committee expressed the view that "rape is a social sickness, and it is not the law that will rid us of this sickness" [78]. Following Lakhdar Setti's trial, *Libération* published a letter from an imprisoned woman who believed that "the punishments inflicted for rape seem to me like monstrosities" [79]. CAP member Agnès Ouin believed there was something ridiculous about appealing to that repressive institution in order to change a patriarchal society that is "prepared to recognize whatever you want as a crime" ([80], p. 77).

These texts echoed debates on these questions taking place among feminist movements themselves. But once legal action had been taken, penal alternatives to incarceration stirred controversy. Josyane Moutet proposed an institution to impose fines as punishment, possibly proportional to income. She also explored the use of suspended sentences with probation, which had been instituted in 1958. These penalty reduction ideas presented two problems. On the one hand, the reference to fines echoed the idea of paying cash in the absence of consent to sexual relations. On the other hand, downgrading the punishments in the hierarchy of penalties ran counter to the demand that rape be recognized as a crime. *Libération* published a letter signed "women", entitled "Long Live Rape". The letter explained that "for now, the women's struggle cannot allow itself to challenge the judicial apparatus through 'women's trials', but should use these as a necessary step, for lack of anything better" [81]. In *Questions féministes*, a long article described a change of position in criminal matters. Signed by lawyer Martine Le Péron, an activist who co-founded an association that supported women victims, it carried a meaningful title: "Rape Victims Have Priority":

"We are confronted with a contradiction: on the one hand, we are fighting against the crime of rape, and we are revealing the specific oppression we are suffering as women, by making use of the judicial apparatus; but on the other hand, we should confront the repressive logic of this apparatus: its prison system, and especially its virulent misogyny. Because the problem of repression cannot be our priority: what our feminist battle is interested in is the defense of rape victims" [67].

This article is interesting because its author is aware of the prison crisis and the criticism of the penal system. She cites Discipline and Punish and acknowledges that prison does not rehabilitate convicts. However, she sees no other options that prison in order to punish the rape with a sanction that fits the severity of the crime. Compared with the hopes of a radical transformation of the patriarchal social order, one can say that this is a fallback solution. However, precisely because these hopes seem more and more distant, this solution appears increasingly as necessary.

4. Debates on Penalties and a Reform of the Law

In the spring of 1978, a trial began in the criminal court of Aix-en-Provence for the rape case that the magistrate's court had refused to consider three years earlier. In her plea, Gisèle Halimi criticized the use of incarceration in the case of thieves driven by need. On the other hand, she explained, "rape is perhaps the only crime [...] where this punishment can be deterrent":

"Middle-class and working-class culture is such that rape suspects [...] are under the impression that raping a woman is not a crime. Absolutely not. [...] If there are prison sentences, a penalty, can one assert that convicted rapists will never be recidivists? I do not believe so. Are there many recidivist rapists? I do not believe this either, but what I mean

to say is that it will be inside prison that, little by little, their thoughts will gradually lead them to the fact that rape is a crime of society, a crime of culture, a total crime" ([82], p. 338).

Gisèle Halimi also rejected the idea of resorting to self-defense. In the late 1970s, this theme was taken up by far-right groups in their denunciation of the lack of public safety ([83], p. 211). The left subsequently treated it as a threat to the rule of law. The arguments developed by Choisir, along with the second trial's high visibility in the media, largely put an end to the tension between using the law for subversive purposes and using it for penal purposes. This did not mean that the activists lost sight of what they had challenged alongside other movements. For example, in September 1978, *Des Femmes en mouvement*, whose views were close to those of the group Psychoanalysis and Politics, published an "interview with women who have friends in prison in Fleury" [84], where a hunger strike was underway. In December 1979, the same journal published a text by an "anti-rape committee" demanding "hearings so that the crime is recognized, but not demanding punishment" [85]. However, the article continues, "there very quickly arises the difficulty of reconciling our position (not demanding punishment) and that of a women who demands it practically because she is afraid". The text observes that it is "hard to find other forms of action and expression" and that "resorting to the law seems to be inevitable".

