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## **REAL PUNISHMENT FOR REAL CRIMINALS? COMMUNITY SENTENCES AND THE GENDERING OF PUNISHMENT**

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This paper seeks to problematise and offer possible explanations for the contrast between the decline in the numbers of women placed on probation and the increase in the numbers of men placed on probation since the early 1980s. To illustrate the problem, I have chosen statistics for the years 1983 and 1994. [1] I have also included figures for 1993 because these show the lowest figure for women and the greatest discrepancy between men and women. Although Summary Probation Statistics are available for 1995 (Home Office 1996c) these had not, at the time of writing, been analysed by sex.

**Table 1. Persons commencing probation supervision by sex**

<b>Year</b>	<b>No. males</b>	<b>No. females</b>	<b>Per males</b>	<b>cent Per females</b>	<b>cent</b>
1983	26,780	11,180	71	29	
1993	35,757	7,104	83	17	
1994	40,368	8,751	82	18	
Change 1983-94	+13,588	-2,329	+11	-11	

Source: Home Office (1994a, 1996a), *Probation Statistics England and Wales* (1993, 1994)

There seems to be no straightforward answer to the obvious question: 'Why has this happened?' Known female offending is not declining, nor, as we know only too well, is the female prison population. So why has the probation order - once the sentence of first choice for so many female offenders - apparently become so unpopular, and what are the implications of this for the treatment of women who commit crime?

As well as arguing from a standpoint of concern about criminal justice policy and practice, I want to ask the more theoretical question: 'What is the relationship between feminist perspectives on penalty and the discourse of punishment in the community?' The proposition which this paper aims to examine is that the ideologies, policies, practices and personnel of the Probation Service (the agency which has prime responsibility for dealing with offenders in the community) are increasingly constructed within discourses which are gendered in their evolution, their emergence and their effects.

There are three assumptions which underpin my arguments. The first is that penology, including feminist analyses of penalty, has focused overwhelmingly on imprisonment, both in its literal sense and as a metaphor for social control. Traditional penology has been concerned with the reality and/or the disciplinary symbolism of the prison. Feminist analysis

(e.g. Howe 1994) has been concerned with women in prison or with women imprisoned by their sexuality, their domesticity or their pathological otherness. Both, I am asserting, have neglected the intermediate sphere of state-authorised non-incarcerative punishment which, I hope to argue, deserves (gender) analysis in its own right, which goes beyond the received wisdom of *Decarceration* (Scull 1983) and *Visions of Social Control* (Cohen 1985).

The second assumption is that the discourse of 'punishment in the community' which characterised criminal justice policy from 1988 to 1993 (and was half-heartedly revived in *Strengthening Punishment in the Community* (Home Office 1995) and *Protecting the Public* (Home Office 1996b) may be viewed with hindsight as an opportunity to interrogate the relationship between penalty and prison. It represented an attempt to find ways of constructing an offender as being suitable for community-based intervention without having to justify why s/he should not go to prison.

The third assumption is that any analysis that privileges one aspect of social inequality, as this paper does, runs the risk of failing to take account of other equally important social inequalities such as race and class. I acknowledge that wherever I talk about female offenders, I am not talking about all women who commit crime but about particular groups of women, disproportionately young, black and/or poor women (Hood and Cordovil 1992). I accept Hedderman and Hough's argument (1994) that there is little evidence of systematic discrimination against women offenders - the whole point about discrimination is that it is often not overt or systematic. But, as they also acknowledge, and as more recent Home Office research has found (Hedderman and Gelsthorpe 1997), that is not to deny the existence of more subtle and complex discrimination within and between groups of women.

## **The Probation Service, women offenders and the contribution of feminist perspectives in criminology**

In an article bemoaning the declining use of the probation order, Robinson (1978) presented, without comment, figures which demonstrated that, whilst probation orders on men had declined in ten years from 23,000 to 20,000, those on women had increased from 6,500 to 9,000. The figures were followed by the observation that 'defendants of all ages are affected by the *fall* in proportionate use of probation' (1978: 42, emphases added). This refusal to allow facts to get in the way of a good argument reflected the Probation Service's traditional tendency to render its women clients invisible.<sup>[2]</sup>

The first article on sexual discrimination and the law to appear in the *Probation Journal* suggested that, contrary to popular mythology, women offenders were dealt with more severely than men and that 'when previous record is taken into consideration, females are more likely to be imprisoned than males' (Mawby 1977: 42). Four years later, a second article on the processing of women offenders through the courts, based on a study of sentencing in a magistrates' court over a period of six months, came to the conclusion that 'women are more likely than men to be processed according to an assessment of their personal circumstances, rather than their offence' (Worrall 1981: 90). Both articles were criticised for their statistical naivete (Walker 1981, Farrington and Morris 1983) but the underlying arguments - that different and not wholly rational criteria are applied when sentencing men and women and that probation officers may unwittingly contribute to discriminatory sentencing through social inquiry reports - appeared to strike chords with many practitioners. However, it was a further three years before a third article highlighted the under-utilisation by courts of community service for women (Dominelli 1984) and no further articles on women appeared in the *Probation Journal* until 1989. It would be unfair to argue that three articles in 12 years reflected the overall level of interest in women offenders throughout the Probation Service but it does indicate a slowness to enter a debate which was becoming increasingly sophisticated within the academic discipline of criminology. (For a summary of research during this period on the differential treatment of males and females in the criminal justice system, see Gelsthorpe 1987.) It was not, in fact, until the publication of the Home Office Inspectorate *Thematic Report on Probation Service Provision for Female Offenders* (1991) and the (in)famous Section 95 of the Criminal Justice Act 1991 that the Service officially accepted the need to develop particular policies in this area.

In the early 1980s, many women were being placed on probation at an early stage in their criminal careers. Although women offenders represented between 15 and 17 per cent of all known offenders, they accounted for about one-third of all probation orders. With increasing

awareness of the dangers of net-widening, an optimistic view emerged that reducing the numbers of women on probation would result in a reduction in the numbers of women being sent to prison. The social inquiry report was identified as a key document in the social construction of female offenders as suitable candidates for supervision. Worrall (1981) and Eaton (1986) drew attention to the dangers of seeking to locate such women within the ideology of the nuclear family and of portraying (or failing to portray) them as good wives, mothers, or daughters. In a statistical comparison of court disposals of male and female defendants, Mair and Brockington (1988) concluded that women tend to be referred for social inquiry reports more readily than men (when offence and previous record are matched) and are more likely to be recommended for (and to receive) probation orders. Mair and Brockington observe that there is some evidence that referral for reports is in itself likely to move a defendant 'up-tariff' and that this should be a matter of concern for a service seeking to target reports on specific groups seen to be at risk of custody.

Deciding when a female offender is 'at risk' of custody, however, has been a vexing issue. Jackson and Smith (1987) found that many women are in prison for an accumulation of minor offences, having been considered unsuitable for community service as a result of domestic responsibilities. Similarly, Dunkley (1992) found a lack of consensus amongst probation officers about the appropriateness of referring women to Day (now Probation) Centres. Consciousness of sentencing discrimination may lead one officer to recommend Centre attendance to forestall a custodial sentence, whilst another officer may view such a recommendation as collusion with that same discrimination.

Representing women in social inquiry reports as 'programmable' - as motivated towards and able to benefit from the resources of the Probation Service - requires their construction within the discourses of domesticity, sexuality and pathology (Worrall 1990). It is an exercise fraught with dilemmas:

'The trap for probation officers who might want to construct female lawbreakers within alternative discourses is that, in an area where such stereotypes dominate, they run the risk of seriously disadvantaging their client. Hence many officers justify their continued writing of gender-stereotyped reports on the grounds that they are working tactically in their clients' best interest.' (Worrall 1990: 116)

Stephen (1993) confirms the view that female offenders are 'muted' (Worrall 1990). Whilst their own accounts of their offending differ little from those given by men (and are predominantly based on external social factors), they are more likely to find their accounts disregarded by probation officers, who apparently still tended to prefer seeing women's crime as the result of 'underlying emotional problems'. Female offenders are still not being listened to.

Very little research exists which is specifically concerned with the portrayal of black women in social inquiry or pre-sentence reports. Denney (1992) suggests that probation officers tend to write assessments of white women offenders which are more detailed and sympathetic than those of black women. There is a tendency to assume that, at the root of black women's offending lies a problem of identity resulting from not belonging to the dominant culture. Whilst white women may be portrayed as neurotic and irrational, black women are portrayed as unpredictable and 'suffering from a peculiarly "feminine" form of "silliness"' (Denney 1992: 109). Chiqwada (1989) argues that racism in social inquiry reports is more overt:

'Black women may be seen as over-protective, over-religious or over-punitive, and labelled as "bad" mothers. Expressions of emotion, whether anger or affection, may be misinterpreted. Similarly, value judgements concerning issues such as sexual or family relationships, work status, parental responsibility based on a Eurocentric view of society, are then used to justify prison sentences.' (1989: 104)