In February 1978, with legislative elections in mind, Choisir published a series of demands [86]. One proposal aimed to make all acts of sexual violence subject to the criminal courts, which dealt with the most serious crimes. The project's other articles made further demands: to prohibit infringement of the victim's private life during the investigation, to publicize the proceedings unless the victim requested otherwise, to post the conviction at the court, at the town hall and at the rapist's residence and workplace for at least 15 days, to authorize associations to act as plaintiffs, to prohibit the exercise of one's profession if it was used to commit rape. These proposals translated anti-establishment themes in the context of the judiciary. The public debate on rape turned into publicity of trials themselves. Associations' and movements' statements on rape turned into the possibility of being plaintiffs and addressing the court. The idea of publicly identifying the culprit, promoted in meetings and protests, translated into publicity through the posting of the conviction. The question of relations of domination in the professional arena turned into the additional penalty of prohibiting the exercise of a profession.

In June 1978, the Senate opened a discussion on reforming the penalties for rape. The first subject of discussion concerned the new definition it should be given. This varied from the first draft passed by the Senate ("every sexual act") to the proposition's first reading in the National Assembly ("every act of sexual penetration"). These changes did not so much reflect disagreements, but rather a process of clarification and rewording that had two aims: to broaden the category of rape to include acts excluded by the old definition, and to maintain a distinction between rape as a crime and other acts of sexual violence punished as offences.

There were more contentious discussions about the scale of punishments. During the opening of the Senate debate, the rapporteur explained that "it seemed rational [...] to bring incurred penalties back to the level of penalties for violent sexual assault", that is to say 5 to 10 years in prison for simple rape, or 10 to 20 years if there are aggravating circumstances. Through the voice of Monique Pelletier, who was then Secretary of State and Justice, and would later be Minister of the Female Condition from 1978 to 1981, the government expressed its support for this position ([87], p. 1789). Choisir consequently voiced opposition to the bill passed by the Senate. During its examination of the Senate's bill, the National Assembly's law commission reverted back to the harsher penalties: 10 to 20 years for simple rape. The Senate—particularly through the voice of socialist senator Cécile Goldet, a former resistance fighter and physician long involved in the Family Planning movement—would not yield on this point ([88], p. 2088). The disagreement was resolved before the second reading in the Assembly, whose law commission supported the opinion of the Senate. This discord did not reduce support for the bill, which was passed unanimously by both assemblies. *Les Cahiers du féminisme*, the feminist journal of the Revolutionary Communist League party, explained that "fundamentally, this law will change nothing for women", based as it was on "the deception that consists in making us believe

that respect for women will be measured by the number of years of imprisonment handed down in trials" [89]. However, the unanimity of the parliamentary political parties meant that positions such as these were expressed by only a small minority.

When the discourse of women's movements was taken up in the drafting of the reform, this showed a hybridization process that made it possible to reconcile the need for punishment with criticism of incarceration. Criticism of long prison sentences led to a legislative compromise. This is how the length of sentences was reduced. Gisèle Halimi expressed her disapproval: "Whatever the crime, all long prison sentences are individually destructive, harmful and socially unnecessary", "however, it is not acceptable that only sentences for rape should be abolished and reduced" [90]. When Choisir announced it was supporting François Mitterrand in 1981, the organization wrote that it did not see the rape law as real progress. It expected more from the left. Yet it was the socialist and communist deputies in the Assembly and Senate who had championed the reduction in the length of sentences. This is why, when activists from Choisir met with François Mitterrand between the two rounds of the presidential election, the candidate made no policy commitments in this area ([91], p. 92).

However, even if it went unnoticed during the 1981 elections, this unclear stance marked lasting policy uncertainty. From 1981 to 1986, the government left rape sentences unchanged. Yet according to judge Xavier Lameyre, since the late 1980s, the state has been establishing a special criminal law ([92], p. 547). Since 1989, it has extended the statute of limitations, created a genetic file specifically for sexual delinquents, increased the length of sentences in the new Penal Code, increased the number of aggravating circumstances, created a specific penalty of socio-judicial supervision after incarceration, enacted mobile electronic surveillance measures and introduced post-sentence security detention. The Prisoners' Action Committee disappeared as did, to a certain extent, the activist practices it embodied: prisoner activism as part of a radical challenge to incarceration. However, other actors, like the Union of the Magistracy, the Lawyers' Union of France and the Human Rights League have continued their work, and new organizations like the French Section of International Prison Watch have taken up and structured the protest against prisons, in the name of prisoners' rights and against the lengthening of prison sentences. It is not possible, in this article, to describe in minute detail, what became of these activist causes and groups from the 1980s to the 2000s. To put it briefly, what is important for us is the constitution, from the 1980s, of two relatively separate and autonomous militant fields. On one hand, feminist movements use victimization surveys to denounce the impunity of the vast majority of sexual offenders. On the other hand, activist groups condemn the punitive turn and the growth of the prison population. Between the two are a substantial number of unanswered penal questions.

5. Conclusions

Among the social movements that emerged after May 1968, the first years were marked by radical forms of protest. This radicalism presented a theoretical problem for the criminal justice system, which was trapped between the idea it must be revolutionized by giving it the power to fight class enemies, and the idea that it should be subverted through a range of protest practices, both legal and illegal. Contrary to the Maoist idea of "popular justice", activist movements developed angles of attack that targeted forms of repression of which they considered themselves to be victims. During those years, prison was more than just one of the places where this rejection exploded violently. It was a common form that made it possible to channel denunciations to various institutions that presented comparable issues: rejection of the disciplinary order, of arbitrary penalties, of being treated like children. All of this was countered by the assertion of respect for prisoners' rights, including the right to political expression.

In the process that led to the activist problematization of the issue of rape after May 1968 and the change of law in 1980, feminist groups expressed a wide range of opinions on the question of how their actions should relate with the criminal justice system. At the outset, movements that positioned themselves within a general theoretical perspective—either by linking female oppression

with class struggle, or by developing a specific analysis of the oppression of women—placed rape and its punishment (or the lack thereof) in a common critical framework: a crime of male domination judged by a classist justice system, a crime of male domination judged by a sexist justice system. These groups took up positions distinct from those of Choisir, which defined its own forms of action by involving itself in the process of drafting legislative reforms. For radical movements, recourse to the criminal justice system was a moment of subversion aimed at future social change. For reformist movements, the reform of the law was the concrete result of the struggle.

This position gradually became the dominant one in a context of declining radical movements. During those same years, a front developed linking researchers, union and association activists, as well as left-wing parties. Together they forged critical weapons to attack the government's security policy and its reforms of the penal and prison systems. The period spanning from 1975 to the 1980 law set the stage for contemporary controversies surrounding penal processes and sexual violence. At a time when hope for radical social change was receding, and in the context of the development of government discourse on the need for severe penalties, two distinct, largely autonomous activist camps took shape, one that denounced the impunity of rapists, and another that criticized repressive changes to penal law.

It is true that denunciations of female victims of violence for resorting to the justice system generated a great deal of anti-feminist discourse after the 1970s. But it is not because criticism of the justice system serves as a smokescreen covering various denials of the reality of sexual violence that it is an anecdotal element in the history of social movements. The French case examined here is far from unique. Marie Gottschalk has shown the debates that American feminists had on these questions, and the importance of the reorganization of the activist and judicial spheres during the 1980s in the heyday of policies of penal severity [93]. The French situation is very different from the one of the USA. Marie Gottschalk shows that feminist groups in the US have to take side in the Reagan years, in a moment of fast and brutal change of penal policies. In France, under the mandates of the socialist François Mitterrand (1981–1995), some former activists began careers in government. Discussions take place about the reduction of penal severity, and a law creates a new alternative to jail for minor offences. However, the government fails to reform the sentences for the most severe crimes, including rape. One reason is that the leftist parties have inherited a political ambivalence from the 1970s mobilizations, between the denunciation of impunity of certain crimes and the denunciation of repression. From this point of view, the case of the USA is unique but it's also a magnifying mirror of political dilemmas shared by other countries. To me, it is crucial to be able to analyze these dilemmas without falling in the antifeminist rhetoric that assimilates the struggle against sexual assault with the conservative discourse supporting penal turns. For this purpose, it is useful to understand the historical links between feminism and criticism of the penal system. Today, Aya Gruber has shown that "feminist critiques of gender crime enforcement" ([1], p. 606) are coming to the fore. Many of the arguments put forward today by these critics are the same as those made by feminist movements during their debates in the 1970s. For this reason, their history still has much to tell us.

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Abbreviations

CAP	Comité d'action des prisonniers (Prisoners' Action Committee)
GIP	Groupe d'information sur les prisons (Prison Information Group)
MLF	Mouvement de liberation des femmes (Women's Liberation Movement)

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