Worrall (1989) found that probation officers recognized the structural and personal oppression experienced by women offenders but they also recognized that the women themselves often colluded with stereotypical descriptions of themselves as good wives and mothers or as emotionally unstable. Most did not see themselves as 'real criminals'. They appeared to commit their crimes out of economic necessity or as a response to intolerable emotional stress. Key themes emerged - loneliness, fear (including fear of the power of experts and officials), low self-esteem, bewilderment, anger - frequently suppressed into depression, and a sense of not being listened to, heard or understood. Perhaps the most striking thing to emerge was that the notion of 'contract' (as in popular use in probation) seemed meaningless to them. They could not, or were not prepared to, organise their lives to suit the experts -

however well-intentioned - and if forced to do so, would find all sorts of subtle ways of resisting such control.

Eaton (1993) interviewed women ex-prisoners who had made a conscious decision to re-direct their lives. One element in this process was the development of reciprocal relationships. For many women offenders, their only experience of relationships is oppressive and exploitative. Whether in personal or official dealings their expectations have been of hierarchical relationships in which they are told what they should do and how they should behave in order to please other people. Anything which contributes to the breaking down of those expectations and the development of mutuality in relationships will help to motivate women towards change. Probation officers who listen and encourage and avoid judging are more likely to motivate women to re-direct their lives than are those who insist on hierarchy and the strict application of National Standards.

Carlen (1990) found that over half of the Probation Service areas which she surveyed were making, or planning to make, separate provision for women offenders. Documented examples of groupwork with women offenders emphasise democracy and empowerment, focusing on the experiences that unite rather than divide women (Buchanan et al. 1991, Jones et al. 1991, Mistry 1989). Five years later, however, such provision remains controversial and under threat at times of financial stringency.

So much for the 'traditional' probation order, but what of more recent innovations such as Community Service and Combination Orders? Sentencers have always been ambivalent about ordering women to do Community Service. Overall, about 5 per cent of female offenders receive community service orders, compared with 9 per cent of male offenders (Hine 1993). The difference, however, is even more significant in the 17-20 year old age range, where 14 per cent of men receive orders, compared with 6 per cent of women.

**Table 2. Persons commencing community service orders by sex**

Year	No. males	No. females
1983	32,450	1,790
1993	45,147	3,032
1994	46,477	3,601

Source: Home Office (1994a,1996a), *Probation Statistics England and Wales* (1993, 1994)

As Hine (1993) points out, the most pertinent question to ask of these figures may not relate to the low level of sentencing women but to the high level of sentencing men. Community Service, it could be argued, is permeated with the ideology that it is a 'young man's punishment'. She also identifies greater inconsistency in the use of community service for women than for men. Using elements of the Cambridgeshire Offender Gravity Rating, Hine found that, whilst two-thirds of the men on community service in her study were convicted of 'mid-range' offences and had 'mid-range' criminal histories, this applied to only a half of the women.<sup>[3]</sup> Hine concludes:

'that there is less consensus for female offenders on community service, which suggests that factors other than offence and previous criminal history played a greater part in their sentencing than it did for male offenders.' (1993: 69)

This concern is reflected in Barker's (1993) investigation of the attitudes and experiences of women serving community service orders. For one-third of the 48 women she interviewed, this sentence represented their first contact with the criminal justice system. For most of the women interviewed, community service had been an enjoyable and worthwhile experience, despite difficulties in organising child care. Criticism is levelled at probation officers who, in the majority of cases, did not argue well for community service in pre-sentence reports (and this study, it must be remembered, was concerned with women who had received such orders). Barker is optimistic about the future of community service for women, arguing that, as numbers increase following the 1991 Criminal Justice Act, some of the problems identified will resolve themselves. Her study, however, significantly omits interviews with women who are experiencing difficulty in completing orders or who have been subject to breach proceedings.

Armstrong (1990) paints a more pessimistic picture of women's completion rates and lays greater emphasis on the sexual harassment some women experience, especially when placed in predominantly male work group.

And, finally, the new Combination Order (which combines a probation order and a community service order) is also proving a relatively popular sentence for women (nearly 10 per cent of the orders made in 1994, compared with 6-7 per cent of community service orders on their own). Since community service and combination orders are commonly viewed as being more punitive than probation orders, one cannot ignore that possibility that the probation order is being leapfrogged by sentencers for too many women.

It is apparent that successful gatekeeping at one end of what used to be called the 'tariff' has not succeeded in reducing the numbers of women being sent to prison. Consequently, it has to be conceded that the 'minimal intervention' approach of juvenile justice is not directly transferable to work with female offenders. This may simply be because, whilst many juveniles 'grow out' of crime, most women commit crime in response to more deeply-rooted and enduring socio-economic conditions. Less simply, it may be because 'part of the problem is that it is unclear what the "better treatment of women" actually means' (Harris 1992: 98). Increased gender-consciousness is a necessary pre-condition to, but does not guarantee, a reduction in discrimination.

The current dilemma facing the Probation Service in relation to women offenders is how to find ways of keeping more of them out of prison, when that may mean offering alternatives rather earlier in a woman's criminal career than appears to be ideologically sound. But it might be argued that nothing can be less sound ideologically than jeopardising a woman's freedom by rigid commitment to a dogma of minimal intervention at all costs. On the other hand, 'setting women up to fail' by placing unrealistic multiple demands on them in the name of 'punishment in the community' also has little to commend it.

So, although there is cause for celebration at one end of what used to be called the sentencing tariff, that is by no means the end of the story. We need to look elsewhere - to the discourse of 'punishment in the community' itself - for an explanation of the reduction in probation orders on women.

## **Punishment in the community and women offenders**

Making sense of the period of criminal justice policy and legislation from 1988 to 1993 is not an easy matter. I cannot agree with the view that the whole promotion of 'punishment in the community' was merely a stop-gap measure, or worse, a deliberate conspiracy to prove that liberalism must fail. My naive analysis of the 1991 Criminal Justice Act is that its failure was not due to its inability to achieve its objective of de-centring the prison - it was initially very successful in doing that - but to its inability to establish the 'punitive city' outside the prison. Despite, or perhaps because of, the fear of an Orwellian society, there is a great deal of resistance to any discourse which appears to 'blur the boundaries' and widen or strengthen the net of social control. Garland has recently described a 'paranoid culture', indicating that 'the relations of the individual to the political community are pathologically out of sorts' (1995: 3). So rather than view the rise and fall of the discourse of 'punishment in the community' as either a story of 'benevolence gone wrong' or 'mystification' (Cohen 1983), I see it as a period of strange and paradoxical but effective refusal or resistance by the courts and the public (but not by probation officers) to accept the programmes, technologies and strategies of power which have sought to construct punishment or penalty as a continuum of control.

In a speech to the Annual Conference of the Association of Chief Officers of Probation (ACOP) in September 1988, following the publication of the Green Paper *Punishment, Custody and the Community* (Home Office 1988), John Patten (then Home Office Minister of State) attempted to define 'punishment' in such a way as to make it palatable to a professional group which, whilst accepting that its work included elements of control, had traditionally found it difficult to incorporate the word 'punishment' into its vocabulary. I will quote Patten's argument in full because its logic is central to my main argument:

'I acknowledge straight away that there is an inherent tension between the concept of control - let alone punishment - and the roles of the probation service which are variously described as "welfare", "caring" or "helping". ... But I still use the word "punishment". My reason for this lies in some basic truths about the way the criminal justice system operates and how the public perceive it. Taking the public first, their concept of punishment, I suggest, is that of an

offender being subject to restrictions on liberty, inconvenience and even to financial penalties; these restrictions to be proportionate to the degree of inconvenience the offender has caused for society or for his [sic] victims. They will be reflected in restrictions on his ability to do what he wants and when, and in the obligations which are put on him to face the reasons for his offending, the consequences for his victim and the need for reparation to society. The Green Paper recognises that in some cases the perception of punishment can be met only by a custodial sentence. It argues, however, that it would be adequately met in case of significant other categories of offenders, by ... punishment in the community. *The fact is that all probation based disposals are already in varying degrees forms of punishment. For example, the offender who has to report to a probation officer, or work specified hours on Community Service or spend 60 days at a day centre is clearly being punished. It is bizarre to scratch around to find polite euphemisms for what is going on.*' (Patten, 1988: 12, original emphasis)

At one level, the logic of this argument is flawless. No-one pretends that the only definition of 'punishment' is the narrow one of incarceration or of inflicting pain on the physical body. Even if our understanding of the term goes no further than Walker's definition of punishment as involving 'the infliction of something which is assumed to be unwelcome to the recipient' (1991: 1) no-one would dispute that a conditional discharge or a fine are, in a sense, punishments, as are probation orders and community service orders, insofar as they are unwelcome inconveniences.

But what this technical definition fails to address is the discursive Desire of the term 'punishment' - the audience it addresses, the aspirations it nurtures and the practices and prejudices it buttresses. It is here that Patten's definition so clearly (but subtly) parts company from the traditional value-base of the Probation Service. It is one thing to say that punishment is an inevitable (even desirable) by-product of placing an offender on probation. It is quite another to say that punishment is the purpose of such an order. On the surface, Patten is arguing for the 'just deserts' philosophy which became explicit in the later White Paper - the imposition of proportionate restriction of liberty or inconvenience. But underneath is an attempt to appropriate a range of other discourses (deterrence, reform, rehabilitation) and to argue that they can be subsumed within a 'just deserts' discourse, because they are not incompatible with it.

So this process is reconstructing paradox as coherence, rendering 'that which is absent present'. What is being presented here is a falsely-constructed politics of consensus. Instead of acknowledging genuine conflicts of interest and philosophy and arguing for a pragmatic compromise, the argument is presented in such a way as to pretend that there is no conflict, except in the minds of dangerously inflexible subversives, who apparently delight in the 'bizarre' practice of 'scratch(ing) around to find polite euphemisms'. Scratching around for polite euphemisms is the Other to be excluded from the discourse.

So one of the ways in which the Government sought to greenpaper over the cracks of the penal crisis was to argue that 'we're all in the business of punishment'. There are no differences of principle, only differences of approach and language - and credibility. It is not, we must understand, that the Government is opposed to non-custodial disposals. On the contrary, it wishes to enhance their status and extend their use by introducing the possibility of 'mixing and matching', to enable sentencers to make their own unique 'designer packages'. But, in order to do this, it has to be recognised that 'not every sentencer or member of the public had full confidence in the present orders which leave offenders in the community' (Home Office, 1988: 2). (This is, of course, a theme which re-emerged with the proposals to replace all existing community sentences with one all-embracing 'community sentence', the content of which was to be decided by the sentencer.) In other words, responsibility for making the new packages work lies not with sentencers but with those who provide what must now be referred to as 'tough and demanding punishment' for people who must no longer be called 'clients' but must now be referred to as 'offenders'. As John Patten rightly says, 'this is more than a semantic point' (Patten 1988: 11).

When the White Paper, *Crime, Justice and Protecting the Public* (Home Office 1990) and the Criminal Justice Act 1991 subsequently emerged with their much-heralded claim to 'just deserts' and the peculiarly situated Section 95, there was some optimism that just deserts for women would actually result in less punishment (because we know women commit less serious offences and have fewer previous convictions than men) and better provision (because access to community sentences had to be non-discriminatory). But, as Barbara Hudson (1987) has observed, in practice, just deserts or retributive sentencing always results in more, not less punishment. And so it has seemed for women.

But that is not the end of the story, for the impact of 'punishment in the community' on the Probation Service has been more complex than that and has worked together with aspects of feminist analyses of penalty in a paradoxical fashion to marginalise and further disadvantage certain female offenders. The thresholds of 'seriousness', introduced by the Act, which circumscribe the spaces in which male and female lawbreakers are constructed as punishable criminals do not seem to have been gender-neutral in their effects. Crossing the threshold of 'serious enough' (that is, to warrant a community sentence) seems to be discursively almost inseparable for women from crossing the threshold of 'so serious' (that is, to warrant a custodial sentence). The apparent need to divide female offenders into two rather than more categories is tenacious. Consequently, the construction of women as either 'good but sad' or 'bad and/or mad' which feminism sought to combat has become even more marked, with the danger that the good old probation order is now seen as inappropriate for both categories.

## **Feminist perspectives on penalty and punishment in the community**

What then are the factors which contribute to this marginalisation of women offenders in relation to community sentences?

First, the awareness of discrimination has led to a reduction in overly intrusive welfare-oriented orders on women who commit minor offences and have no previous convictions. This has emerged independently of 'punishment in the community' but is buttressed by the just deserts philosophy. Ironically, however, it serves to reinforce the view that many women offenders are not 'real' criminals and should not be the business of criminal justice professionals. In particular, those unreconstructed male probation officers who have always viewed work with women with a degree of contempt are now actually able to use the language of anti-discrimination and wave their copies of Hedderman and Hough to justify their hitherto paternalistic attitudes.

Second, the discourse of 'punishment in the community' has required advocates of community sentences to construct and market them as 'tough and demanding'. The fear of being accused of providing 'soft options' has meant that probation orders and community service orders have to be seen as suitable for hardened male criminals. Women, of course, are not excluded but are subject to the same 'suitability test'. This results in a trap whereby women can only be admitted to this provision if they can be constructed as being as intractable as men. But since these refractory women tend to be tolerated less than their male counterparts, there is always the danger that women constructed as suitable for tough, demanding community sentences are simultaneously perceived as 'unfeminine' and therefore as 'needing' custodial control.

Third, the increasing emphasis on resource management has resulted in a need to justify provision in terms of cost-effectiveness as well as (and, some might say, as a priority over) other criteria of effectiveness (Raynor et al. 1994). Where numbers of women on Probation or Community Service or in hostels are very small, it becomes difficult to argue for separate or special provision. Moves to centralise provision within a Probation Service area may solve this problem but create others in relation to geographical accessibility.

Fourth, the abolition of the requirement for probation officers to hold a social work qualification has (arguably) indirectly further 'masculinised' the Service. Michael Howard, when Home Secretary, was apparently alarmed at the high proportion of (young) women entering the profession and wished to redress the balance of recruitment in favour of older men with military or similar backgrounds, looking for career changes (Home Office 1994b). One of the effects of this may be to reduce the numbers of female officers who have a particular commitment to working with female offenders. Another will almost certainly be the development of an organisation from which female officers feel increasingly alienated and in which they are increasingly reluctant to seek promotion. I have argued elsewhere (Worrall 1995) that the language of managerialism and even the culture of formal equal opportunities policies may have the effect of privileging certain 'masculine' modes of communication, characterised by articulacy, clarity of expression and so-called 'objectivity', and of rejecting the communication of the intuitive and the experiential which frequently appears less certain or complete.

Fifth, the emerging but still under-theorised interest in the relationship between masculinities and crime(s) has understandably caught the imagination of many in the Probation Service (Cordery and Whitehead 1992, McCaughey 1992, McCaughey and Buckley 1993). It may well be that such a focus will in the long run make a greater difference to the lives of more (non-criminal) women than will a continued insistence on the plight of what is, after all, a very small group of deviant women. But the effect is, once again, to marginalise those women and to see their needs as insignificant in the criminal justice system as a whole.

## Conclusion

In this paper I have attempted to demonstrate the complex and paradoxical relationship between feminist perspectives on penalty and the discourse of 'punishment in the community'. I have tried to argue that the Probation Service should be more concerned than it is about keeping women out of prison, not only because female offenders remain a neglected and often disadvantaged group of criminals, but because the Service's attitudes towards and treatment of female offenders is an indicator of its attitude towards itself as a gendered organisation.

At a more theoretical level, I have expressed discomfort with a feminist analysis of penalty that requires a juxtaposition of the 'real' or public prison and the symbolic or private prison of informal social control. Somewhere in between there is a realm of social and welfare regulation (or, as Pat Carlen has put it, 'anti-social control' (1995)) that is nevertheless authorised - or, at least, buttressed - by the criminal law, yet is gendered. It is gendered not simply because women are punished in different ways from men but because, as Garland says,

'Penalty acts as an authoritative Other which helps to define the individual selves which stand in relation to it. It provides a basic model for our understanding of other people and for our understanding of ourselves.' (1990: 268)

And our understanding of ourselves is gendered!

The question, then, which writers like Adrian Howe (1994) demand that a feminist analysis of penalty should address is: 'How does our understanding of ourselves and our social relations determine our differential penal and non-penal disciplining of male and female bodies?' A further question, however, which seems to me to be just as central to the development of a fully critical penology might be phrased thus: when we construct a (male or female) law-breaker as an offender who deserves or requires our penal (and especially non-incarcerative) intervention, what are we saying about our (gendered) selves and the nature of our gendered social relations?

## Notes

1. Although Summary Probation Statistics are available for 1995 (Home Office 1996c) these had not been analysed by sex at the time of writing. [\[Back to text\]](#)
2. Since presenting this paper, parts of this sub-section have appeared as part of a chapter written by the author in G.McIvor (ed)(1995) *Working with Offenders: Research Highlights in Social Work 26*, London, Jessica Kingsley. [\[Back to text\]](#)
3. Until 1991 Probation Statistics indicated the previous criminal history of men and women placed on probation and community service. The proportion of women placed on community service with no previous convictions increased from 18% in 1981 to 30% in 1991. The comparable figures for men were 10% and 13%. [\[Back to text\]](#)

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